

THE SECRETARY OF STATE FOR DEFENCE

and

International Paint Limited

Contract number

CSS/0125

relating to

The provision of Coating Supply and Advisory Services to support the In Service Support for Royal Fleet Auxiliary Vessels and Royal Navy Ocean Survey Vessel, as defined in this agreement.

Record of Document Revision

Revision No.	Revision Date	Brief Revision Description	Change Control
V1	03/10/2018	Initial Issue	

TERMS AND CONDITIONS OF CONTRACT

CONTENTS

<u>PART 1</u>	<u>DEFENCE CONDITIONS</u>	
<u>PART 2</u>	<u>SPECIAL CONDITIONS</u>	
<u>SECTION 1</u>	<u>SCOPE</u>	
<u>1.</u>	<u>INTERPRETATION</u>	
<u>2.</u>	<u>THE SERVICES</u>	
<u>3.</u>	<u>CORE OBLIGATIONS</u>	
<u>4.</u>	<u>JOINT DEVELOPMENT</u>	
<u>5.</u>	<u>NOT USED</u>	
<u>6.</u>	<u>CONTRACT GOVERNANCE</u>	
<u>7.</u>	<u>PRECEDENCE OF DOCUMENTATION</u>	
<u>8.</u>	<u>COMMENCEMENT AND DURATION</u>	
<u>9.</u>	<u>VALUE FOR MONEY REVIEW</u>	
<u>SECTION 2</u>	<u>PRICING AND PAYMENT</u>	
<u>10.</u>	<u>PRICING</u>	
<u>11.</u>	<u>PROJECT WORK PACKAGES</u>	
<u>SECTION 3</u>	<u>PERFORMANCE MANAGEMENT</u>	
<u>12.</u>	<u>PERFORMANCE MONITORING OF THE CONTRACTOR BY THE AUTHORITY</u>	
<u>13.</u>	<u>CORRECTIVE ACTION PLAN</u>	
<u>SECTION 4</u>	<u>SCHEDULING</u>	
<u>14.</u>	<u>TIME AND PROGRAMMES</u>	
<u>15.</u>	<u>EARLY WARNING OF DELAYS IN PLANNED PROJECT WORK PACKAGE ACCEPTANCE</u>	
<u>16.</u>	<u>EXTENSIONS OF TIME FOR PROJECT WORK PACKAGES</u>	
<u>17.</u>	<u>NOT USED</u>	
<u>18.</u>	<u>COMPENSATION EVENTS</u>	
<u>19.</u>	<u>NOT USED</u>	

<u>20.</u>	<u>FORCE MAJEURE EVENTS</u>	
<u>21.</u>	<u>NOT USED</u>	
<u>22.</u>	<u>NOT USED</u>	
<u>23.</u>	<u>NOT USED</u>	
<u>SECTION 5</u>	<u>RULES</u>	
<u>24.</u>	<u>CONTRACTOR WARRANTIES AND UNDERTAKINGS</u>	
<u>25.</u>	<u>AUTHORITY DISCLOSED DATA AND UNDERTAKINGS</u>	
<u>26.</u>	<u>NECESSARY CONSENTS</u>	
<u>27.</u>	<u>CONTRACTOR RELATED PARTIES</u>	
<u>28.</u>	<u>AUTHORITY RELATED PARTIES</u>	
<u>29.</u>	<u>COMMUNICATIONS AND NOTICES TO REPRESENTATIVES</u>	
<u>30.</u>	<u>DISPUTES</u>	
<u>31.</u>	<u>PARTIES' OBLIGATIONS DURING A DISPUTE</u>	
<u>32.</u>	<u>CONTRACTOR'S INFORMATION, DOCUMENTS AND RECORDS</u>	
<u>33.</u>	<u>RISK MANAGEMENT</u>	
<u>34.</u>	<u>CONTRACTOR'S QUALITY MANAGEMENT</u>	
<u>35.</u>	<u>EXPLOSIVES, GASOLINE AND OTHER HIGHLY FLAMMABLE MATERIALS</u>	
<u>36.</u>	<u>NOT USED</u>	
<u>37.</u>	<u>AUTHORITY SITES</u>	
<u>38.</u>	<u>HEALTH AND SAFETY</u>	
<u>39.</u>	<u>PROVISIONS COMMON TO THE SITES</u>	
<u>40.</u>	<u>SUBCONTRACTORS</u>	
<u>41.</u>	<u>MATTERS TO BE INCLUDED IN SUBCONTRACTS</u>	
<u>42.</u>	<u>COLLABORATIVE WORKING CHARTER</u>	
<u>SECTION 6</u>	<u>INTELLECTUAL PROPERTY RIGHTS</u>	
<u>43.</u>	<u>INTELLECTUAL PROPERTY RIGHTS (IPR)</u>	
<u>SECTION 7</u>	<u>CHANGE</u>	
<u>44.</u>	<u>CHANGES TO THE CONTRACT</u>	

<u>45.</u>	<u>AUTHORITY CHANGE</u>	
<u>46.</u>	<u>CONTRACTOR CHANGE</u>	
<u>47.</u>	<u>QUALIFYING CHANGE IN LAW</u>	
<u>48.</u>	<u>APPROVAL BY THE AUTHORITY</u>	
<u>SECTION 8</u>	<u>PEOPLE</u>	
<u>49.</u>	<u>DATA PROTECTION</u>	
<u>50.</u>	<u>TUPE</u>	
<u>SECTION 9</u>	<u>SECURITY</u>	
<u>51.</u>	<u>SECURITY LIAISON OFFICER</u>	
<u>52.</u>	<u>SECURITY GRADING</u>	
<u>53.</u>	<u>SECURITY REQUIREMENTS</u>	
<u>54.</u>	<u>PERSONNEL SECURITY</u>	
<u>55.</u>	<u>INFORMATION SECURITY</u>	
<u>56.</u>	<u>CYBER SECURITY</u>	
<u>57.</u>	<u>SECRET MATTERS</u>	
<u>58.</u>	<u>LOSS AND INCIDENT REPORTING</u>	
<u>59.</u>	<u>CO-OPERATION FOR SECURITY INVESTIGATION</u>	
<u>60.</u>	<u>BREACH OF SECURITY</u>	
<u>SECTION 10</u>	<u>INSURANCE AND INDEMNITIES</u>	
<u>61.</u>	<u>NOT USED</u>	
<u>62.</u>	<u>NOT USED</u>	
<u>63.</u>	<u>INSURANCE</u>	
<u>64.</u>	<u>CONTRACTOR'S CLAIMS IN RELATION TO THIS CONTRACT</u>	
<u>SECTION 11</u>	<u>EXIT</u>	
<u>65.</u>	<u>NOT USED</u>	
<u>66.</u>	<u>TERMINATION BY THE AUTHORITY</u>	
<u>67.</u>	<u>EXIT PROVISIONS</u>	
<u>68.</u>	<u>COMPENSATION ON TERMINATION</u>	

<u>69.</u>	<u>GROSS UP OF TERMINATION PAYMENTS</u>	
<u>70.</u>	<u>TIMING OF PAYMENT OF THE TERMINATION SUM</u>	
<u>71.</u>	<u>NOT USED</u>	
<u>72.</u>	<u>CONTINUING OBLIGATIONS</u>	
<u>SECTION 12</u>	<u>GENERAL</u>	
<u>73.</u>	<u>CAPACITY OF THE AUTHORITY</u>	
<u>74.</u>	<u>NO RECOURSE TO PUBLIC FUNDS</u>	
<u>75.</u>	<u>ENTIRE AGREEMENT</u>	
<u>76.</u>	<u>COUNTERPARTS</u>	
<u>77.</u>	<u>PUBLIC RELATIONS AND PUBLICITY</u>	

LIST OF SCHEDULES

<u>SCHEDULE NUMBER</u>	<u>SCHEDULE TITLE</u>
<u>1</u>	<u>STATEMENT OF TECHNICAL REQUIREMENTS</u>
<u>2</u>	<u>CONTRACT MEETINGS</u>
<u>3</u>	<u>DEFINITIONS</u>
<u>4</u>	<u>PRICING AND PAYMENT</u>
<u>5</u>	<u>LIST OF PROJECT WORK PACKAGES</u>
<u>6</u>	<u>KEY PERFORMANCE INDICATORS</u>
<u>7</u>	<u>NOT USED</u>
<u>8</u>	<u>CONTRACTOR PLANS</u>
<u>9</u>	<u>RISK REGISTER</u>
<u>10</u>	<u>TUPE</u>
<u>11</u>	<u>REQUIRED INSURANCES</u>
<u>12</u>	<u>SUSTAINABLE PROCUREMENT CHARTER</u>
<u>13</u>	<u>COLLABORATIVE WORKING</u>
<u>14</u>	<u>COLLABORATIVE WORKING CHARTER</u>

<u>15</u>	<u>RELATIONSHIP MATURITY MATRIX</u>
<u>16</u>	<u>PARENT COMPANY GUARANTEE</u>
<u>17</u>	<u>BANK GUARANTEE</u>
<u>18</u>	<u>TASKING FORM</u>
<u>19</u>	<u>NOT USED</u>
<u>20</u>	<u>NOT USED</u>
<u>21</u>	<u>DEFFORM 111 ADDRESSES AND OTHER INFORMATION</u>

THIS FRAMEWORK AGREEMENT (HEREIN REFERED TO AS THE 'CONTRACT' CSS/0125 IS MADE 03 OCTOBER 2018

between

- (1) THE SECRETARY OF STATE FOR DEFENCE** (The Authority)
- (2) International Paint Limited** (The Contractor)

WHEREAS:

- a. the Authority requires a number of contractors ("**Market Facing Contractors**") to take responsibility for the exclusive delivery of certain long-term maintenance and ancillary services to: RFA WAVE KNIGHT, RFA WAVE RULER, RFA FORT AUSTIN, RFA FORT ROSALIE, RFA FORT VICTORIA, RFA LYME BAY, RFA MOUNTS BAY, RFA CARDIGAN BAY, RFA ARGUS, HMS SCOTT and RFA TIDESPRING, RFA TIDERACE, RFA TIDESURGE, RFA TIDEFORCE.
- b. The Authority has undertaken a competitive tendering exercise in order to select the best Market Facing Contractor to fulfil this maintenance and ancillary service function;
- c. the Authority and the Contractor have accepted:
 - (1) all Market Facing Contractors will be required to work closely with the Authority's other relevant contractors and suppliers, and particularly the Ship Cluster Owners;
 - (2) an aim of this Contract is to achieve delivery of the services described in this Contract at the best possible value-for-money for the Authority;
 - (3) a further aim of this Contract is to incentivise full and transparent working relationships between the Authority and the Market Facing Contractor to which end the parties have signed the Collaborative Working Charter at Schedule 14;
 - (4) the Authority wishes to develop the way in which it interacts with key service providers and suppliers in order to better meet the Authority's operational requirements and to achieve continuous cost reduction; and
 - (5) The Authority and the Contractor (together the "**Parties**" and each a "**Party**") agree that establishing a strategic relationship and maintaining a close relationship based on Collaborative Working in respect of Through Life Support will be advantageous to both Parties.

THE PARTIES AGREE AS FOLLOWS:

PART 1 – DEFENCE CONDITIONS

1.1 The following DEFCONS shall apply to the Contract:

DEFCONS	DESCRIPTIONS
DEFCON 5J (Edn 18/11/16)	Unique Identifiers
DEFCON 23 (Edn 08/09)	Special Jigs, Tooling and Test Equipment
DEFCON 68 (Edn 02/17)	Supply of Data for Hazardous Articles, Materials and Substances.
DEFCON 76 (Edn 12/06)	Contractor's Personnel at Government Establishments
DEFCON 90 (Edn 11/06)	Copyright
DEFCON 117 (Edn 10/13)	Supply of Documentation for NATO codification and Defence Inventory Introduction
DEFCON 127 (Edn 12/14)	Price Fixing for Contracts of Lesser Value
DEFCON 129J (Edn 18/11/16)	The Use Of Electronic Business Delivery Form
DEFCON 501 (Edn 11/17)	Definitions and Interpretations
DEFCON 502 (Edn 05/17)	Specifications Changes
DEFCON 503 (Edn 12/14)	Formal Amendments to Contract
DEFCON 507 (Edn 10/98)	Delivery
DEFCON 513 (Edn 11/16)	Value Added Tax (VAT)
DEFCON 514 (Edn 08/15)	Material Breach
DEFCON 515 (Edn 02/17)	Bankruptcy And Insolvency
DEFCON 516 (Edn 04/12)	Equality
DEFCON 518 (Edn 02/17)	Transfer
DEFCON 520 (Edn 02/17)	Corrupt Gifts And Payments Of Commission
DEFCON 522 (Edn 11/17)	Payment and Recovery of Sums Due
DEFCON 524 (Edn 10/98)	Rejection
DEFCON 525 (Edn 10/98)	Acceptance
DEFCON 526 (Edn 08/02)	Notices
DEFCON 527 (Edn 09/97)	Waiver
DEFCON 528 (Edn 07/17)	Import and Export Licences
DEFCON 529 (Edn 09/97)	Law (English)
DEFCON 530 (Edn 12/14)	Dispute Resolution (English Law)
DEFCON 531 (Edn 11/14)	Disclosure Of Information

DEFCON 534 (Edn 06/17)	Subcontracting and Prompt Payment
DEFCON 537 (Edn 06/02)	Rights of Third Parties
DEFCON 538 (Edn 06/02)	Severability
DEFCON 539 (Edn 08/13)	Transparency
DEFCON 550 (Edn 02/14)	Child Labour and Employment Law
DEFCON 566 (Edn 03/18)	Change Of Control Of Contractor
DEFCON 602A (Edn 12/17)	Quality Assurance with Deliverable Quality Plan
DEFCON 608 (Edn 10/14)	Access and Facilities to be Provided by the Contractor
DEFCON 609 (Edn 06/14)	Contractor's Records
DEFCON 612 (Edn 10/98)	Loss Of or Damage to the Articles
DEFCON 621B (Edn 10/04)	Transport (If Contractor Is Responsible For Transport)
DEFCON 624 (Edn 11/13)	Use of Asbestos
DEFCON 625 (Edn 10/98)	Co-operation On Expiry of Contract
DEFCON 630 (Edn 02/18)	Framework Agreements
DEFCON 632 (Edn 08/12)	Third Party Intellectual Property – Rights and Restrictions
DEFCON 637 (Edn 05/17)	Defect Investigation and Liability
DEFCON 642 (Edn 06/14)	Progress Meetings
DEFCON 643 (Edn 12/14)	Price Fixing(Non-qualifying contracts)
DEFCON 647 (Edn 09/13)	Financial Management Information
DEFCON 649 (Edn 12/16)	Vesting
DEFCON 656B (Edn 08/16)	Termination for Convenience – Over £5m
DEFCON 658 (Edn 10/17)	Cyber
DEFCON 659A (Edn 02/17)	Security Measures
DEFCON 660 (Edn 12/15)	Official-Sensitive Security Requirements
DEFCON 670 (Edn 02/17)	Tax Compliance
DEFCON 681 (Edn 06/02)	Decoupling Clause – Subcontracting With The Crown
DEFCON 691 (Edn 03/15)	Timber and Wood-Derived Products
DEFCON 694 (Edn 03/16)	Accounting For Property Of The Authority
DEFCON 697 (Edn 07/13)	Contractors On Deployed Operations
DEFCON 703 (Edn 08/13)	Intellectual Property Rights – Vesting in the Authority

In addition to the list above, any other DEFCON the use of which is required for the proper comprehension and/or implementation of any DEFCON listed above shall apply to the extent that any such other DEFCON if so required.

PART 2 - SPECIAL CONDITIONS TO CONTRACT

SECTION 1 – SCOPE

1. INTERPRETATION

1.1 In this Contract except where the context otherwise requires:

- a. the masculine includes the feminine and vice-versa;
- b. the singular includes the plural and vice versa;
- c. the Definitions as listed in Schedule 3 (Definitions) shall apply;
- d. a reference in this Contract to any Clause, Sub-Clause, part, paragraph or Schedule is, except where expressly stated to the contrary, a reference to such clause, Sub-Clause, part, paragraph or Schedule of this Contract;
- e. unless stated to the contrary, any reference to this Contract or to any other document shall include any permitted variation, amendment or supplement to such document;
- f. any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted;
- g. any reference to a public organisation shall be construed as a reference to any successor (statutory or otherwise) to such public organisation or any organisation which has taken over the functions and duties of such public organisation;
- h. references to any documents being in the Agreed Form means such documents have been initialled by or on behalf of each of the Parties for the purpose of identification;
- i. a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;
- j. headings are for convenience of reference only;
- k. a reference to a DEFCON, followed by a number and edition description, shall be a reference to the DEFCON published by the Authority under that number and edition description as amended from time to time; and
- l. words preceding "include", "includes", "including" and "included" shall be construed without limitation by the words which follow those words.

2. THE SERVICES

2.1 The Contractor shall carry out the Services as described in Schedule 1 (Statement of Technical Requirement), and in accordance with these Terms and Conditions of Contract.

3. CORE OBLIGATIONS

3.1 The Contractor, in addition to its obligations set out elsewhere under this Contract, shall carry out the Services, and/or shall procure that the Services are carried out and/or performed in accordance with:

- a. the provisions of Schedule 1 (Statement of Technical Requirement) and other Schedules contained herein;
 - b. the relevant Project Work Packages
 - c. the KPIs;
 - d. the Engineering Load Plan;
 - e. Good Industry Practice;
 - f. all Necessary Consents;
 - g. the Contractor's approved quality assurance systems as set out in Clause 34 (Contractors' Quality Management);
 - h. all applicable policies of the Authority;
 - i. Legislation.
- 3.2 In carrying out its obligations, the Contractor shall at all times have due regard to the Ship Cluster Owner (SCO) contractors requirements when developing programme plans and shall work with the Ship Cluster Owner to ensure all maintenance activities are managed as a coherent singular programme in accordance with Clause 11 (Project Work Packages) and with the principles of Schedule 13 (Collaborative Working).

4 JOINT DEVELOPMENT

- 4.1 In addition to and pursuant to Clause 3, the Contractor acknowledges and agrees that a programme of development with the Authority, hereinafter referred to as Joint Development, shall be maintained to ensure that the obligations of the Contract are met by:
- a. improving working relationships between the Parties;
 - b. enhancing communication between the Parties;
 - c. enabling the Authority to better meet its operational requirements;
 - d. facilitating continuous reduction in the cost to the Authority of provision of the Services; and
 - e. identifying any means by which greater efficiency in the implementation of this Contract can be achieved.
- 4.2 Accordingly, the Contractor and the Authority shall undertake Joint Development activities which shall include as a minimum:
- a. a baseline assessment against Schedule 13 (Collaborative Working) to the Contract;
 - b. agreed objectives to support the contract delivery and improvement, to be described in a specific, measurable, achievable, realistic, and time-limited format;
 - c. agreed review dates for the Market Facing Contractor, Ship Cluster Owner and Cluster Support Team (CST) to determine performance against the Joint Development activities described herein, and any resultant on-going action planning;
 - d. compliance with the strategic meeting governance process as defined in Clause 6 (Contract Governance) and Schedule 2 (Contract Meetings);
 - e. development of cost reduction plans to assist the CST in the delivery of Project Work Package target costs development of process and efficiency improvements; and

f. details of a system for recording lessons learned and details of any agreed actions;

which will be summarised and discussed at the bi-annual Joint Development meeting, as per Schedule 2 (Contract Meetings).

- 4.3 Any agreement made following the activities detailed within Clause 4.2 shall be recorded within a Joint Development Plan, which shall be reviewed at each Bi-Annual Joint Development Meeting as detailed at Schedule 2 (Contract Meetings).
- 4.4 In fulfilling its requirements under this Clause 4, and as and when required by the Authority, the Contractor acknowledges and agrees to review their relationship by re-assessing itself against Schedule 13 (Collaborative Working) in accordance with the provisions of Clause 6 (Contract Governance), and shall work to the principles of BS1 1000/ISO44001.
- 4.5 The Contractor hereby acknowledges and accepts that Joint Development forms part of the Authority's Performance Monitoring as defined at Clause 12 and Schedule 2 (Contract Meetings).
- 4.6 Nothing in this Clause, or as a result of this Clause, shall relieve the Contractor of its obligations, and no assistance, or lack of assistance received from the Authority, may be used by the Contractor as a reason for poor performance.

5. NOT USED

6 CONTRACT GOVERNANCE

- 6.1 The Contractor and the Authority shall comply with, and actively participate in, the governance process as defined in Schedule 2 (Contract Meetings).
- 6.2 The organisational responsibility for all events, meetings and workshops shall lie with the Authority's Representative. Each party shall bear its own associated costs for attendance.

7. PRECEDENCE OF DOCUMENTATION

- 7.1 If there is any inconsistency between the provisions of the main body of this Contract and any of the other documents, or between any of the other contract documents, the conflict shall be resolved according to the following descending order of priority:
- a. the Terms and Conditions of the Contract including DEFCONs and Special Conditions;
 - b. Schedule 1 to the Terms and Conditions (Statement of Technical Requirement);
 - c. the remaining Schedules 2 through 21 to the Terms and Conditions;
 - d. any other documents referred to by this Contract.
- 7.2 If either Party becomes aware of any inconsistency within or between the documents referred to in Clause 7.1 above, such Party's Representative shall notify the other Party's Representative forthwith and the Parties shall seek to resolve such inconsistency in accordance with the order of precedence set out in Clause 7.1, provided always that if either Party considers the inconsistency to be material then the matter shall be determined in accordance with the Dispute Resolution Procedure at Clause 30 (Disputes).

8. COMMENCEMENT AND DURATION

- 8.1 This Contract and the rights and obligations of the Parties under this Contract shall (subject to Clause 72 (Continuing Obligations)) run from the Commencement Date, until the earlier of:
- a. the Termination Date; or

b. the Expiry Date

such period being the "**Contract Period**".

- 8.2 In consideration of the payment of One Pound (£1.00) by the Authority to the Contractor, the Contractor shall not withdraw or amend the offer made in its tender during this Contract Period.

9. VALUE FOR MONEY REVIEW

- 9.1 The Authority shall, as part of the performance measurement and management process conduct a Value For Money (VFM) Review as detailed at Schedule 2 (Contract Meetings). The purpose of the VFM Review is to provide a robust and consistent approach to determine if the Contract is delivering Value For Money, and to provide recommendations as to whether the Contract should continue or be terminated in accordance with Clause 66 (Termination by the Authority) and competed within the wider market.
- 9.2 The Authority may require the Contractor to provide data (that could include but not necessarily be limited to: Cost Certificates; hours spent completing Work Packages; and anticipated costs for future Work Packages) and attend workshops or interviews in support of the formulation of the VFM review and outcomes.
- 9.3 The Authority shall assess the relationship between the Contractor and the Ship Cluster Owners as part of the VFM Review. Consequently, the Authority reserves the right to change the relationship, which may result in a change of scope to this Contract or a change in the Contractor's obligations under this Contract.

SECTION 2 - PRICING AND PAYMENT

10 PRICING

- 10.1 The pricing and payment of this Contract and disputed amounts and set-off shall be in accordance with the provisions of Schedule 4 (Pricing and Payment).

11 PROJECT WORK PACKAGES

- 11.1 The Authority is not bound to authorise any Project Work Packages in any given period and as such projected work may be cancelled or re-scheduled. Such changes could arise as a result of fluctuations in platform availability or Authority financial or political constraints. The Authority shall not pay for any costs incurred by the Contractor as a consequence of maintaining the capability to deliver Project Work Packages, including but not limited to facilities and personnel.
- 11.2 Not used.
- 11.3 The Authority does not bind itself to receive and pay for Project Work Packages, other than those committed during the term of the Contract and developed and agreed under this Clause 11, and for which an Acceptance Certificate has been issued by the Authority.
- 11.4 Payment of the Project Work Packages shall be made by the Authority in accordance with Schedule 4 (Pricing and Payment).
- 11.5 The Project Work Packages shall be developed by the Authority, the Contractor, the SCO contractor(s) and other MFC(s) as required.
- 11.6 Each Project Work Package shall clearly define the scope and responsibility of the Contractor, the SCO contractor(s), other MFC(s) and the Authority and shall be agreed by all Parties prior to approval by the Authority.
- 11.7 Following agreement of the Project Work Package by the Authority pursuant to Clauses 11.9 and 11.13, the respective scope and responsibilities shall form a deliverable on either the Contractor, SCO contractor(s), or other MFC(s) as applicable.
- 11.8 The Contractor acknowledges that the SCO Contractor(s) are responsible for the integration of an MFC provision, into a singular programme plan (Clause 3.2 refers). Where a task has been placed on the SCO contractor, which relates to the Project Management and co-ordination of the Contractor's specification of work as tasked under this Contract, the Contractor shall provide the SCO Contractor(s) with all assistance as requested in completing such work.

General Provisions Relating to the Initiation of Project Work Packages

- 11.9 Where the Authority authorises a Project Work Package all work shall be carried out to the satisfaction of the Authority in accordance with the Terms and Conditions of the Contract.
- 11.10 The Authority shall authorise the Contractor to commence work using the Tasking Form (Schedule 18) or by contract amendment. The Contractor shall not undertake any Project Work Package unless it is authorised by the Authority to do so.
- 11.11 The price to be paid by the Authority in respect of each Project Work Package undertaken by the Contractor shall be in accordance with the provisions of Schedule 4 (Pricing and Payment) provided always that:

- a. Prices shall be calculated using the rates contained in Schedule 4 and shall not exceed these agreed rates;
- b. The provisions of this Clause 11.18 are subject to the relevant provisions of Clause 10 (Pricing) as regards the maximum amounts payable by the Authority under this Contract;
- c. The Authority shall not be liable for any costs that exceed the Project Work Package Firm Price.

Non Fleet Time support

- 11.12 For Non Fleet Time Support (NFTS) requirements, the CST shall maintain a Programme Plan of all current and future projects and their key milestones in a jointly agreed format. At the appropriate planning milestone, the Cluster Support Team Leader (CSTL) will issue a Tasking Form (Schedule 18) to the Contractor for pricing. The Contractor shall provide a quotation with full supporting breakdown and any planned savings or efficiencies in accordance with Clause 32 (Contractor's Information, Documents and Records), Clause 10 (Pricing), and DEFCON 643 (Edn 12/14) to the CSTL within the timescale agreed in the project milestone plan.
- 11.13 Upon agreement of the confirmed Project Work Package price using the Firm Price agreed within Schedule 4 (Pricing and Payment), the Authority will amend the Contract accordingly.

Fleet Time Support

- 11.14 Where Fleet Time Support (FTS) is required, the Authority will raise a Tasking Form (Schedule 18), for each required FTS as it occurs.

Routine Priority Tasks

- a. The Contractor shall acknowledge receipt of the requirement within 1 (one) working day and provide a Firm Price quotation within 5 (five) working days, or a later period if agreed by the Authority, using the Tasking Form Part 2 (Schedule 18). The Contractor shall provide a full supporting breakdown with their quotations, in accordance with Clause 32 (Contractor's Information, Documents and Records) and Clause 10 (Pricing).
- b. For the global supply of sea-stock the Authority may require the Contractor to expedite delivery over and above the timescales within Schedule 1 (Statement of Technical Requirements). In these exceptional circumstances, timescales and any applicable cost(s) will be agreed on a case-by-case basis.

Urgent Priority Tasks

- c. This requirement is not applicable to the Contractor.

- 11.15 For all Project Work Packages agreed in respect of FTS the Authority will, subject to the quotation being considered fair and reasonable, return the Tasking Form countersigned Authorisation to Proceed (Part 3 of Schedule 18) enabling the Contractor to undertake the Project Work Package.

Additional and Emergent Work and Rebates

- 11.16 In addition to the work agreed in any Project Work Package, the Contractor shall execute and complete all authorised additional and emergent work of whatsoever nature and extent, during the course of the Project Work Package.

- 11.17 Before any additional or emergent work is undertaken the Contractor shall submit to the CSTL a Tasking Form (Schedule 18) together with confirmation that the work can be completed within the agreed Contract Acceptance Date.
- 11.18 For all additional or emergent work pursuant to this Clause 11 the rates and pricing at Schedule 4 (Pricing and Payment) shall apply.
- 11.19 Authorisation to proceed will be given in writing by the CSTL, following submission of a Tasking Form (Schedule 18) in accordance with Clause 11.30. The Authority is not bound to pay for additional/emergent work that has not been so authorised.
- 11.20 In any Project Work Package the Contractor shall assimilate additional and/or emergent work equating to 30% of the total man hours programmed for the Project Work Package without affecting the agreed Contract Acceptance Date, providing this additional and/or emergent work is not on the Critical Path.
- 11.21 Where the Authority reduces or changes the scope of a Project Work Package which results in a rebate, the Contractor shall submit to the Authority a revised Tasking Form (Schedule 18), taking into account the reduction to the Firm Price. Subject to agreement of the quotation and price breaks, the Authority shall accept the revised Tasking Form.

SECTION 3 - PERFORMANCE MANAGEMENT

12. PERFORMANCE MONITORING OF THE CONTRACTOR BY THE AUTHORITY

- 12.1 The Contractor shall monitor its performance in the delivery of the Services and maintain records of such monitoring in accordance with Clause 32 (Contractor's Information, Documents and Records).
- 12.2 The Authority shall monitor the performance of the Contractor in the delivery of the Services against this Contract using the reporting metrics and meeting regime as defined in Schedule 2 (Contract Meetings) and the Performance Management System defined at Schedule 6 (Key Performance Indicators).
- 12.3 The Authority's reporting regime shall incorporate the reviews detailed below, in which the Contractor shall be required to provide information as directed by the Authority pursuant to Clause 6 (Contract Governance) and Schedule 2 (Contract Meetings):
- a. Contract Performance Review - The Contractor shall provide data as requested by the Authority in accordance with the frequency and requirements detailed in Schedule 2 (Contract Meetings).
 - b. Annual Performance Review – the Authority reserves the right to use the monthly data provided under Clause 12.3 a. to conduct an Annual Performance Review which may or may not be put in the public domain. In the event the data is made public, Contractor anonymity shall be ensured.
 - c. Value for Money Review in accordance with Clause 9 (Value for Money Review)
 - d. Joint Development Reviews in accordance with Clause 4 (Joint Development) at the frequency detailed in Schedule 2 (Contract Meetings)
- 12.4 The Contractor acknowledges that performance of its obligations is an absolute requirement of this Contract. Failure to comply with such obligations may result in Contract Default. In such instances, the Authority shall invoke the exit strategy leading to Contract termination unless performance is improved in accordance with Clause 13 (Corrective Action Plan) and within agreed timescales.
- 12.5 Not used.

Contractor's Progress Monitoring for Specific Work Packages (e.g. Refit Periods, etc)

- 12.6 At weekly intervals throughout the period of a Project Work Package, unless otherwise agreed with the Authority's Representative, the Contractor shall attend the progress reports and provide input to the project management plans, cardinal date programmes, labour loading curves and critical path analysis network schedules, which are managed by the SCO Contractor(s).
- 12.7 Not used.
- 12.8 Progress reports shall identify the significant risks to the programme and the action to be taken to manage those risks. These reports shall contain the Contractor's assessment of the most optimistic and pessimistic outcomes.
- 12.9 Progress Meetings shall be held weekly or as otherwise decided by the Authority's Representative. The meetings shall be chaired by the Authority's Representative.
- 12.10 Attendance at progress meetings shall be as decided by the Authority's Representative. For planning purposes the Authority's Representative shall advise the Contractor of the numbers and names of any Authority Representatives scheduled to attend.

- 12.11 In addition, the Contractor shall provide facilities for and attend such other meetings as the Authority's Representative may require in order to adequately monitor progress of the Project Work Package(s).
- 12.12 The submission and acceptance of these reports and minutes shall not prejudice the rights of the Authority under Clause 66 (Termination by the Authority).

Monitoring during Work Packages

- 12.13 The Authority may elect, at its own cost, to undertake its own performance monitoring at any time for any purpose, including in order to ensure that the Project Work Packages are being provided in accordance with this Contract. The Contractor shall use all reasonable endeavours to assist the Authority in such an exercise. The Authority's Representative shall be entitled to notify the Contractor of the outcome of the performance monitoring exercise, and the Contractor shall have due regard to the Authority's comments in relation to future Project Work Packages.
- 12.14 If the Authority's Representative issues a notice under Clause 12.13, the Contractor shall bear its own costs, indemnify and keep the Authority indemnified at all times from and against all reasonable costs and expenses incurred by or on behalf of the Authority in relation to such increased level of monitoring.

13. CORRECTIVE ACTION PLAN

- 13.1 The process for measuring performance against the KPIs is set out in Schedule 6 (Key Performance Indicators) and shall be used to determine any areas of Contractor Default.
- 13.2 In the event that the Contractor's performance is assessed in a given month as either Amber or Red, which is below the standard required by the Authority, the Contractor shall provide a Corrective Action Plan within 5 (five) Business Days of submission of the performance data analysis provided to the Authority.
- 13.3 The Corrective Action Plan shall provide, but not be limited to, details of:
- a. any such failure in performance by the Contractor (as described above) (a **"Performance Failure"**);
 - b. the Contractor's explanation and root cause analysis of such Performance Failure;
 - c. the Contractor's proposed actions to be taken to fully remedy such Performance Failure (the **"Remedial Steps"**);
 - d. any measures (whether interim or otherwise) to prevent future recurrence and/or aggravation of such Performance Failure;
 - e. the completion date by which the Contractor shall implement the proposed Remedial Steps (and any other measures, as described in Clause 13.3d above). The Contractor shall note that the completion date must be prior to the next monthly KPI report unless otherwise agreed by the Authority;
 - f. the date on which it is proposed that the Authority confirm that the Remedial Steps have been undertaken such that the relevant Performance Failure is remedied to the Authority's reasonable satisfaction, such confirmation to be provided within 2 (two) Business Days of notification that the Performance Failure has been remedied.
- 13.4 The Parties shall, acting reasonably, agree (within 5 (five) Business Days of the Contractor's submission of the Corrective Action Plan) the contents of any Corrective Action Plan submitted pursuant to Clause 13.2. In the event that the Parties are unable to so agree, the matter shall be agreed in accordance with Clause 30 (Disputes).

- 13.5 Following agreement or determination of the Corrective Action Plan pursuant to Clause 13.3 the Contractor shall implement such Corrective Action Plan, and shall report to the Authority on a weekly basis (reporting frequency may be reduced at the Authority's discretion) on its progress in respect of such implementation, identifying within such report each Remedial Step covered by such Corrective Action Plan as being:
- a. On schedule for completion within the relevant timescale identified in the Corrective Action Plan (as agreed or determined pursuant to Clause 13.3); or
 - b. behind schedule for completion within the relevant timescale identified in the Corrective Action Plan (as agreed or determined pursuant to Clause 13.3), but not irremediably so ("**Failing Status**"); or
 - c. irremediably behind schedule for completion within the relevant timescale identified in the Corrective Action Plan (as agreed or determined pursuant to Clause 13.3) ("**Failed Status**").
- 13.6 If any Remedial Step is identified as being of Failing Status, the Contractor shall, at the same time as submitting the report in which such Remedial Step is so identified, submit its proposals for correcting the fact that such Remedial Step is behind schedule for timely completion, and shall implement such proposals.
- 13.7 If any Remedial Step is identified as being of Failed Status, the Contractor shall, at the same time as submitting the report in which such Remedial Step is so identified, submit its proposals for correcting the fact that such Remedial Step is irremediably behind schedule for timely completion (including revising such schedule to the extent necessary), and, if the Authority agrees to such revised schedule, shall implement such proposals.
- 13.8 Where, pursuant to Clause 13.7, the Contractor cannot either: a) correct any Failed Remedial Step to a timely completion, or b) submit any proposal for correcting the fact that such Remedial Step is behind schedule for timely completion, the Authority withholds the right to invoke any and all options available to it as detailed in Clauses 66.7 to 66.8 (Termination for Contractor Default).

SECTION 4 – SCHEDULING

14. TIME AND PROGRAMMES

- 14.1 The Contractor shall support the SCO(s) at all times through the delivery of technical coating products and a technical coating advisor service.
- 14.2 The Contractor shall work with the ship maintenance contractor to ensure that the milestone dates agreed in the committed Project Work Package(s) are achieved.

15. EARLY WARNING OF DELAYS IN PLANNED PROJECT WORK PACKAGE ACCEPTANCE

- 15.1 Without prejudice to the Contractor's obligation to notify pursuant to Clause 18 (Compensation Events) and Clause 20 (Force Majeure Events) if either:
- a. the Contractor becomes aware, or is notified by the Authority's Representative, that the actual progress of a Project Work Package may become or has been significantly delayed in relation to the Project Work Package Programme; or
 - b. the Contractor becomes aware that there will be or is likely to be a delay in provision of the Project Work Package, such that a Contract Acceptance Date may not be achieved,
- then the Contractor's Representative shall as soon as reasonably practicable and in any event within 2 (two) Business Days of becoming aware of the likely delay, submit to the Authority's Commercial Officer (copied to the Authority's Representative):
- (1) a notice to that effect specifying the reason for the delay or likely delay; and:
 - (2) an estimate of the likely effect of the delay on the Project Work Package including any Contract Acceptance Date taking into account any measures that the Contractor proposes to adopt to mitigate the consequences of the delay in accordance with Clause 15.2 and
 - (3) a revised Project Work Package Programme showing the manner and the periods in which the Project Work Package shall be carried out to achieve the relevant Contract Acceptance Date.
- 15.2 The Contractor shall provide any further information relating to the delay and/or is reasonably requested by the Authority's Commercial Officer.
- 15.3 The Contractor shall take all reasonable steps to mitigate the delay and consequences of any delay which is the subject of a notice pursuant to Clause 15.1.

16. EXTENSIONS OF TIME FOR PROJECT WORK PACKAGES

- 16.1 If any delay or anticipated failure to meet a Contract Acceptance Date for a given Project Work Package is notified to the Authority's Commercial Officer (copied to the Authority's Representative) by the Contractor's representative as being in the Contractor's reasonable opinion attributable to:
- a. a Compensation Event, then the provisions of Clause 18 (Compensation Events) shall apply; or
 - b. a Force Majeure Event, then the provisions of Clause 20 (Force Majeure Events) shall apply; or
 - c. a Change, then the provisions of either Clause 45 (Authority Change) or Clause 46 (Contractor Change) shall apply.

17. NOT USED

18. COMPENSATION EVENTS

18.1 If, for any Project Work Package, the following events occur:

- a. a breach by the Authority of any of its obligations under this Contract; and/or
- b. material damage to the Contractor's Sites caused by the Authority's Representative and/or an Authority Related Party in exercising its rights under Clause 12 (Performance Monitoring of the Contractor by the Authority);

hereinafter referred to as "**Compensation Events**", and as a direct result of these Compensation Events:

- c. the Contractor is unable to achieve an Acceptance Certificate for the relevant Project Work Package on or before the Contract Acceptance Date for that Project Work Package; or
- d. the Contractor is unable to comply with its obligations under this Contract;

then the Contractor is entitled to apply for an extension of time to the Contract Acceptance Date for that Project Work Package and/or relief from its obligations under this Contract, provided this is limited to Project Work Packages previously submitted and agreed by the Authority including the provision of long-lead requirements.

Procedure for Compensation Event Claims

18.2 To obtain an extension of time and/or relief and/or claim compensation the Contractor must:

- a. as soon as practicable, and in any event within 2 (two) Business Days after it became aware that the Compensation Event has caused or is likely to cause delay, breach of an obligation under this Contract and/or the Contractor to incur costs and/or lose revenue, notify the Authority's Commercial Officer and the CSTL of its claim for an extension of time to the Contract Acceptance Date for the relevant Project Work Package and/or payment of compensation and/or relief from its obligations under this Contract; and
- b. as soon as practicable, and in any event within 2 (two) Business Days of service of the notice referred to in Sub-Clause 18.2 a., notify the Authority's Commercial Officer of full details of the Compensation Event and the extension of time and/or relief from its obligations and/or any Estimated Change in Project Costs and/or loss of revenue claimed; and
- c. demonstrate to the reasonable satisfaction of the Authority's Commercial Officer that:
 - (1) the Compensation Event was the direct cause of the Estimated Change in Project Costs and/or loss of revenue and/or delay in the achievement of the Contract Acceptance Date for the relevant Project Work Package and/or breach of the Contractor's obligations under this Contract; and
 - (2) the Estimated Change in Project Costs and/or loss of revenue, time lost, and/or relief from the obligations under this Contract claimed, could not reasonably be expected to be mitigated or recovered by the Contractor acting in accordance with Good Industry Practice.

18.3 The Contractor shall have no claim against the Authority for any loss or delay occasioned by Crown establishments being closed for holidays.

Effect of a Compensation Event

- 18.4 If the Contractor has complied with its obligations under Clause 18.2 (Procedure for Compensation Event Claims), then:
- any relevant Contract Acceptance Date shall be adjusted by such time as shall be reasonable for such a Compensation Event, taking into account the likely effect of the delay; and
 - in the case of an additional cost being incurred by the Contractor on or before the Contract Acceptance Date for that Project Work Package, the Authority shall compensate the Contractor for the actual Estimated Change in Project Costs as adjusted to reflect the actual costs reasonably incurred; and
 - the Authority shall give the Contractor such relief from its obligations (including any deductions from payments due to the Contractor under this Contract that the Authority is entitled to make in accordance with this Contract) under this Contract as is reasonable for such a Compensation Event.

Late Provision of Notice or Information

- 18.5 If the information required by Clause 18.2 (Procedure for Compensation Event Claims) is provided after the dates referred to in that Clause, then the Contractor shall not be entitled to any extension of time, compensation or relief from its obligations under this Contract in respect of the period for which the relevant information is delayed.

Failure to Agree

- 18.6 Subject to Clause 18.5, if the Parties cannot agree the extent of any compensation, delay incurred, relief from the Contractor's obligations under this Contract, or the Authority disagrees that a Compensation Event has occurred (or as to its consequences), or that the Contractor is entitled to relief under Clause 18, the Parties shall resolve the matter in accordance with the Dispute Resolution Procedure Clause 30 (Disputes).

19. NOT USED

20. FORCE MAJEURE EVENTS

- 20.1 The Contractor shall not be in breach of this Contract, nor liable for late or non-performance of any of its obligations under this Contract, if such delay or failure result from a **"Force Majeure Event"**. For the purposes of this Contract a Force Majeure Event is defined as one of the following:
- acts of nature;
 - war;
 - hostilities;
 - fire at any of the Contractor's premises or those of its suppliers except to the extent that the fire was caused by their own negligence.
- 20.2 The Contractor shall immediately notify the Authority in writing on the occurrence of a Force Majeure Event, including details of the Force Majeure Event, its effect on the Contractor's obligations under this Contract, and the actions proposed to mitigate its effect.
- 20.3 The Contractor shall be entitled to an appropriate extension of time for performing such obligations provided always that the Contractor has used, to the satisfaction of the Authority, all reasonable endeavours, both to mitigate the effects of the Force Majeure Event, and to facilitate the continued performance of its obligations under this Contract.

- 20.4 The maximum extension of time granted under this clause shall be limited to 4 (four) weeks after which time the Authority may, on giving written notice to the Contractor, terminate this Contract, without seeking compensation from the Contractor, with immediate effect.
- 20.5 No Party shall be entitled to bring a claim for a breach of obligations under this Contract by the other Party or incur any liability to the other Party for any losses or damages incurred by that other Party to the extent that a Force Majeure Event occurs and the affected Party is prevented from carrying out obligations by that Force Majeure Event. Pursuant to Clause 20.4, the Authority shall not be entitled to terminate this Contract for Contractor Default to the extent that such Contractor Default arises from a Force Majeure Event.
- 20.6 Nothing in Clause 20.4 shall affect the Authority's entitlement to make payment retentions in the period during which a Force Majeure Event is subsisting, but payment retentions shall not be made in respect of a failing KPI, where it is agreed that the circumstances giving rise to such payment retentions was as a result of a Force Majeure event.

Cessation of Force Majeure Event

- 20.7 The Contractor shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Contractor to be unable to comply with its obligations under this Contract. Following such notification this Contract shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

Failure to Agree

- 20.8 If the Parties cannot agree that the circumstances giving rise to deductions were as a result of a Force Majeure Event, the Parties shall resolve the matter in accordance with the Dispute Resolution Procedure Clause 30 (Disputes).

21. NOT USED

22. NOT USED

23. NOT USED

SECTION 5 – RULES

24. CONTRACTOR WARRANTIES AND UNDERTAKINGS

Contractor Warranties

24.1 The Authority relies upon Contractors warranties and representations and as such the Contractor warrants and represents to the Authority that:

- a. on the Commencement Date and thereafter throughout the Contract Period it 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. on the Commencement Date and thereafter throughout the Contract Period it has the corporate power to enter into and to exercise its rights and perform its obligations under the Contract;
- c. on the Commencement Date and thereafter throughout the Contract Period all action necessary on the part of the Contractor to authorise the execution of and the performance of its obligations under the Contract has been taken or, in the case of any such document executed after the Commencement Date, shall be taken before such execution;
- d. on the Commencement Date the legal and beneficial ownership of the Contractor (or the company of which the Contractor is a subsidiary) is accepted as being that described within the Contractor's Tender return;
- e. on the Commencement Date, any collateral warranties or documents under Clause 24.1 p. shall be obtained;
- f. on the Commencement Date and thereafter throughout the Contract Period the obligations expressed to be assumed by the Contractor under the Contract are, or in the case of any such document executed after the Commencement Date shall be, legal, valid, binding and enforceable to the extent permitted by law and each Contract or document shall be in the proper form for enforcement in England;
- g. on the Commencement Date and thereafter throughout the Contract Period the Contractor's execution, delivery and performance by it of the Contract does not contravene any provision of:
 - (1) any existing Legislation binding on the Contractor including Legislation which has been enacted but is not yet in force;
 - (2) the memorandum and articles of association of the Contractor;
 - (3) any order or decree of any court or arbitrator which is binding on the Contractor; or
 - (4) any obligation which is binding upon the Contractor or upon any of its assets or revenues;
- h. on the Commencement Date the Contractor's warranted data is true and accurate in all respects;
- i. on the Commencement Date and thereafter throughout the Contract Period no claim is presently being assessed and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of the Contractor (having made all due enquiry), pending or threatened against it or any of its assets which shall or might have a material adverse effect on the ability of the Contractor to perform its obligations under the Contract;

- j. on the Commencement Date and thereafter throughout the Contract Period it is not the subject of any other obligation, compliance with which shall or is likely to have a material adverse effect on the ability of the Contractor to perform its obligations under the Contract;
- k. on the Commencement Date and thereafter throughout the Contract Period no proceedings or other steps have been taken but not discharged (nor, to the best of the knowledge of the Contractor, having made all due enquiry, 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;
- l. on the Commencement Date and in entering into this Contract it has not committed any Prohibited Act;
- m. on the Commencement Date there is no (and nor has there been) any infringement or alleged infringement of any third party's IPR in connection with the Project;
- n. it is aware of its roles and responsibilities as contained within this Contract;
- o. it is aware of its roles and responsibilities relating to the following:
 - (1) the scope of the SCO Contracts and MFC Contracts and how such Contracts relate to this Contract;
 - (2) management and integration of the SCO, within its own programme management plans to ensure that each Project Work Package meets the required performance targets; and
 - (3) for the avoidance of doubt, the Contractor shall in accordance with the Contract, be responsible for the performance of each obligation, subject to the provisions of Clauses 18 (Compensation Events) and 20 (Force Majeure);
- p. the Contractor shall provide a performance guarantee for all work conducted under this Contract for a period of 12 (twelve) months, during which:
 - (1) any paint area is found to be defective or show symptoms of weakness due to faulty materials or workmanship so as, in the opinion of the Authority shall have the right either to:
 - (a) require the Contractor to repair and/or replace such defective areas of paint or where the defect or weakness is due to a failing in training or oversight, replace any material and cover the fair and reasonable costs associated with rectifying the defect on the vessel. Where the Contractor is required to take such corrective action outside the United Kingdom, the Authority will reimburse the difference between the reasonable expenses actually incurred and the reasonable expenses the Authority judges that would have been incurred had such action been taken within the United Kingdom; or
 - (b) take such action itself, or through another Contractor, and to recover from the Contractor its entire costs in so doing to be claimed from the next authorised Project Work Package or by an ad hoc reimbursement should it be the final authorised Project Work Package raised against the Contract;
 - (2) notwithstanding anything contained in Clause 24.1 p. (1), the Contractor shall not be required to remedy or pay the cost of remedying any deficiency arising:
 - (a) from fair wear and tear or;
 - (b) from negligence on the part of any person in the service of the Authority;

- (3) where at any time before and during the performance of the Contract the Authority specifies the use of unusual materials not normally used and the Contractor has, within 14 (fourteen) days of the date on which the use of such materials was specified, given written notice to the Authority disclaiming liability under this Clause in respect of any unfitness which may result from the use of such materials, he shall not be responsible under this Clause for any such unfitness.
- (4) where the Authority has supplied items or materials this Clause shall apply to the work required to install such item(s) or material(s).
- (5) the Contractor shall notify the Authority where a more favourable guarantee term than that defined in this Clause can be obtained from its supply chain. The Authority shall be entitled to the benefits of such guarantee, which shall be in addition to the provisions of this Clause.
- (6) the Contractor shall proceed with due diligence in corrective action under this Clause.
- (7) nothing in this Clause 24.1 p. shall relieve the Contractor of his obligations detailed elsewhere in the Contract.

Contractor Undertakings

24.2 The Contractor undertakes that, for so long as this Contract remains in full force:

- a. it shall give the Authority's Representative notice of any litigation, arbitration, administrative or adjudication or mediation proceedings before or of any court, arbitrator, administrator or adjudicator or mediator or Relevant Authority against itself or a Subcontractor which would adversely affect the Contractor's ability to perform its obligations under this Contract, such notice to be given within 5 (five) Business Days of the Contractor becoming aware that such proceedings may be threatened or pending, or immediately after the commencement thereof (as applicable);
- b. it shall not cease to be resident in the United Kingdom or sell, transfer, lend or dispose of (other than by way of security) in whole or in part its undertaking, business or trade outside the United Kingdom;
- c. it shall not undertake the performance of its obligations under this Contract for provision of the Services otherwise than through itself or a Subcontractor;
- d. it shall not change or cease its business or start any other business which is materially different from that to be carried on by it under this Contract;
- e. it shall, in accordance with DEFCON 566 (Edn 10/16), inform the Authority of any material change of control in the Contractor.

25. AUTHORITY DISCLOSED DATA AND UNDERTAKINGS

Authority Disclosed Data

- 25.1 Subject to Clause 25.4 (Fraudulent Statements) the Authority does not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any of the Disclosed Data and neither the Authority nor any of its agents or employees shall be liable to the Contractor in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of:
- a. any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the Disclosed Data; or

- b. any failure to make available to the Contractor any materials, documents, drawings, plans or other information relating to the Project.

Contractor's Due Diligence

25.2 The Contractor shall be deemed to have:

- a. satisfied itself as to the extent of the risks assumed by it under this Contract; and
- b. gathered all information necessary to perform its obligations under this Contract and other obligations assumed and/ or any other relevant information.

25.3 Subject to Clause 25.4 (Fraudulent Statements), the Contractor shall not in any way be relieved from any obligation under this Contract nor shall it be entitled to claim against the Authority on grounds that any information, whether obtained from the Authority or otherwise (including information made available by the Authority), is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information.

Fraudulent Statements

25.4 Nothing in this Clause 25 (Authority Disclosed Data and Undertakings) shall exclude any liability which the Authority or any of its agents or employees would otherwise have to the Contractor in respect of any statements made fraudulently prior to the Commencement Date.

26. NECESSARY CONSENTS

26.1 The Contractor shall:

- a. at its own expense obtain and maintain all Necessary Consents which may be required for the performance of the Project including the entering into of any legal agreements necessary for the grant of the Necessary Consents;
- b. at its own expense use all reasonable endeavours to assist the Authority to obtain all Necessary Consents that, as a matter of law, only the Authority is eligible to obtain;
- c. be responsible for implementing each Necessary Consent within the period of its validity in accordance with its terms and relevant Legislation;
- d. provide free of charge to the Authority's Representative a copy of any application for a Necessary Consent (with a copy of all accompanying drawings and other documents) and a copy of any Necessary Consent obtained and any associated legal agreement; and
- e. comply with the conditions attached to any Necessary Consents and the terms of any associated legal agreement and procure that no such Necessary Consent or associated legal agreement is breached by it or any Contractor Related Party and use best endeavours to preserve the Necessary Consents and procure that such Necessary Consent is not revoked or quashed and that all Necessary Consents continue in full force and effect for such time as is necessary for the Contractor to carry out its obligations under this Contract.

26.2 The Contractor shall not (and shall use all reasonable endeavours to procure that any Contractor Related Parties shall not) without the prior consent of the Authority's Representative (which consent shall not be unreasonably withheld or delayed) apply for or agree to any change, relaxation or waiver of any Necessary Consent (whether obtained before or after the Commencement Date) or of any condition attached to it but, subject to the compliance by the Contractor with its obligations under this Clause, references in this Contract to Necessary Consents shall be construed as referring to the Necessary Consents as from time to time varied, relaxed or waived.

26.3 The Contractor shall indemnify and keep indemnified the Authority against all Losses, claims, damages, liabilities, costs and expense (including reasonable legal costs) incurred by it in respect of any breach of Clause 26.1 (Necessary Consents) by the Contractor and/or any act or omission of any Subcontractor that results in such breach.

26.4 The Authority shall, subject to the Contractor's compliance with Clause 26.1 b., use all reasonable endeavours to obtain all Necessary Consents that, as a matter of law, only the Authority is eligible to obtain.

27. CONTRACTOR RELATED PARTIES

27.1 Subject to the provisions of this Contract, the Contractor shall be responsible and liable for the acts and omissions of the Contractor Related Parties as if they were the acts and omissions of the Contractor. The Contractor shall, as between itself and the Authority, be responsible for the selection of and pricing by all Contractor Related Parties.

27.2 Without limitation to its actual knowledge, the Contractor shall, for all purposes of this Contract, be deemed to have such knowledge in respect of the Project as is held (or ought reasonably to be held) by any Contractor Related Party.

28. AUTHORITY RELATED PARTIES

28.1 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.

29. COMMUNICATIONS AND NOTICES TO REPRESENTATIVES

29.1 All notices, information, documentation, certificates or written instructions to be provided or submitted under this Contract by one Party shall be in writing and authenticated by signature or by such other method as agreed between the Parties, shall be marked in a prominent position with the number of this Contract, shall be served by sending the same by a scanned attachment to an e-mail, first class post, or by hand, and shall be marked for the attention of the other Party's representative, to the other Party's address given in Schedule 8 (Contractors Plans). A full list of Authority addresses is provided at Schedule 21 (Addresses and Other Information)

Service of Notices

29.2 Notices sent by e-mail shall be effective on positive confirmation of receipt by the recipient. Notices given by post shall be effective upon the earlier of actual receipt and 5 (five) Business Days after mailing. Notices delivered by hand shall be effective upon delivery.

Notices to Representatives

29.3 Subject to Clause 29.1 to 29.2, any notice, information, instructions or public communication given to:

- a. the Contractor's Representative shall be given in writing and shall be deemed to have been given to the Contractor; and
- b. the Authority's Representative shall be given in writing and shall be deemed to have been given to the Authority.

29.4 The Authority shall not be responsible for and the Contractor shall not be entitled to rely on and shall not do so or claim relief, additional time, losses, expenses, damages, costs or other liabilities should the Contractor act on or fail to act on any notice, communication or other purported instruction given by a person alleging to act for and on behalf of the Authority unless such person is the Authority's Representative.

30. DISPUTES

- 30.1 If any Dispute is a Technical Dispute, the Parties agree, for the purposes of DEFCON 530 (Edn 12/14) – Dispute Resolution (English Law), that the alternative Dispute procedure set out in this Clause 30 shall apply.
- 30.2 The Party referring any Technical Dispute shall, within 20 (twenty) Business Days of any meeting taking place pursuant to paragraph 1 of DEFCON 530 (Edn 12/14), notify the other Party of not less than 3 (three) appropriately qualified experts, any one of whom it proposes should decide the Technical Dispute, and each of whom shall be a person who is wholly independent of the Contractor, the Authority, any relevant Subcontractor and any of the major competitors of the Contractor or relevant Subcontractor.
- 30.3 Within 10 (ten) Business Days of receiving notification pursuant to Clause 30.2, the Party receiving the notice shall either:
- a. select 1 (one) of the 3 (three) experts proposed by the referring Party;
 - b. propose not less than 3 (three) alternative appropriately qualified experts to the other Party, any one of whom it proposes should decide the Technical Dispute, and each of whom shall be a person who is wholly independent of the Contractor, the Authority, any relevant Subcontractor and any of the major competitors of the Contractor or relevant Subcontractor; or
 - c. request the President of the Law Society to appoint an appropriately qualified expert to decide the Technical Dispute.
- 30.4 If the Party receiving the notice pursuant to Clause 30.2 proposes (pursuant to Clause 30.3) 3 (three) (or more) alternative persons to act as experts, the other Party shall, within a further 10 (ten) Business Days, either select one of these 3 (three) (or more) persons or request the President of the Law Society to appoint an appropriately qualified expert to decide the Technical Dispute.
- 30.5 The expert agreed or selected pursuant to Clauses 30.2, 30.3 or 30.4 shall be the **"Expert"**.
- 30.6 The Expert shall be deemed not to be an arbitrator but shall render his decision as an expert, and the provisions of the Arbitration Act 1996 and the law relating to arbitration shall not apply to the Expert or his determination or the procedure by which it reached his determination.
- 30.7 The Expert shall act impartially and may take the initiative in ascertaining the facts and the law. The Expert shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Contract.

Submission of Arguments

- 30.8 Within 5 (five) Business Days of appointment in relation to a particular Technical Dispute, the Expert shall require the Parties to submit in writing their respective arguments. The Expert shall, in his absolute discretion, consider whether a hearing is necessary in order to resolve the Technical Dispute.

Expert's Decision

- 30.9 In any event, the Expert shall provide to both Parties his written decision on the Technical Dispute within 28 (twenty-eight) Business Days of appointment (or such other period as the Parties may agree after the notice referred to in Clause 30.2) or 30 (thirty) Business Days from the date of the notice referred to in Clause 30.2 if the Party which referred the Technical Dispute agrees. The Expert shall, at the cost of the Party requiring reasons for his decision, state any such reasons on request. In the event that the Expert's recommendation is not acceptable to either of the Parties, then both Parties agree that arbitration in accordance with DEFCON 530 (Edn 12/14) shall apply.

General Provisions relating to Expert Determination

- 30.10 The Expert's costs of any reference shall be borne as the Expert shall specify or, in the absence of the Expert specifying to the contrary, equally by the Parties. Each Party shall bear its own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses.
- 30.11 All information, data or documentation disclosed or delivered by a Party to the Expert in consequence of or in connection with his appointment as Expert shall be treated as confidential. The Expert shall not, save as permitted by DEFCON 531 (Edn 11/14), disclose to any person or company any such information, data or documentation. All such information, data or documentation shall remain the property of the Party disclosing or delivering the same, and all copies shall be returned to such Party on completion of the Expert's work.
- 30.12 The Expert is not liable for anything done or omitted in the discharge or purported discharge of his functions as Expert unless the act or omission is in bad faith. Any employee or agent of the Expert is similarly protected from liability.

31. PARTIES' OBLIGATIONS DURING A DISPUTE

- 31.1 The Parties shall continue to comply with, observe and perform all their obligations under this Contract regardless of the nature of any Technical Dispute and notwithstanding the referral of a Dispute for resolution under the Dispute Resolution Procedure (Clause 30 (Disputes)), and shall give effect forthwith to every decision of the Expert and/or the arbitrator delivered under the Dispute Resolution Procedure.

32. CONTRACTOR'S INFORMATION, DOCUMENTS AND RECORDS

Records Relating to Service Provision

- 32.1 The Contractor shall at all times, and in accordance with Good Industry Practice, maintain information, documents, records and the like in the possession of, or available to, the Contractor relating to the Project including information, documents, and records of:
- a. hazardous substances pursuant to Clause 38.8 to 38.18 (Hazardous Systems and Materials); and
 - b. the Contractor's performance monitoring pursuant to Clause 12 (Contractor's Performance Monitoring); and
 - c. all incidents relating to health, safety and security which occur during the Contract Period; and
 - d. all maintenance procedures carried out during the Contract Period,
- (together the "**Project Records**")
- 32.2 The Authority shall be entitled to disclose the Project Records to potential Follow-on Contractors for the purposes of re-competition.

Financial Records and Open Book Accounting

- 32.3 The Contractor shall, at all times and in accordance with Good Industry Practice, maintain information, documents, records and the like in the possession of, or available to, the Contractor relating to the Project including information, documents, and records of the costs of carrying out Service Provision, including those relating to the design, construction, maintenance, operation and financing of the Project including all books of account kept in accordance with UK Generally Accepted Accounting Practice showing in detail:

- a. administrative overheads; and
- b. payments made or received from Subcontractors; and
- c. capital and revenue expenditure; and
- d. the Contractor's consolidated income statement and audited financial statements for each of its annual financial periods; and
- e. copies of any formal notices in respect of waivers, consents and similar actions in respect of breaches of representations or warranties under the financing agreements from the Contractor to the Agent; and
- f. such other items as the Authority may require to conduct cost audits for verification of cost expenditure or estimated expenditure, for the purpose of this Contract.

Updating the Records and Deliverable Documents

32.4 The Contractor shall ensure that the Project Records are kept up to date at all times and/or are updated when reasonably requested by the Authority's Representative and shall deliver a copy of any updated Project Records to the Authority's representative:

- a. in respect of Project Records within 20 (twenty) Business Days from the later of their creation or the Authority's Representative's request; and
- b. in respect of Financial Records within 20 (twenty) Business Days from the Authority's Representative's request.

32.5 The Contractor shall keep the Authority fully informed as to the procedures in place for ensuring that the Project Records and Financial Records are at all times fully up to date, and at the Authority's reasonable request provide the Authority's Representative with evidence that the Project Records and Financial Records are fully up to date.

Retention, Inspection and Audit Access

32.6 The Project Records and Financial Records shall be retained for a period of at least 6 (six) Years after the Contractor's obligations under this Contract have come to an end.

32.7 The Contractor shall at all times provide such facilities as the Authority may reasonably require for its Representatives to visit any place where the Project Records and Financial Records are held and examine such documents.

32.8 The Contractor shall provide a report on any or all of the Project Records and Financial Records to the Authority's Representative as and when requested by the Authority's Representative.

32.9 The Contractor shall:

- a. permit all Project Records and Financial Records to be examined and copied from time to time by any auditor (whether internal or external) of the Authority and other Representatives of the Authority; and
- b. co-operate fully and in a timely manner with any reasonable request from time to time of any auditor (whether internal or external) of the Authority and at the expense of the Contractor to provide documents, or to procure the provision of documents, relating to the Project, and to provide, or to procure the provision of, any oral or written explanation relating to the same; and

- c. co-operate fully with the Authority to use any data in Progress or Financial records to improve the efficiency and Value for Money of the services performed under the Contract.

32.10 For the purposes of the National Audit Act 1983 the Comptroller and Auditor General may examine all or any of the Project Records and Financial Records as he may reasonably require which are owned, held or otherwise within the control of the Contractor and any Subcontractor and may require the Contractor and any Subcontractor to produce such oral or written explanations as he considers necessary.

32.11 The Parties acknowledge that the Comptroller and Auditor General has the right to publish details of this Contract (including Commercially Sensitive Information) in its relevant reports to Parliament.

33. RISK MANAGEMENT

33.1 Within 30 (thirty) Business Days of the Commencement Date and thereafter throughout the Contract Period, the Parties shall develop and (acting reasonably and in good faith) agree the Risk and Opportunity Management Plan and the contents of the Risk Register (Schedule 9), as described or in the form (as relevant) set out in Schedule 1 (SOTR).

33.2 For the avoidance of doubt, the agreement of the Risk and Opportunity Management Plan and Risk Register is for Project Management purposes only and shall in no way affect the Parties' respective rights and obligations as more particularly set out in this Contract.

34. CONTRACTOR'S QUALITY MANAGEMENT

34.1 Not later than 6 (six) weeks following the Commencement Date, and at least 6 (six) monthly thereafter throughout the Contract Period, the Contractor shall submit to the Authority's Representative an acceptable deliverable Contractor's Quality Plan for provision of the services complying with AQAP 2105 Edition 2 (or such other quality standard as may replace or supersede the same or, in the absence of a replacement or a superseding quality standard or equivalent or such other quality assurance system acceptable to the Authority's Representative (acting reasonably) in relation to provision of the Services.

34.2 The Contractor's Quality Plan shall make provision for the following:

- a. ensure the effective operation of the Quality Plan pursuant to this Clause 34 (Contractor's Quality Management);
- b. review the Quality Plan at intervals requested by the Authority to ensure its continued suitability and effectiveness; and
- c. liaise with the Authority on all matters relating to the Quality Plan.

34.3 The Contractor shall, in addition to its obligations under Clauses 34.1 and 34.2 above, ensure that the Services comply with:

- a. Def Stan 05-61 (Part 1 Issue 6 dated 31 March 2016) (Concessions)
- b. Def Stan 05-61 (Part 4 Issue 3 dated 25 Oct 2002) (Contractor Working Parties)
- c. AQAP 2105 (Edition 2 dated November 2009) – NATO QA Requirements for Deliverable Quality Plans
- d. AQAP 2110 (Edition D version 1 dated June 2016) – NATO QA Requirements for Design, Development and Production.
- e. DEFCON 602A (Edn 12/17) (Deliverable Assurance with Deliverable Quality Plan)

Audit of Contractor's Quality Assurance Systems

- 34.4 The Authority may carry out periodic audits, monitoring and spot checks of the Contractor's quality assurance systems and the Contractor shall procure, through the inclusion of a relevant clause in any subcontracts, that the Authority shall have a like right in respect of any relevant Subcontractors to carry out periodic audits, monitoring and spot checks of the Subcontractor's quality assurance systems. The Contractor shall co-operate and shall procure that any relevant Subcontractor co-operates with the Authority including providing it with all information and documentation which it reasonably requires in connection with its rights under this Clause 34.4.
- 34.5 The Project QA Focal Point for the requirement is detailed in box 7 of the Defence Form 111, attached to this Contract. Where considered appropriate it is recommended that MOD Government Quality Assurance Representative (GQAR) tasking be raised to carry out any risk-based surveillance. If DQAFF surveillance is undertaken, please request the Project QA Focal Point to co-ordinate any such tasking.

35. EXPLOSIVES, GASOLINE AND OTHER HIGHLY FLAMMABLE MATERIALS

- 35.1 Without prejudice and further to the provision of DEFCON 68 (Edn 02/16), when requested by the Authority, a safe transit store shall be provided by the Contractor for holding Dangerous Goods, removed from the Vessel pending disposal instructions from the Authority's Representative. Similarly a safe store shall be provided by the Contractor for Dangerous Goods in transit which may be delivered to the Contractor for the Vessel.
- 35.2 The Authority shall supply to the Contractor only those Dangerous Goods stated in this Contract.

Use of Substances that Deplete the Ozone Layer

- 35.3 Where this Contract requires substances that deplete the ozone layer to be removed from the Vessel, the Authority's Representative shall give instructions for these to be returned through the Authority to a banking facility. Where a requirement arises for the use of such substances and this Contract provides for supply of such substances by the Authority, application shall be made by the Contractor to the Authority's Representative sufficiently in advance to allow the Authority reasonable time to make delivery of such substances by the required date. The Contractor's application shall include sufficient details of such substances including type, quality (if appropriate) and required date. The Contractor shall be responsible for any costs incurred by it or the Authority due to a failure by the Contractor to make such an application sufficiently in advance to allow the Authority reasonable time to make delivery of such substances by the required date.

36. NOT USED

37. AUTHORITY SITES

Contractor's Conduct on Authority Sites

- 37.1 Subject to Clause 37.2, the Contractor shall, and/or shall procure that, in carrying out the provision of the Services at the Authority Sites it and/or any Contractor Related Party shall:
- a. not act or omit to act in any way which shall give rise to a right for any person to obtain title to or any right or interest over an Authority Site or any part of it;
 - b. observe and comply with any third party rights (including public rights) which may exist from time to time in respect of land comprising and adjoining the Authority Sites, and the Contractor shall ensure that the provision of the Services is carried out in such a way as not to interfere with access to and use and occupation of public or private roads or footpaths by any person who is entitled to any such access, use or occupation;
 - c. not use or occupy the Authority Sites for any purpose other than the provision of the Services;

- d. not deposit or manufacture on the Authority Sites any materials which are not required for the provision of the Services;
- e. not store materials or park vehicles in the immediate external vicinity of the boundaries of the Authority Sites other than for reasonable periods necessary for loading and unloading;
- f. not discharge any oil, grease or deleterious, dangerous, poisonous, explosive or radioactive matter from the Authority Sites into any rivers or any ditches or conduits on the Authority Sites and/or any adjoining property and not permit or suffer the blockage of any of such rivers, ditches and conduits by reason of anything done or omitted on the Authority Sites, and shall comply at the Contractor's expense with any requirements of the Environment Agency or any other Relevant Authority so far as such requirements relate to or affect the provision of the Services;
- g. procure that those parts of such Authority Site which are from time to time occupied by the Contractor and/or Contractor Related Parties for the purpose of the provision of the Services are maintained in a clean, orderly, safe and secure state, and their working areas on the Authority Sites are secure against trespassers and clean and tidy so far as practicable having regard to the nature of the provision of the Services;
- h. as soon as is reasonably practicable following issue of an Acceptance Certificate, clear from the relevant Authority Sites to the reasonable satisfaction of the Authority all temporary structures, rubbish and all building and surplus material and equipment of the Contractor, and any Subcontractor and in default the Authority shall be entitled to employ an alternative contractor to clear them and shall be entitled to be reimbursed by the Contractor for any costs reasonably incurred in clearing or procuring the clearing of them, provided that the Authority shall not be entitled to exercise such right for a period of 1 (one) week following the date of the Acceptance Certificate;
- i. not, without the written consent of the Authority's Representative (not to be unreasonably withheld or delayed), erect any temporary structure except site accommodation; and
- j. take all necessary steps in accordance with Legislation and all relevant Authority Policies including DEFSTAN 00-56 with regard to ensuring that the health and safety of all:
 - (1) occupants of the Authority Sites; and
 - (2) individuals invited onto the Authority Sites; and
 - (3) occupants of adjoining properties,
 is not adversely impacted upon.

37.2 The Contractor shall comply and shall ensure that his Representatives comply with the rules, regulations and requirements that are in force whilst at the Authority Site which shall be provided by the Authority on request.

37.3 When on board ship, compliance with the rules, regulations and requirements shall be in accordance with the ship's regulations as interpreted by the Officer in Charge. Details of those rules, regulations and requirements shall be provided on request by the Officer in Charge.

37.4 No act or omission of the Authority or an Authority Related Party shall result in the Contractor being in breach of Clause 37.1 unless such act or omission arises out of or in connection with the Authority or an Authority Related Party:

- a. acting on the instruction of the Contractor or a Subcontractor; and/or

- b. failing to supervise and/or take reasonable care to supervise the performance of any person engaged in the provision of the Services.

38. HEALTH AND SAFETY

General

- 38.1 Notwithstanding and without prejudice to the provisions detailed elsewhere in the Contract, the Contractor shall be entirely responsible for the safety, whilst on the Contractor's premises, of all personnel having legitimate cause to be there in connection with the Contract, whether or not in the Contractor's employ.
- 38.2 Not used.
- 38.3 During Fleet Time the Contractor shall comply with the health and safety requirements of the Vessel(s), and on arrival at the Vessel(s), shall make themselves aware of such requirements.
- 38.4 The Contractor shall assign a Safety Manager whose responsibility will be to oversee the implementation of HS&EP statutory requirements and those detailed within this Clause 38 from the Commencement Date until Contract Expiry.

Support Activity Safety and Environmental Protection Organisation & Arrangements (S&EP O&A)

- 38.5 The Contractor shall maintain a generic Support Activity (S&EP O&A) (Schedule 8) covering all activities that may be undertaken under this Contract. The generic (S&EP O&A) shall include, but not be limited to:
 - a. a contents list;
 - b. a list of activities and associated safety risk assessments, mitigations, associated safe working practices, and permit to work schemes;
 - c. a list of activities and associated environmental risk and impacts assessments, Site Environmental Controls and Procedures (including the provision of waste management);
 - d. the hierarchy of safety responsibilities;
 - e. emergency procedures and arrangements.
- 38.6 Not used.
- 38.7 The Authority shall, on the provision of reasonable notice to the Contractor, carry out formal audits with reference to the implementation and effectiveness of the (S&EP O&A).

Hazardous Materials

- 38.8 The obligations on the Contractor contained in this Clause are without prejudice to, and are in addition to, those outlined under DEFCON 68 (Edn 02/16) – Supply of Hazardous Articles and Substances, and any other requirements outlined elsewhere in the Contract.
- 38.9 Acknowledging that serious health hazards and pollution prevention requirements are associated with handling toxic, low flashpoint and/or radioactive materials the Contractor shall exercise due care when working with such materials and shall ensure that such materials are disposed of in compliance with applicable Statutory and Defence Safety Authority requirements.
- 38.10 The Contractor shall maintain a Control of Substances Hazardous to Health register in relation to products and services supplied and shall ensure that a copy of each register is held at the Contractor's registered office, and that a copy is given to the Authority's Representative.

- 38.11 The Authority's Representative shall notify the Contractor of any items which it, or any Authority Related Party, is using or storing and which requires registration.
- 38.12 The Contractor shall consult with the Health and Safety Executive where the Contractor is in any doubt as to the requirements referred to in Clause 38.9 above.
- 38.13 In addition to complying with Clause 38.9, the Contractor shall ensure that any hazardous materials or equipment used or intended to be used in the carrying out of Service Provision are kept under control and in safe keeping in accordance with all relevant Legislation and Good Industry Practice. The Contractor shall ensure that all such materials are appropriately and clearly labelled on their containers. The Contractor shall promptly inform the Authority of any such materials being used or stored at any Sites or on any Vessels, and shall comply with additional reasonable requirements of the Authority in respect of such materials and equipment.
- 38.14 The Contractor shall notify the Authority's Representative of any unique-to-site environmental hazards relating to products supplied and activity performed under the Contract.
- 38.15 The Contractor shall notify the Authority's Representative of relevant statutory requirements and the Contractor's own (and Subcontractor's as appropriate) environmental protection policies which cover such hazards.
- 38.16 Not used.
- 38.17 The Contractor shall ensure that any person working on or with hazardous material has been appropriately trained to deal with the associated hazards and that suitable warning notices are displayed in accordance with the requirements of relevant statutory requirements.
- 38.18 Notwithstanding the provisions of Clause 38.14 and 38.15, prior to any delivery of any hazardous materials to a Vessel or Authority Site the Contractor shall provide information to the Authority's Representative on such hazardous materials in the form of the annex to DEFCON 68 (Edn 02/16), Supply of Data for Hazardous Articles, Materials and Substances, or as otherwise specified in the Contractor's Proposals.

Safe Systems of Work

- 38.19 Acknowledging that serious health and safety hazards are associated live electrical or pressurised systems, the Contractor shall exercise due care when working with such systems, and shall ensure that safe systems of work are used (in compliance with any applicable statutory requirements).
- 38.20 The Contractor shall consult with the Health and Safety Executive where the Contractor is in any doubt as to the requirements referred to in Clause 38.19.
- 38.21 The Contractor shall notify the Authority's Representative of any unique-to-site health and safety hazards relating to activity performed under the Contract.
- 38.22 The Contractor shall notify the Authority's Representative of relevant statutory requirements and the Contractor's own (and Subcontractor's as appropriate) safety policies which cover such hazards.
- 38.23 The Contractor shall ensure that any person working on or with hazardous systems or equipment has been appropriately trained to deal with the associated hazards and that suitable warning notices are displayed in accordance with the statutory requirements.

Major Incidents

- 38.24 If there is an incident, either a near miss or resulting in harm or damage to property, personnel or the environment, relating to activity under this Contract, the Contractor shall inform the Authority as

soon as reasonably practicable. The Contractor shall identify and implement the necessary recovery and/or remedial action to rectify the causes and effects of the incident.

- 38.25 If the Authority deems the incident to be sufficiently serious as to require formal investigation, the Contractor, if so requested by the Authority, shall conduct an investigation as soon as reasonably practicable to establish the root cause of the incident.
- 38.26 Where an investigation is to be conducted by the Contractor pursuant to Clause 38.24 above the Authority shall retain the right to nominate a representative to participate in the investigation in any of the following capacities:
- a. as members of the investigating team;
 - b. in an advisory capacity; and/or
 - c. to question witnesses.
- 38.27 The presence of an Authority's representative shall be without prejudice to the Authority's right to accept or reject the findings and recommendations of such investigation.
- 38.28 If the Contractor wishes to call the Authority's personnel to an inquiry (either to give evidence or for any other purpose), prior approval to do so shall be sought from the Authority's Representative who will advise on the procedure to be followed by the Contractor in doing so.
- 38.29 A full report of any investigation undertaken pursuant to Clause 38.26, signed by a director of the Contractor shall be forwarded to the Authority within 10 working days of its completion and shall include:
- a. a narrative of the incident;
 - b. conclusions and recommendations;
 - c. record of oral evidence given in the course of such investigation;
 - d. copies of any written evidence, sketches or diagrams produced in the course of such investigation to illustrate the evidence of any witnesses;
 - e. if there is any difference of opinion among the investigation team on any material point, the grounds of difference shall be stated fully.
- 38.30 The report referred to in Clause 38.29 above shall be without prejudice to the rights of the Authority under the Contract, or otherwise, in respect of any Loss or damage arising from any incident giving rise to such report.
- 38.31 Notwithstanding the foregoing, if the Authority wishes to conduct a subsequent enquiry, the Authority shall have the right to require the Contractor and/or any Contractor Related Party to attend the Authority's enquiry in any capacity, to give evidence or for any other purpose. If the Contractor proposes to call any Authority employee to such inquiry (either to give evidence or for any other purpose) prior approval to do so shall be sought from the Authority's Representative who will advise on the procedure to be followed in doing so.

39. PROVISIONS COMMON TO THE SITES

Contractor Site Meetings

- 39.1 The Contractor shall ensure that the Authority's Representative and/or any other representative of the Authority is afforded a reasonable opportunity to attend meetings on the Sites relating to provision of the Services.
- 39.2 The Contractor shall supply to the Authority's Representative and/or any representative or adviser of the Authority visiting any of the Sites pursuant to DEFCON 608 (Edn 10/14) such information in respect of provision of the Services as may reasonably be requested.

Sustainable Procurement

- 39.3 The Authority and the Contractor are fully committed to the principles of Sustainable Procurement as defined in the Sustainable Procurement Charter at Schedule 12.

40. SUBCONTRACTORS

- 40.1 If the Project includes, or shall involve, the disclosure of information about a Secret Matter, for the purposes of this Clause 40, "**Subcontractor**" shall mean a Subcontractor of any level or tier through the supply chain to the Contractor involved in the provision of the services, or any person who has or may have access to Secret Matter.
- 40.2 The Contractor shall perform its obligations under, and observe all the terms of, any Subcontract, which it has entered into with a Subcontractor.
- 40.3 Nothing in this Contract shall prohibit or prevent any Subcontractor employed by the Contractor from being employed by the Authority at any establishments of the Authority.
- 40.4 Prior to entering into any Subcontract relating to IPR, the Contractor shall notify the proposed Subcontractor that the Contractor is not, by virtue of prior agreement with the Authority, entitled to place a contract with the Subcontractor which does not comply with the conditions of Clause 41.2 (Subcontractor IPR).
- 40.5 The Contractor shall retain, for 6 (six) Years from the earlier of the Termination Date or the Expiry Date as the case may be, a copy of all Subcontracts (or the relevant parts thereof) sufficient to demonstrate the Authority's rights with respect to Clause 41.2 and 41.3 (Subcontractor IPR) including rights in respect of Subcontractor IPR and shall provide certified copies of such records to the Authority's Representative upon request.

Approval of change to Subcontractors

- 40.6 If the Contractor wishes to replace a Subcontractor or add an additional Subcontractor, the Contractor shall propose a Change pursuant to Clause 46 (Contractor Change) by submitting for the Authority's Representative's approval:
- a. the name of the proposed Subcontractor; and
 - b. a statement of the work to be carried out; and
 - c. a copy of the proposed Subcontract which shall include the matters required pursuant to Clause 41 (Matters to be Included in Subcontracts); and
 - d. any other details known to the Contractor which the Authority's Representative shall reasonably require; and

- e. evidence that auditable and demonstrable value for money has been achieved through the procurement process (Clause 32.6 (Retention Inspection and Audit Access) refers); and/or
- f. that a competition has been run using public contracting regulations principles in force at the time of the procurement.

40.7 The Authority reserves the right to nominate a particular Subcontractor where possession of specialist knowledge/experience is essential for the work. Where the Authority requires the use of a particular specialist Subcontractor this will be specified in the Tasking Form (Schedule 18) and no further approval is required.

40.8 Notwithstanding the rights of the Authority under this Clause 40 (Subcontractors), the Contractor shall remain wholly responsible and liable for the acts and/or omissions of any Subcontractor under this Contract.

40.9 Not used.

Terms of Subcontracts

40.10 The Contractor shall ensure that all Subcontractors comply with the Contractor's Quality Plan as defined in Clause 34.1.

40.11 The Authority may, at its sole discretion, seek to acquire the same rights from a proposed Subcontractor as are recited in Clause 43 (IPR) by means of a direct IPR agreement with a proposed Subcontractor, and the Contractor may not place a Subcontract until the Authority's Representative has confirmed in writing either that it has entered into such a direct agreement or that it does not wish to do so. Should the Authority opt for such a direct agreement, the Authority's Representative shall inform the Contractor provided always that the Authority shall be responsible for its own costs in procuring and negotiating any such direct agreements.

40.12 The Authority's Representative shall (acting reasonably) confirm or reject the identity of the proposed Subcontractor and/or the terms of the proposed Subcontract within 30 (thirty) Business Days of the Contractor's Notice of Change provided that it shall be reasonable for the Authority's Representative to reject any proposed Subcontractor who is not a Suitable Substitute Subcontractor and/or who will not be appointed under a Subcontract including the matters required pursuant to Clause 41 (Matters to be Included in Subcontracts).

40.13 The Contractor shall not, in respect of a Project Work Package, employ a proposed new Subcontractor and/or use a proposed Subcontract and shall procure that a Subcontractor does not, in respect of the Project Work Package, employ a Subcontractor and/or use a proposed Subcontract rejected by the Authority pursuant to Clause 40.12.

40.14 On:

- a. the Authority's Representative approval pursuant to Clause 40.10, (Terms of Subcontracts); and
- b. the entering into of the relevant Subcontract documentation by the parties to it,

the proposed new Subcontractor and Subcontract shall become a Subcontractor and Subcontract respectively for the purposes of this Contract.

41. MATTERS TO BE INCLUDED IN SUBCONTRACTS

Secrecy and Security

- 41.1 For the purposes of this Clause 41.1 (Secrecy and Security), "**Subcontractor**" shall mean Subcontractor to the Contractor, Subcontractor to the Contractor, a Subcontractor of a Subcontractor to the Contractor, and any other Subcontractor of whatever tier involved in Service Provision.
- a. All Subcontracts shall include provisions for placing the Subcontractor under obligations in relation to secrecy and security corresponding to those placed on the Contractor as set out in this Contract.
 - b. The Contractor shall, and shall procure that its Subcontractors shall give such notices, directions, requirements and decisions to the Subcontractors as may be necessary to bring the provisions relating to secrecy and security which are included in Subcontracts pursuant to this Clause 41.1 (Secrecy and Security) into operation in such cases and to such extent as the Authority's Representative may direct.
 - c. The Contractor's Representative shall give the Authority's Representative such information and particulars as the Authority's Representative may from time to time require for the purposes of satisfying the Authority that the obligations imposed by or under the provisions of Clause 41.1 (Secrecy and Security) have been and are being observed and as to what the Contractor has done or is doing or proposes to do to secure the observance of those obligations and to prevent any breach thereof.
 - d. Nothing in this Clause 41.1 (Secrecy and Security) shall be construed as intended to prevent any person from giving any information or performing any action on any occasion when it is, by virtue of any Legislation, the duty of that person to give that information or carry out that action.
 - e. The Contractor shall ensure that the obligations in any Subcontract are such that a Subcontractor shall not do anything to place the Contractor at risk of breaching the provisions of Clauses 51 to 60 (Section 9 – Security), and the security regulations as set out in this Contract. The Contractor shall ensure that each Subcontractor complies with such obligations in the relevant Subcontract.

Subcontractor IPR

41.2 All Subcontracts shall include:

- a. a licence for the Authority under Subcontractor IPR in the same terms as the licence the Authority receives in relation to Contractor IPR as set out in Clause 43 (IPR); and provisions such that the Subcontract shall not be rescinded, or varied in such a way as to alter or extinguish any rights granted to the Authority without the prior written consent of the Authority's Representative; and
- b. provisions that the Authority's rights referred to in this Clause 41.2 which are otherwise enforceable under the Contracts (Rights of Third Parties) Act 1999, are not rendered unenforceable; and
- c. a requirement that either party to the Subcontract may release to the Authority any of those parts of the Subcontract as are necessary to be sufficient to demonstrate compliance with the provisions of this Clause and that any such release shall not amount to a breach of any provision of confidentiality contained within the Subcontract; and
- d. provisions that the Authority and the Contractor may register any licence of registered Third Party IPR against that IPR.

41.3 Other Subcontract terms

- a. All Subcontracts shall be subject to the terms and conditions of this Contract (including IPR and Pricing).
- b. The Contractor shall be responsible to the Authority for the designation to the Subcontractor of agreed codes of practice, behaviours and supplier development and management principles.
- c. Payment of Subcontractors shall be in accordance with DEFCON 534 (Edn 11/16). If a dispute arises then only the sum in dispute may be withheld and all other outstanding payments must be made in accordance with Clause 31 (Parties' Obligations During a Dispute).

42. COLLABORATIVE WORKING CHARTER

- 42.1 The Authority, the Contractor, the SCO Contractor and the other MFCs have signed a Collaborative Working Charter, as set out at Schedule 14, committing all Parties to uphold the overarching and general principles set out therein.
- 42.2 The Collaborative Working Charter shall apply for the duration of the Contract.
- 42.3 Neither in this Contract nor in the Collaborative Working document (Schedule 13), nor in the working out of the Contract nor its subsequent management is there any intention on the part of the Participants to create a partnership as defined in the Partnership Act 1890 nor any intention to create any joint venture nor any intention to constitute either party as agent of the other.

SECTION 6 – INTELLECTUAL PROPERTY RIGHTS

43. INTELLECTUAL PROPERTY RIGHTS (IPR)

- 43.1 The following standard provisions shall apply without prejudice to any specific rights of the Authority set out in this Clause:
 - a. DEFCON 531 (11/14) Disclosure of Information
 - b. DEFCON 632 (08/12) Third Party Intellectual Property Rights - Commercial And Non Commercial Articles And Services
 - c. DEFCON 703 (Edn 08/13) - Intellectual Property Rights - Vesting in the Authority.
- 43.2 The Contractor shall allow personnel of other contractors engaged on, or likely to be engaged on, or bidding for the manufacture, build, re-design, upkeep, repair, refit, updating and modification of Vessels and any part or parts thereof for the UK Government, to attend training courses relating to the Vessel(s) and arranged for, or as would be arranged for, personnel of the Authority. Such personnel of other contractors will be nominated by the Authority in the same manner as personnel of the Authority and paid for as arranged by the Authority. Such personnel of other contractors will be identified as such by the Authority to the Contractor.

Subcontracts

- 43.3 The Contractor shall not place any subcontract or order involving the design or development of equipment required under this Contract without the prior written consent of the Authority.
- 43.4 Unless otherwise agreed, such consent will be conditional on the proposed Subcontractor concluding a direct agreement with the Authority in the form set out in DEFFORM 177 (Edn 03/80). Wherever possible the request for approval should be accompanied by two copies of the agreement signed by the Subcontractor. If, in any case the Contractor is unable to comply with this Condition

despite making all reasonable efforts he shall report the matter to the Authority's Commercial Officer (Copied to the Authority's Representative) and await further instructions before placing the Subcontract or order.

Security of Supply

43.5 In the event that:

- a) the Authority decides to place a follow on contract with the Contractor for the continuing provision of the Contractor Deliverables which are the same as or similar to those provided under this Contract and the Contractor is unwilling or unable to accept, on fair and reasonable terms a follow on contract from the Authority; and/or
- b) The Contractor permanently discontinuing its business for whatever reason and such business is not continued by a successor in interest to the Contractor to whom the relevant intellectual property rights have been transferred,

then the Authority shall have the right to obtain from the Contractor, or from the authorised trustees or receivers acting on behalf of the Contractor, sufficient data, code, information and license(s) required for the provision of the Contractor Deliverables as those provided under this Contract or such similar deliverables, articles or services. Such data, code, information and license(s) may be used royalty-free by the Authority or Replacement Contractor to provide deliverables, articles or services similar to those provided under the Contract.

Improvement Scheme

43.6 The Contractor hereby grants to the Authority a royalty-free licence of all Contractor-owned intellectual property covering the Assets or Services within the Improvement Scheme (with the right to grant sub-licences to any contractor of a Ship Cluster) and to use the Assets or Services for that Ship Cluster. The Contractor shall provide all necessary assistance to the extent required to enable the Authority or any contractor of a Ship Cluster to implement the Improvement Scheme.

SECTION 7 – CHANGE

44. CHANGES TO THE CONTRACT

- 44.1 The Contract may only be amended (or changed) with the written authority of the Authority's Commercial Officer in accordance with Clauses 45 and 46 (Authority Change and Contractor Change), the purpose of which is to:
- a. establish a disciplined and uniform method of handling and recording proposed changes to the Contract;
 - b. assure the Authority that every aspect of the Contract has been considered and all foreseen repercussions have been evaluated before an amendment is issued; and
 - c. assure the Authority that agreement with the Contractor has been reached on the content of the proposal;
 - d. aid the preparation of any amendments to the Contract;
 - e. maintain a record of all proposed Contract changes.

45. AUTHORITY CHANGE

- 45.1 The Authority has the right to propose changes to the Services in accordance with this Clause, and DEFCON 502 (Edn 05/17), which shall apply to this Contract. The Authority shall not propose a change to the Services which:
- a. would cause any Necessary Consent to be revoked (or a new Necessary Consent required to implement the relevant change to the Services to be obtained);
 - b. would materially and adversely affect the health and safety of any person;
 - c. would require the Contractor to implement the change to the Services in an unreasonable period of time;
 - d. would (if implemented) materially and adversely change the nature of the Project (including its risk profile); and/or
 - e. the Authority does not have the legal power or capacity to require the implementation of.

If the Authority requires a change to the Services, it must serve a notice (an "Authority Notice of Change") on the Contract detailing the proposed change.

- 45.2 The Authority Notice of Change shall:

- a. set out the change in Service required in sufficient detail to enable the Contractor to calculate and provide the Estimated Change in Project Costs in accordance with Clause 45.3 below (the "**Estimate**"); and
- b. require the Contractor to provide the Authority with the Estimate within 15 (fifteen) Business days of receipt of the Authority Notice of Change.

- 45.3 As soon as practicable and in any event within 15 (fifteen) Business Days after having received the Authority Notice of Change, the Contractor shall deliver to the Authority an Estimate in accordance with DEFCON 127 (Edn 12/14) or DEFCON 643 (Edn 12/14) as appropriate. The Estimate shall include the opinion of the Contractor on:

- a. whether relief from compliance with obligations is required, including the obligations of the Contractor to achieve any agreed Contract Acceptance Date or delivery date and meet the Authority's Requirements during the implementation of the change to the Services;
- b. any impact on the provision of the Services;
- c. any amendment required to this Contract and/or any Project Document as a result of the change to the Services;
- d. any Estimated Change in Project Costs that result from the change to the Services;
- e. any regulatory approvals and/or Necessary Consents which are required;
- f. any steps required to be taken to ensure compliance with the Security Requirements; and
- g. the proposed method of certification of any construction or operational aspects of the Services required by the change to the Services if not covered by the procedures specified in Schedule 1 (Authority's Requirements).

45.4 As soon as practicable after the Authority receives the Estimate, the Parties shall discuss and agree the issues set out in the Estimate, including:

- a. providing evidence that the Contractor has used reasonable endeavours (including (where practicable) the use of competitive quotes) to oblige its Subcontractors to minimise any increase in costs and maximise any reduction in costs; and
- b. demonstrating that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain assets that have been affected by the Authority Change concerned, has been taken into account in the amount which in its opinion has resulted or is required under Clause(s) 45.3 d. and/or 45.3 e. above.

45.5 In such discussions the Authority may modify the Authority Notice of Change and the Contractor shall, as soon as practicable, and in any event not more than 10 (ten) Business Days after receipt of such modification, notify the Authority of any consequential changes to the Estimate.

45.6 If the Contractor does not intend to use its own resources to implement any change to the Services it shall comply with Good Industry Practice with the objective of ensuring that it obtains best Value for Money when procuring any work, services, supplies, materials or equipment required in relation to the change to the Services.

45.7 If the parties cannot agree on the contents of the Estimate then the dispute will be determined in accordance with the Dispute Resolution Procedure (Clause 30 (Disputes)).

45.8 As soon as practicable after the contents of the Estimate have been agreed or otherwise determined pursuant to the Dispute Resolution Procedure, the Authority shall:

- a. confirm in writing the Estimate (as modified); or
- b. withdraw the Authority Notice of Change.

45.9 If the Authority does not confirm acceptance of the Estimate (as modified) in writing within 20 (twenty) Business Days of the contents of the Estimate having been agreed in accordance with Clause 45.4 above or determined pursuant to Clause 45.7 above, then the Authority Notice of Change shall be deemed to have been withdrawn.

45.10 In the event that the Estimate has been accepted by the Authority, then the adjustment to any amount payable by the Authority to the Contractor in respect of any Services, or any additional coatings deliverables required to execute the Services are being added to the list of Firm prices in Schedule 4, shall be as set out in a Contract amendment.

46. CONTRACTOR CHANGE

- 46.1 If the Contractor wishes to introduce a change (a "**Contractor Change**") to the Services, it must serve a notice (a "**Contractor Notice of Change**") on the Authority, and take due regard of DEFCON 502 (Edn 06/14), which shall apply to this Contract.
- 46.2 The Contractor Notice of Change must:
- a. set out the proposed change to the Services in sufficient detail to enable the Authority to evaluate it in full;
 - b. specify the Contractor's reasons for proposing the change to the Services;
 - c. request the Authority to consult with the Contractor with a view to deciding whether to agree to the change in Service and, if so, what consequential changes the Authority requires as a result;
 - d. indicate any implications (including contracted, financial, operational and/or technical implications) of the change to the Services;
 - e. indicate, in particular, whether a variation to any amount payable by the Authority to the Contractor under this Contract is proposed (and, if so, give a detailed cost estimate of such proposed change, in accordance with DEFCON 127 (Edn 12/14) or DEFCON 643 (Edn 12/14) as appropriate); and
 - f. indicate if there are any dates by which a decision by the Authority is critical.
- 46.3 The Authority shall evaluate the Contractor's proposed change to the Services, taking into account all relevant issues, including whether:
- a. a change in any amount payable by the Authority to the Contractor under this Contract will occur;
 - b. the change affects the quality of the Service or the likelihood of successful delivery of the Services;
 - c. the change will interfere with the relationship of the Authority with third parties;
 - d. the financial strength of the Contractor is sufficient to perform the changed Service;
 - e. any additional steps will be required to ensure compliance with the Security Requirements; and/or
 - f. the change materially affects the risks or costs to which the Authority is exposed.
- 46.4 As soon as practicable after receiving the Contractor Notice of Change, the Parties shall meet and discuss the matter referred to in it. During such discussions the Authority may propose modifications or accept or reject the Contractor Notice of Change.
- 46.5 If the Authority accepts the Contractor Notice of Change (with or without modification), the relevant change to the Services shall be implemented by the Authority issuing a Contract amendment.
- 46.6 If the Authority rejects the Contractor Notice of Change, it shall not be obliged to give its reasons for such a rejection.
- 46.7 Unless the Authority's acceptance specifically agrees to an increase in any amount payable by the Authority to the Contractor under this Contract, there shall be no increase in any amount payable by

the Authority to the Contractor under this Contract as a result of a change to the Services proposed by the Contractor.

- 46.8 The Authority cannot reject a change to the Services which is required in order to conform to a Change in Law.

47. QUALIFYING CHANGE IN LAW

- 47.1 If a Qualifying Change in Law occurs or is shortly to occur, then either party may write to the other to express an opinion on its likely effects, giving details of its opinion of:

- a. any necessary change in Service;
- b. whether any changes are required to the terms of this Contract to deal with the Qualifying Change in Law;
- c. whether relief from compliance with obligations is required, including the obligation of the Contractor to achieve all required Contract Acceptance Dates and/or delivery dates, and the performance regime during the implementation of any relevant Qualifying Change in Law;
- d. any loss of profit that will result from the relevant Qualifying Change in Law, in so far as the profit directly relates to incentives properly due under the Contract; and
- e. any Estimated Change in Project Costs that directly result from the Qualifying Change in Law, whether increases or decreases,

in each case giving in full detail the procedure for implementing the change in Service. Responsibility for the costs of implementation (and any resulting variation to the summary of costs) shall be dealt with in accordance with Clauses 47.2 and 47.3 below.

- 47.2 As soon as practicable after receipt of any notice from either party under Clause 47.1 above, the parties shall discuss and agree the issues referred to in Clause 47.1 above and any ways in which the Contractor can mitigate the effect of the Qualifying Change of Law, including:

- a. providing evidence that the Contractor has used reasonable endeavours (including (where practicable) the use of competitive quotes) to oblige its Subcontractors to minimise any increase in costs and maximise any reduction in costs;
- b. demonstrating how any increase in expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred or would have been incurred, foreseeable Changes in Law at that time have been taken into account by the Contractor;
- c. giving evidence as to how the Qualifying Change in Law has affected the prices charged by any similar businesses to the Project, including similar businesses in which the Shareholders or their Affiliates carry on business; and
- d. demonstrating that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain assets that have been affected by the Qualifying Change in Law concerned, has been taken into account in the amount which in its opinion has resulted or is required under Clause 47.1 e. above.

- 47.3 All cost increases incurred as a result of changes relating to a Qualifying Change in Law shall be determined in accordance with Clause 45 (Authority Change) or Clause 46 (Contractor Change).

48. APPROVAL BY THE AUTHORITY

- 48.1 Except for a confirmation of a Change pursuant to Clause 45 (Authority Change) and 46 (Contractor Change) which expressly changes the Contractor's obligations or liabilities or the Authority's rights under this Contract, no review, comment or approval by the Authority shall operate to exclude or limit the Contractor's obligations or liabilities or the Authority's rights under this Contract.
- 48.2 Neither the giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of the Authority, shall unless otherwise expressly stated in this Contract, relieve the Contractor of any of its obligations under the Project Documents or of any duty which it may have under this Contract to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgement or knowledge.

SECTION 8 – PEOPLE

49. DATA PROTECTION

General

- 49.1 In relation to all Personal Data, the Contractor shall at all times comply with the Data Protection Act 1998 (DPA) as required under the DPA as a data controller (as defined in section 1 of the DPA), including maintaining a valid and up to date registration or notification under the DPA covering the data processing to be performed in connection with the Services.
- 49.2 The Contractor and any Subcontractor shall only undertake processing of Personal Data reasonably required in connection with provision of the Services and shall not transfer any such Personal Data to any country or territory outside the European Economic Area.

No Disclosure

- 49.3 The Contractor shall not disclose Personal Data to any third parties other than:
- a. to employees and Subcontractors to whom such disclosure is reasonably necessary in order for the Contractor to provide the Services; or
 - b. to the extent required under the DPA and/or a court order,
- provided that disclosure under Clause 49.3 a. above is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this Clause 49.3 and that the Contractor shall notify the Authority's Representative of any disclosure of Personal Data which either the Contractor or a Subcontractor is required to make under Clause 49.3b. above immediately upon becoming aware of such a requirement.
- 49.4 The Contractor shall bring into effect and maintain all appropriate technical and organisational measures to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data in accordance with the seventh data protection principle of the DPA including taking reasonable steps to ensure that staff having access to the Personal Data are aware of their responsibilities in relation to that data.
- 49.5 The Authority may, at reasonable intervals, request a written description of the technical and organisational methods employed by the Contractor or the Subcontractors referred to in Clause 49.4. Within 20 (twenty) Business Days of such a request, the Contractor shall supply written particulars of all such measures detailed to a reasonable level such that the Authority can determine whether or not, in connection with the Personal Data, it is compliant with the DPA.

Indemnity by the Contractor

- 49.6 The Contractor shall indemnify and keep indemnified the Authority against all losses, claims, damages, liabilities, costs and expenses (including reasonable legal costs) incurred by it in respect of any breach of this Clause 49 (Data Protection) by the Contractor and/or any act or omission of any Subcontractor.

50. TUPE

50.1 Contractors are to adhere to the process, definitions and requirements outlined in Schedule 10, TUPE to the Contract.

SECTION 9 – SECURITY

51. SECURITY LIAISON OFFICER

- 51.1 The Contractor shall appoint (or shall procure the appointment of), as soon as reasonably practicable following the Commencement Date and throughout the Contract period, an officer ("**the Security Liaison Officer**") to be responsible, in consultation with such representative as the Authority may designate, for the implementation of all security arrangements concerning the Named Employees, the area in which they are employed, their offices and their equipment. The Security Liaison Officer shall also be responsible for the training and supervision of the Named Employees to ensure that appropriate security regulations are met.

52. SECURITY GRADING

- 52.1 All aspects associated with this Contract are classified OFFICIAL. Some aspects are more sensitive and are classified as OFFICIAL-SENSITIVE. The Authority shall issue a Security Aspects Letter which shall define the OFFICIAL-SENSITIVE information that is furnished to the Contractor, or which is to be developed by it, under this Contract. The Contractor shall mark all OFFICIAL-SENSITIVE documents which it originates or copies during the Contract clearly with the OFFICIAL-SENSITIVE classification. However, the Contractor is not required to mark information/material related to the Contract which is only OFFICIAL.

53. SECURITY REQUIREMENTS

- 53.1 In respect of any elements of provision of the Services which are to be carried out on an Authority Site, the Contractor shall ensure that such elements are carried out at all times in accordance with those provisions relating to the security issues in Clauses 54, 55 and DEFCON 76 (Edn 12/06).
- 53.2 In respect of any elements of provision of the Services which are to be carried out on a Contractor Site, the Contractor shall ensure:
- a. that such elements are carried out at all times in accordance with the provisions of the current version of the Security Policy Framework (SPF); and
 - b. if the Project includes, or shall involve, Secret Matters, a requirement that the Project is carried out at all times in accordance with the provisions of Clause 57
- 53.3 In respect of handling information:
- a. OFFICIAL-SENSITIVE material shall be handled in accordance with DEFCON660 (Edn 12/15).
 - b. SECRET material shall be handled in accordance with DEFCON 659A (Edn 02/17).
 - c. All information shall be handled in accordance with DEFCON 531 (Edn 11/14).
- 53.4 The Authority's Representative shall, in so far as is practical, inform the Contractor's Representative of any specific or general security information which would reasonably be expected to affect the security of the Contractor or any Subcontractor or their property.
- 53.5 The Contractor shall ensure that all systems used to store, process, or generate MOD information including those systems containing OFFICIAL and/or OFFICIAL-SENSITIVE information, are registered on the MoD Defence Assurance Risk Tool (DART), as described in Industry Security Notice (ISN) 2017/01.
- 53.6 The Contractor shall ensure that all data is encrypted in accordance with National Cyber Security Centre (NCSC) policy, or an alternative MoD agreed standard.

- 53.7 For systems being fitted to Vessels where there is a need for the Contractor to hold technical information or data then a Technical Assistance Agreement (TAA) will need to be signed by the Authority, the Contractor, and where applicable the US company supplying the hardware. If a US company is directly involved then they will instigate the process from their end. If the equipment is held and maintained within the UK then the Authority will instigate the process. For this process the Contractor will need to demonstrate that they have a suitable and sufficient Security Plan in place in order to safeguard the information.
- 53.8 Any material covered under International Traffic in Arms Regulations (ITAR) shall be removed by the Ship's staff prior to the ship entering a maintenance period wherever practicable. Any ITAR equipment remaining on board shall be suitably secured and will be monitored by Ship's staff throughout the period. The Contractor shall be fully aware of ITAR and other relevant export control regulations and handle data or equipment accordingly.

54. PERSONNEL SECURITY

Security Clearance

- 54.1 In respect of each Named Employee, not less than 40 (forty) Business Days before such person begins to provide the Services, the Contractor shall be responsible for ensuring that such Named Employee is security cleared to the level required by the Security Requirements by application to UK Security Vetting (UKSV) (or other issuing body of the Authority from time to time). If the Authority is responsible for applying for security clearance of Named Employees pursuant to this clause, the Contractor shall ensure that a completed security clearance application is submitted via the National Security Vetting System (NSVS) for such Named Employee not less than 30 (thirty) Business Days before such Named Employee begins to provide the Services. The Contractor shall be aware of the expiry date of any such clearance and ensure that all staff are maintained at the required level.

Admission to Authority Sites:

- 54.2 In respect of each Named Employee, not less than 30 (thirty) Business Days before such person is intended to enter onto an Authority Site in order to provide the Services, the Contractor shall provide the Authority's Representative with details of the Named Employee, the Authority Site to which access is required and the capacity in which such person is concerned with the provision of Services.
- 54.3 The Authority's Representative shall issue a pass for all Named Employees who are security cleared to an appropriate level for the Authority Site pursuant to Clause 54.1 (Security Clearance) on or before such person is intended to enter onto an Authority Site in order to provide the Services. Passes shall remain the property of the Authority and shall be surrendered on demand or on termination or expiry of the Contract.
- 54.4 A person not in possession of a pass who is required by the Contractor or any Subcontractor to attend an Authority Site to provide emergency reactive services (an "Accompanied Emergency Reactive Worker") may be allowed temporary admission to the Authority Site provided that the Contractor shall, or shall procure that any Subcontractor shall, ensure that such individual is accompanied at all times whilst on the Authority Site by a member of the Contractor or Subcontractor's staff who has been issued with a pass pursuant to Clause 54.3, or if appropriate by a member of the Authority Site staff.
- 54.5 Whilst engaged at the Authority's Sites the Contractor shall, and shall procure that any Subcontractor shall, ensure that all Named Employees and other accompanied emergency reactive workers pursuant to Clause 54.4 comply with the Authority's Policies relating to the conduct of staff and security arrangements, and in accordance with DEFCON 76 (Edn 12/06).
- 54.6 Notwithstanding the provisions of Clauses 54.1 to 54.5 inclusive, the Authority may refuse any person admission to an Authority Site or require the removal of any person from an Authority Site:

- a. if such person is not in possession of a valid pass issued pursuant to Clause 54.3 or is not an accompanied emergency reactive worker pursuant to Clause 54.4;
- b. if such person, in the Authority's opinion, represents a risk to themselves or an Authority Related Party or property and the Authority's Representative has given written notice to the Contractor's Representative to this effect;
- c. if the Authority has reasonable grounds for considering that the presence or conduct of such person at the Authority Site is undesirable and the Authority's Representative has given written notice to the Contractor's Representative to this effect;
- d. as part of a security investigation pursuant to Clause 59 (Co-operation for Security Investigation) and the Authority's Representative has given written notice to the Contractor's Representative to this effect;
- e. in the event that security or safety may be, or may have been compromised; and/or
- f. for any other reason.

55. INFORMATION SECURITY

55.1 The following describes the minimum security requirements for processing and accessing OFFICIAL-SENSITIVE information on IT systems:

- a. Access: Physical access to all hardware elements of the IT system is to be strictly controlled. The principle of "least privilege" will be applied to System Administrators. System Administrators should not conduct 'standard' User function using the privileged accounts;
- b. Identification and Authentication (ID&A): All systems shall have the following functionality:
 - (1) Up to date lists of authorised users;
 - (2) Positive identification of all users at the start of each processing session;
- c. Passwords: Passwords are part of most ID&A Security Measures. Passwords shall be 'strong' using an appropriate method to achieve this, for example including numeric and "special" characters (if permitted by the system) as well as alphabetic characters;
- d. Internal Access Control: All systems shall have internal Access Controls to prevent unauthorised users from accessing or modifying the data;
- e. Data Transmission: Unless the Authority authorises otherwise, OFFICIAL-SENSITIVE information shall be transmitted or accessed electronically (e.g. point to point computer links) via a public network like the Internet, using a National Cyber Security Centre (NCSC) Commercial Product Assurance (CPA) cryptographic product or a MOD approved cryptographic technique such as Transmission Layer Security. In the case of the latter, both the sender and recipient organisations must have Transmission Layer Security enabled. Exceptionally, in urgent cases, OFFICIAL-SENSITIVE information may be emailed unencrypted over the internet where there is a strong business need to do so and only with the prior approval of the Authority;
- f. Security Accounting and Audit: Security relevant events fall into two categories, namely legitimate events and violations:
 - (1) The following events shall always be recorded:
 - (A) All log on attempts whether successful or failed;
 - (B) Log off (including time out where applicable);

- (C) The creation, deletion or alteration of access rights and privileges;
 - (D) The creation, deleting or alteration of passwords.
- (2) For each of the events listed above, the following information is to be recorded:
- (A) Type of event;
 - (B) User ID;
 - (C) Date & Time;
 - (D) Device ID.

The accounting records shall have a facility to provide the System Manager with a hard copy of all or selected activity. There shall also be a facility for the records to be printed in an easily readable form. All security records are to be inaccessible to users without a need to know. If the operating system is unable to provide this then the equipment shall be protected by physical means when not in use, i.e. locked away or the hard drive removed and locked away.

- g. Integrity & Availability: The following supporting measures shall be implemented:
- (1) Provide general protection against normally foreseeable accidents/mishaps and known recurrent problems (e.g. viruses and power supply variations);
 - (2) Defined Business Contingency/Continuity and Resilience Plan;
 - (3) Data backup with local storage;
 - (4) Anti Virus Software (Implementation, with updates, of an acceptable industry standard Anti-virus software);
 - (5) Operating systems, applications and firmware shall be tested and supported through-life;
 - (6) Patching of Operating Systems and Applications used shall be in line with the manufacturer's recommended schedule. If patches cannot be applied an understanding of the resulting risk will be documented;
- h. Logon Banners: Wherever possible, a "Logon Banner" shall be provided to summarise the requirements for access to a system which may be needed to institute legal action in case of any breach occurring. A suggested format for the text (depending on national legal requirements) could be: "Unauthorised access to this computer system may constitute a criminal offence";
- i. Unattended Terminals: Users are to be automatically logged off the system if their terminals have been inactive for some predetermined period of time, or systems must activate a password-protected screensaver after 15 minutes of inactivity, to prevent an attacker making use of an unattended terminal;
- j. Internet Connections: Computer systems shall not be connected direct to the Internet or 'untrusted' systems unless protected by a firewall (a software based personal firewall is the minimum) which is acceptable to the Authority's Principal Security Advisor;
- k. Interconnectivity: The Contractor shall be required to identify all interconnected assets and consider the security, testing, and monitoring controls;
- l. Disposal: Before IT storage media (e.g. disks) are disposed of, an erasure product shall be used to overwrite the data. This is a more thorough process than deletion of files, which does not remove the data.

56. CYBER SECURITY

56.1 The Contractor shall be required to maintain Cyber Security in accordance with DEFCON 658 (Edn 10/17) and DEFSTAN 05-138 (Cyber Security for Defence Suppliers) for the duration of the Contract. It is the responsibility of the Contractor to risk-assess any Subcontractors and impart the relevant Cyber Security requirements upon them in accordance with DEFSTAN 05-138.

57. SECRET MATTERS

57.1 Should the Contractor's facilities be required to hold information classified to SECRET or above, the Contractor shall be required to successfully undergo the List X process, unless otherwise stated by the Authority.

57.2 Unless he has the written authorisation of the Authority to do otherwise, neither the Contractor nor any of his Employees shall, either before or after the completion or termination of the Contract, 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. a British dual national, the secondary nationality of which must be declared to the Authority, who will then consider whether access to Secret Matter is allowable;
- c. who does not hold the appropriate authority for access to the protected matter;
- d. in respect of whom the Authority has notified the Contractor in writing that the Secret Matter shall not be disclosed to or acquired by that person;
- e. who is not an Employee of the Contractor;
- f. who is an Employee of the Contractor and has no need to know the information for the proper performance of the Contract.

57.3 The Contractor shall, before, during and after the Contract Period, take all reasonable steps to ensure:

- a. that no such person as is mentioned in Clause 57.2 have access to any material or document under the control of the Contractor containing information about a Secret Matter except with the prior written consent of the Authority's Representative;
- b. that no visitor to any premises in which there is anything to be supplied under this Contract or where work in pursuance of this Contract is being carried on shall see or discuss with the Contractor or any person employed by it any Secret Matter unless the visitor is authorised in writing by the Authority's Representative to do so;
- c. that no photograph of anything to be supplied under this Contract or of any portion of the work carried out in pursuance of this Contract shall be taken except so far as may be necessary for the proper performance thereof or with the prior written consent of the Authority's Representative provided always that:
 - (1) the Contractor shall make an application for such approval in writing to the Authority's Representative; and
 - (2) the photograph is classified and handled in accordance with the Authorities standards;
 - (3) no photograph shall, without the Authority's written consent, be published or otherwise circulated.

- d. that all information about any Secret Matter and every document, model or other thing which contains or may reveal any such information is at all times strictly safeguarded in accordance with its Government security classification, and that, except in so far as may be necessary for the proper performance of this Contract or with the prior written consent of the Authority's Representative, no copies of or extracts from any such document, model or thing shall be made or used and no designation or description which may reveal information about the nature or contents of any such document, model or thing shall be placed thereon; and
- e. that if the Authority's Representative gives written notice to the Contractor's Representative at any time requiring the delivery to the Authority of any such document, model or thing as is mentioned in Clause 57.3 above, that document, model or thing (including all copies thereof or extracts there from) shall forthwith be delivered to the Authority, who shall be deemed to be the owner thereof and accordingly entitled to retain the same.

57.4 The decision of the Authority on the question of whether the Contractor has taken or is taking all reasonable steps as required by the provisions of Clauses 57.1 to 57.4 shall be final and conclusive.

57.5 If at any time either during or after the Contract Period it comes to the notice of the Contractor that any person acting without lawful authority is seeking or has sought to obtain information concerning this Contract or anything done or to be done in pursuance thereof, the matter shall be forthwith reported by it to the Authority's Representative and the report shall, in each case, be accompanied by a statement of the facts including, if possible, the name, address and occupation of that person. The Contractor shall be responsible for making all such arrangements as it may consider appropriate to ensure that if any such occurrence comes to the knowledge of any person employed by it, that person shall forthwith report the matter to the Contractor with a statement of the facts as aforesaid.

57.6 The Contractor shall place every person employed by it or any Subcontractor who in the Contractor's opinion (acting reasonably) has or shall have such knowledge of any Secret Matter as to appreciate its significance, under a duty to the Contractor to observe the same obligations in relation to that matter as are imposed on the Contractor by Clauses 57.1 to 57.4. The Contractor shall, if directed by the Authority's Representative, place every person who is specified in such direction or is one of a class of persons so specified, under the like duty in relation to any Secret Matter which may be specified in the direction, and shall at all times use his best endeavours to ensure that every person upon whom obligations are imposed by virtue of Clauses 57.1 to 57.4 observes the said obligations, and the Contractor shall give such instructions and information to every such person as may be necessary for that purpose, and shall, immediately upon becoming aware of any act or omission which is or would be a breach of the said obligations, report the facts to the Authority's Representative with all necessary particulars.

57.8 On completion of the Contract, the Contractor shall, as advised by the Authority, return or securely destroy all copies of classified documents (including drawings) issued to the Contractor and sub contractors. This includes hard copy and electronic data in accordance with National Cyber Security Centre (NCSC) requirements and Security Policy Framework. The contractor will be required to certify that this has been done, unless written approval has been given by the Authority for their retention.

58. LOSS AND INCIDENT REPORTING

58.1 The Contractor shall, and shall procure that each Subcontractor shall, immediately report any loss or otherwise compromise of any OFFICIAL or other classified information to the Authority in accordance with Industry Security Notice 2017/03.

59. CO-OPERATION FOR SECURITY INVESTIGATION

59.1 The Contractor shall, and shall procure that each Subcontractor shall, notify the Authority's Representative immediately it becomes aware of any breach in relation to MOD-owned, processed, or generated information, in accordance with Industry Security Notice 2017/03.

- 59.2 If the Authority deems the breach to be sufficiently serious as to require investigation, the Contractor, if requested by the Authority, shall conduct an investigation into the breach.
- 59.3 Where an investigation is to be conducted by the Contractor, the Authority shall have the right to nominate officers or other persons to participate in the investigation in any of the following capacities:
- a. as members of the investigating team;
 - b. in an advisory capacity; and
 - c. to question witnesses.
- 59.4 The presence of such nominated officers or other persons shall be without prejudice to the Authority's right to accept or reject the findings of the investigation.
- 59.5 If the Contractor wishes to call the Authority's personnel to an inquiry, the Contractor shall obtain prior approval from the Authority's Representative who will advise on the procedure to be followed.
- 59.6 The Contractor shall forward a full report of the investigation to the Authority. The report shall be signed by a director of the Contractor and shall include:
- a. any oral evidence given;
 - b. copies of any written evidence, sketches or diagrams used to illustrate the evidence of any witness; and
 - c. conclusions and recommendations, including a full statement of any grounds of difference.
- 59.7 The report shall be without prejudice to the rights of the Authority in respect of any loss or damage arising from any breach of the Security Provisions.
- 59.8 Notwithstanding Clauses 59.2 to 59.6 inclusive, if the Authority wishes to conduct a subsequent inquiry, the Authority shall have the right to require the Contractor, Subcontractor and all Named Employees to attend the Authority's inquiry.

60. BREACH OF SECURITY

- 60.1 Without prejudice to the provisions of DEFCON 659A (Edn 02/17), if the Authority in its absolute discretion considers that the breach of the Security Provisions by the Contractor or a Subcontractor or any of the Named Employees amounts to a Breach of Security, the Authority's Representative may serve a Contractor Default Termination Notice on the Contractor's Representative pursuant to Clause 66.7 (Termination for Contractor Default).
- 60.2 If the Authority does not consider that the breach of the Security Provisions by the Contractor or a Subcontractor or any of the Named Employees amounts to a Breach of Security, the Authority's Representative may nevertheless instruct the Contractor to terminate a Subcontract or to procure that a Subcontractor terminates a Subcontract immediately:
- a. if the Subcontractor is in breach of any secrecy or security obligation imposed by any other contract with the Crown;
 - b. where the Authority's Representative considers the circumstances of the breach jeopardise the secrecy or security of a Secret Matter and notifies the Contractor accordingly; or
 - c. following notice of the same by the Authority to the Contractor, a failure to bring the Subcontract into compliance with the Subcontractor IPR provisions.

SECTION 10 – INSURANCES

61 NOT USED

62 NOT USED

63. INSURANCE

Obligations to maintain Insurance

63.1 Without prejudice to its liability to indemnify or otherwise be liable to the Authority under this Contract, the Contractor shall for the periods specified in Schedule 11 (Required Insurances) take out and maintain, or procure the taking out and maintenance of the insurances as set out in Schedule 11 (Required Insurances) and any other insurances as may be required by applicable English Law (together the “Required Insurances”). the Contractor shall ensure that each of the Required Insurances is effective no later than the date on which the relevant risk commences.

63.2 The Required Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the marine insurance market from time to time.

63.3 The Required Insurances shall be taken out and maintained with insurers who are of good financial standing and of good repute in the international insurance market.

General obligations

63.4 Without limiting the other provisions of this Contract, the Contractor shall:

- a. take or procure the taking of all reasonable risk management and risk control measures in relation to the services as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice;
- b. hold all policies in respect of the Required Insurances and cause any insurance broker effecting the Required Insurances to hold any insurance slips and other evidence of placing cover representing any of the Required Insurances to which it is a party.
- c. discharge all its obligations under the Insurance Act 2015 when placing, renewing, amending or maintaining any insurances required by this Contract, including complying with the duty of fair presentation to insurers.

Non invalidation and failure to insure

63.5 The Contractor (and the Contractor shall procure that none of its Subcontractors of any tier) shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Required Insurances.

63.6 Where the Contractor has failed to purchase any of the Required Insurances or maintain any of the Required Insurances in full force and effect, the Authority may elect (but shall not be obliged) following written notice to the Contractor to purchase the relevant Required Insurances, and the Authority shall be entitled to recover the premium and other reasonable costs incurred in connection therewith as a debt due from the Contractor.

Evidence of insurances

63.7 The Contractor shall from the date of this Contract and within 10 (ten) days after the renewal, replacement or placement of the relevant risk of each of the Required Insurances, provide evidence, in a form satisfactory to the Authority, that the Required Insurances are in force and effect and meet in full the requirements of Schedule 11 (Required Insurances). However inspection nor receipt of such evidence by the Authority shall not in itself constitute acceptance by the Authority of the terms thereof, that the extent of the insurance cover is sufficient or that the terms and conditions thereof are satisfactory nor be a waiver or relieve the Contractor of any of its liabilities and obligations under this Contract.

Cancellation

63.8 Subject to Clause 63.9, the Contractor shall notify the Authority in writing at least 10 (ten) days prior to the cancellation, suspension, termination or non-renewal of any of the Required Insurances.

63.9 Clause 63.8 shall not apply where the termination of any Required Insurances occurs purely as a result of a change of insurer in respect of any of the Required Insurances required to be taken out and maintained in accordance with this Clause 63 and the provisions of Clause 63.7 shall apply.

Insurance claims

63.10 The Contractor shall promptly notify to insurers any matter arising from, or in relation to, the Services and/or this Contract for which it may be entitled to claim under any of the Required Insurances. In the event that the Authority receives a claim relating to or arising out of the Services or this Contract, the Contractor shall co-operate with the Authority and assist it in dealing with such claims at its own expense including without limitation providing information and documentation in a timely manner.

63.11 Except where the Authority is the claimant party, the Contractor shall give the Authority notice within 10 (ten) days after any insurance claim in excess of fifty thousand pounds (£50,000) relating to or arising out of this Contract on any of the Required Insurances or which, but for the application of the applicable policy excess, would be made on any of the Required Insurances and (if required by the Authority) full details of the incident giving rise to the claim.

Premiums and deductibles

63.12 Where any Required Insurance requires payment of a premium, the Contractor shall be liable for and shall promptly pay such premium.

63.13 Where any Required Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Contractor shall be liable for such excess or deductible. The Contractor shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Required Insurances whether under the terms of this Contract or otherwise.

64. CONTRACTOR'S CLAIMS IN RELATION TO THIS CONTRACT

64.1 Without prejudice to any entitlement of the Contractor to specific performance of any obligation under this Contract, the Contractor shall not be entitled to any common law or equitable rights including rights to damages or to any other rights under contract, tort or otherwise in relation to any breach of this Contract to the extent that such breach is a Compensation Event or this Contract provides an express remedy in relation to the breach.

65. NOT USED

SECTION 11 – EXIT

66. TERMINATION BY THE AUTHORITY

- 66.1 In the event that the Authority elects to terminate the Contract in accordance with the provisions of DEFCON 656B (Edn 08/16) and/or Clauses 9, 66.4, 66.5, 66.7 and 66.9, then the Authority shall have the right, to be exercised at its sole discretion to terminate the whole Contract.
- 66.2 The Authority's decision to terminate one or more Vessel(s) or Service(s) shall not affect the Authority's rights or Contractors obligations under the Contract in respect of the remaining Vessel(s) or Service(s).
- 66.3 Any reference in this Clause 66 to termination of the Contract shall be deemed to apply to the options referred to in Clause 66.1 above.

Termination under DEFCONs

66.4 The Parties acknowledge that the following DEFCONs shall apply:

- a. DEFCON 515 (Edn 02/17) Bankruptcy and Insolvency
- b. DEFCON 520 (Edn 02/17) Corrupt Gifts and Payments of Commission
- c. DEFCON 656B (Edn 08/16) Termination for Convenience
- d. DEFCON 514 (08/15) Material Breach

The Contractor also acknowledges that the Authority may terminate this Contract pursuant to such DEFCONs.

Termination for Contractor Default for Performance

- 66.5 The Contractor shall be deemed to be in Contractor Default if the individual KPI record for this Contract shows:
- a. There are 2 (two) RED markings on a SINGLE KPI in a 12 (twelve) month rolling period; or
 - b. There are 4 (four) RED markings in total across ALL KPIs in a 12 (twelve) month rolling period; or
 - c. There are 4 (four) AMBER and/or RED markings on a SINGLE KPI in a 12 (twelve) month rolling period; or
 - d. There are 7 (seven) AMBER and/or RED markings in total across ALL KPIs in a 12 (twelve) month rolling period;
- 66.6 When the Performance management process indicates that the Contractor is in Default, the Authority will follow the Termination process as defined in Clauses 66.7 and 66.8.

Termination for Contractor Default

- 66.7 If a Contractor Default has occurred, pursuant to the definition and Clause 66.5, the Authority shall be entitled to terminate this Contract in accordance with the provisions of Clauses 66.8 and 66.9.
- 66.8 If a Contractor Default has occurred and the Authority wishes to terminate this Contract pursuant to Clause 66.7, it must serve a notice (the "Termination Notice") on the Contractor's representative stating:
- a. that the Authority is terminating this Contract for Contractor Default;

- b. the type and nature of Contractor Default that has occurred, giving reasonable details and
- c. that this Contract shall terminate on the day falling at least 30 (thirty) Business Days, or any other date stated by the Authority, after the date the Contractor receives the Termination Notice.

Following receipt of the notice to terminate the Contract, Clauses 67 (Exit Provisions) and 72 (Continuing Obligations) shall apply.

Termination Date and Compensation for Termination for Contractor Default

66.9 This Contract shall terminate on the date falling 40 (forty) Business Days after the date of receipt of the Termination Notice referred to in Clause in 66.8, and the provisions of Clause 68 (Compensation on Termination for Contractor Default) shall apply in respect of such termination.

67. EXIT PROVISIONS

67.1 The following provisions shall apply.

Delivery of Materials

67.2 Not less than 6 (six) months before Expiry Date, or immediately on service of a Termination Notice, the Contractor shall deliver to the Authority's Representative or to such other person as notified by the Authority's Representative or to any location as advised by the Authority's Representative, any materials as so requested by the Authority's Representative.

Deliverable Documents on Termination or Expiry

67.3 Not less than 12 (twelve) months before the Expiry Date, or immediately on service of a Termination Notice, the Contractor shall deliver to the Authority's Representative or to such other person as notified by the Authority's Representative in a hard copy format (or electronic copy where relevant and available):

- a. all information and records relating to the Project which have been produced by both parties (Authority and Contractor);
- b. all information and records relating to the Project which are proprietary to the Contractor or Subcontractors and all software in object code used to provide the Services. The Contractor's obligation under this Sub-Clause in respect of documents which are owned by a third party shall be to use reasonable endeavours.

67.4 Upon termination or expiry of this Contract, and if the Authority wishes to enter into another agreement for the operation and management of a project the same as or similar to the Project, the Contractor shall (and shall use reasonable endeavours to ensure that its Subcontractors shall) comply with all reasonable requests of the Authority's Representative to provide information relating to the Contractor's costs of operating and maintaining the Project including the Financial Records.

Duty to Co-operate

67.5 During the final 6 (six) months before the Expiry Date or during the period of any Termination Notice, the Contractor shall co-operate fully with the transfer of responsibility for provision of the Services (or any part thereof) from the Contractor to any person ("Follow-on Contractor") or to the Authority, and for the purposes of this Clause 67 (Exit Provisions) the meaning of the term "co-operate" shall include:

- a. liaising with the Authority and/or any Follow-on Contractor, and providing reasonable assistance and advice concerning provision of the Services and its transfer to the Authority or to such Follow-on Contractor;

- b. allowing any such Follow-On Contractor access (at reasonable times and on reasonable notice) to the Assets but not so as to interfere with or impede provision of the Services; and
- c. without prejudice to the obligations of the Contractor pursuant to Clause 32 (Contractor's Information, Documents and Records), providing to the Authority's Representative and/or to any Follow-On Contractor all and any information concerning the Vessels and provision of the Services which is reasonably required for the efficient transfer of responsibility for its performance but excluding any information which is commercially sensitive to the Contractor (and for the purpose of this Clause 67.6 c. "commercially sensitive" shall mean information which would, if disclosed to a competitor of the Contractor, give that competitor a competitive advantage over the Contractor and thereby prejudice the business of the Contractor, but shall not include any information referred to in the TUPE information clauses).

Transfer of Responsibility

67.6 For a period of 6 (six) months after the Termination Date or Expiry date, the Contractor shall provide all reasonable assistance, guidance and information to the any Follow-On Contractor or the Authority (as the case may be), and at the Authority's discretion, shall be paid monthly in arrears its reasonable costs actually incurred and directly arising from such provision (subject to providing satisfactory evidence of the same to the Authority at the end of each month).

67.7 Without prejudice to the provisions of Clause 67.7, the Contractor shall use all reasonable endeavours so as to facilitate the smooth transfer of responsibility for provision of the Services to a Follow-on Contractor or to the Authority, as the case may be, and the Contractor shall take no action at any time during the Contract Period or thereafter which is calculated or intended, directly or indirectly, to prejudice or frustrate or make more difficult such transfer.

68. COMPENSATION ON TERMINATION

68.1 On termination of this Contract pursuant to Clause 66 (Termination by the Authority), the Authority shall pay to the Contractor a fair and reasonable price for each Service performed or partially performed in accordance with the Contract, in accordance with Clauses 69 (Gross Up of Termination Payments) and 70 (Time for Payment of the Termination Sum).

69. GROSS UP OF TERMINATION PAYMENTS

69.1 If any amount of compensation payable by the Authority under Clauses 68 is subject to Tax payable to a Relevant Authority in the United Kingdom, then the Authority shall pay to the Contractor such additional amount as shall put the Contractor in the same after Tax position as it would have been in had the payment not been subject to Tax taking account of any relief, allowances deduction, setting-off or credit in respect of Tax (whether available by choice or not) which may be available to the Contractor to reduce the Tax to which the payment is subject.

70. TIMING OF PAYMENT OF THE TERMINATION SUM

70.1 The Authority shall pay the Contractor the amount payable under Clause 68 above, on or before the date falling 30 (thirty) Business Days after the Termination Date.

Exclusivity of Remedy

70.2 Any payment of compensation pursuant of Clause 68 shall be in full satisfaction of any claim which can be made against the Authority by the Contractor in relation to termination of this Contract or any Project Document, and shall be the sole remedy of the Contractor against the Authority in respect of termination of this Contract.

71. NOT USED

72. CONTINUING OBLIGATIONS

- 72.1 Save as otherwise expressly provided in this Contract, or as already taken into account in the calculation of any Termination Sum, or other payment of compensation on termination pursuant to this Contract, and notwithstanding the provisions of Clause 70.2 (Exclusivity of Remedy):
- a. termination of this Contract shall be without prejudice to any accrued rights or obligations under this Contract prior to termination; and
 - b. termination of this Contract shall not affect the continuing rights and obligations of the Contractor and the Authority under Part 1 Defence Conditions, Part 2 Special Conditions Clauses or under any other provision of this Contract which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

SECTION 12 – GENERAL

73. CAPACITY OF THE AUTHORITY

- 73.1 Save as otherwise expressly provided, the obligations of the Authority under this Contract are obligations of the Authority in its capacity as a contracting counterparty and nothing in this Contract shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability under this Contract (howsoever arising) on the part of the Authority to the Contractor.

74. NO RECOURSE TO PUBLIC FUNDS

- 74.1 The Contractor shall at all times perform its obligations under this Contract and the other Project Documents at its own risk and without recourse to Government or other public funds or guarantees now or in the future, save as contemplated by Clause 74.2 or elsewhere in this Contract or with the prior written agreement of the Authority's Representative.
- 74.2 The Contractor confirms that it has not applied and has no intention (as at the date of this Contract) of applying for any Government or European Union grants or funding or any other public funds or guarantees for the purpose of performing its obligations under this Contract and the other Project Documents. If the Contractor is or becomes entitled to apply for any such grants or funding in relation to the carrying out of any of the Services it shall inform the Authority's Representative and obtain its consent before submitting the relevant application. The Authority's agreement to the Contractor's application will be given on condition that, should the Contractor receive any such grant or funding the payments made by the Authority to the Contractor in accordance with this Contract and the other Project Documents will be reduced by the amount of the grant or funding.

75. ENTIRE AGREEMENT

- 75.1 Except where expressly provided in this Contract, this Contract constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Contract.
- 75.2 Each of the Parties acknowledges that:
- a. subject to Clause 25.1 (Authority Disclosed Data) it does not enter into this Contract on the basis of and does not rely, and has not relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any person (whether a Party to this Contract or not) except those expressly repeated or referred to in this Contract and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be any remedy available under this Contract; and
 - b. this clause shall not apply to any statement, representation or warranty made fraudulently, or to any provisions of this Contract which was induced by fraud, for which the remedies available shall be all those available under the law governing this Contract.

76. COUNTERPARTS

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

77. PUBLIC RELATIONS AND PUBLICITY

- 77.1 The Contractor shall not by itself, its employees or agents, and shall procure that its Subcontractors shall not:

- a. communicate with Representatives of the press, television, radio or other communications media on any matter concerning this Contract or the Project;
 - b. photograph or film in or upon any Authority Sites;
 - c. erect or exhibit on any part of the Authority Sites any signs or trade boards; or
 - d. exhibit or attach to any part of the Authority Sites any notice or advertisement,
- unless the Authority's Representative has given its prior written consent or as otherwise required to comply with Legislation.

SoTR Section	Requirement	Performance Measure	Performance Target
1	Plans		
1.1	Service Delivery Plan		
1.1.1	The Contractor shall continue to maintain and implement a Service Delivery Plan (SDP). This plan shall detail the technical and logistics aspects associated with the delivery of the requirements.	Fully developed SDP maintained and implemented to the satisfaction of the Authority.	SDP agreed with the Authority by Contract Award, modified with agreement from the Authority within 6 weeks of Contract Award, and maintained annually thereafter.
1.2	Risk & Opportunity Management Plan		
1.2.1	The Contractor shall continue to maintain and implement a Risk & Opportunity Management Plan (ROMP), in accordance with BS EN 62198:2014 Managing Risk In Projects - Application Guidelines (or an equivalent industry standard). The ROMP shall also describe how risks will be controlled during the term of this Contract.	Fully developed ROMP maintained and implemented to the satisfaction of the Authority. Risk Register Template (Contract Schedule 9) headings used as a minimum to record risks.	ROMP agreed with the Authority by Contract Award, modified with agreement from the Authority within 6 weeks of Contract Award, and maintained annually thereafter.
1.3	Quality Plan		
1.3.1	The Contractor shall continue to develop, maintain and implement a Quality Plan in accordance with Clause 34 of the Terms and Conditions of the Contract.	Fully developed Quality Plan maintained and implemented to the satisfaction of the Authority.	Quality Plan agreed with the Authority by Contract Award, modified with agreement from the Authority within 6 weeks of Contract Award, and maintained six-monthly thereafter.
1.4	Safety & Environmental Protection Organisation & Arrangements		
1.4.1	The Contractor shall continue to develop, maintain and implement a Safety & Environmental Protection Organisation & Arrangements (S&EP O&A) complying with the coatings requirements of ISO 14001:1996 EMAS and OHSAS 18001 Occupational Health and Safety Management Systems - Requirements or equivalent (as superseded from time to time) which shall cover all aspects of the Service Provision.	Fully developed S&EP O&A to the satisfaction of the Authority's nominated representative.	S&EP O&A agreed with the Authority by Contract Award, modified with agreement from the Authority within 6 weeks of Contract Award, implementation reviewed at the first maintenance period, and the System maintained annually.
1.5	Transition Plan		
1.5.1	The Contractor shall provide, maintain and implement a Transition Plan detailing how Transition will be managed including, but not limited to, key tasks, issues and risks during the period. The Contractor shall be required to have the processes and systems in place to ensure a smooth, swift and effective transition.	Approved Transition Plan agreed with the Authority	Transition Plan agreed with the Authority by Contract Award and modified with agreement from the Authority within 1 week of Contract Award
2	Supply & Logistics The Contractor shall undertake the following activities when instructed by an authorised Tasking Form		
2.1	Global Supply of Technical Coatings		

2.1.1	The Contractor shall ensure that all products required under this contract comply with the requirements in Annex A and the standards at Annex B to this SoTR.	Suitable products supplied in full and on time. Compliance with stated standards and specifications.	<p>Delivery Requirements:</p> <p>a. UK & Europe Sea stock – twenty four hours Upkeep Periods – four weeks</p> <p>b. Rest of the World Sea stock – forty eight hours Maintenance/Upkeep stores – four weeks</p> <p>KPI - Supply of Technical Coatings.</p>
2.2	Provision of Technical Coatings Advice		
2.2.1	<p>The Contractor shall provide Technical Coatings advisors to provide advice, guidance, assistance, recommendations, storage and handling advice, safety of application including appropriate Personal Protective Equipment (PPE), disposal of used material and packaging advice, and coatings technical support (including the supply of technical documentation and data sheets), to the nominated Ship Repair organisation including advice to ship staff for on board stores and handling.</p> <p>The Contractor shall be capable of supporting two or three ship-repair organisations at different locations as well as being flexible for deployment to other UK or non-UK locations.</p> <p>The required standard of qualification as a minimum for technical advisors will be qualified to National Association of Corrosion Engineers (NACE) standard Inspector certification level 2 (or equivalent).</p>	Technical Coating advisor shall be available at 24 hours notice to provide survey and inspection support.	No instances of non-compliance.
3	Surveying & Reporting The Contractor shall undertake the following activities when instructed by an authorised Tasking Form		
3.1	Pre-upkeep Surveys and Reporting		
3.1.1	The Contractor shall be required to carry out pre-upkeep surveys and inspections, and Pre-Upkeep Material Assessment (PUMA) of all ships as requested by the Cluster Support Team Leader.	Surveys completed to the satisfaction of the Authority.	<p>Surveys conducted within agreed timescale and to required standard.</p> <p>KPI - Advisor Inspection Report</p>
3.1.2	The Contractor shall produce written reports of the results of surveys of coating breakdowns and deficiencies to be presented to the Authority. These reports are to be supported by sufficient photographs to clearly highlight any defects and recommended remedial action including the prioritisation of any work.	Reports produced to the satisfaction of the Authority.	<p>Survey Report submitted within agreed timescale and to required standard and format as agreed by the Authority.</p> <p>KPI - Advisor Inspection Report</p>
3.2	Work Package Reporting		

3.2.1	The Contractor shall be required to produce written reports of the details and results of final Work Packages to be presented to the Authority; these reports are to be supported by sufficient details and quality of all painting activities undertaken.	Reports produced to the satisfaction of the Authority.	Work Package Report submitted within agreed timescale and to required standard and format as agreed by the Authority. KPI - Advisor Final Report
4	Technical Support The Contractor shall undertake the following activities when instructed by an authorised Tasking Form		
4.1	Oversight of painting activities during all maintenance periods		
4.1.1	The Contractor's duties for oversight of painting activities shall consist of advising the paint applicator/Ship Cluster Owner on matters including, but not be limited to: a) The standard of surface preparation, application, mixing and curing of the paint; b) The undertaking of inspections at each stage of the painting/preparation programme and supervising the mixing of paints; c) The inspection after application of each coat will be required along with the identification of any defects requiring touch-up.	Quality of work to the standard required by the Authority.	Inspection of work will be completed to satisfaction of the Authority. KPI - Advisor Final Report KPI - Number of Repeat Orders
4.2	Preparation of detailed technical specifications		
4.2.1	The Contractor shall be required to prepare and deliver technical specifications to support the whole range of maritime painting/preservation applications from simple touch-up/patch repair through to complete paint scheme removal and re-instatement. The preparation and delivery of technical specifications shall include, but not be limited to: a) Access; b) Safety; c) Environmental requirements (temperature/humidity/pollution); d) Surface preparation; e) Priming/top-coat requirements; f) Curing times.	Specifications enable the Contractor to accurately estimate preparation, application and maintenance of technical coating requirements.	Coatings are applied and maintained to the satisfaction of the Authority.
4.3	Input into specifications.		
4.3.1	The Contractor shall be required to work as part of the Cluster Support Team (CST) to develop the Maintenance Specifications and optimise the painting activities.	Input enables accurate work specifications and pricing.	Estimated time and price matches the work undertaken.
4.4	Compilation and maintenance of individual ship Technical Coatings records (e.g. tank coating records).		

4.4.1	The Contractor shall be required to develop and maintain an electronic technical coatings record (which is to contain a photographic log) for each ship, to contain a history of all coating activities undertaken on that ship carried out under the supervision of a Technical Coatings Advisor.	Electronic technical coatings record to be updated on completion of each maintenance period to the satisfaction of the Authority. Records kept to a suitable quality to enable retrospective analysis and maintain those records for the duration of the contract.	Electronic technical coatings record presented to the Authority within 4 weeks of completion of each Work Package. Records to be made readily available to the Authority.
4.5	Applicator training, monitoring and advice.		
4.5.1	The Contractor shall provide basic application training for ship's staff. The Contractor shall monitor and advise all applicators on technical coatings application technique and requirements.	All applicators to receive relevant guidance/instruction on the correct application and maintenance of Technical Coatings.	Adequate information and knowledge exists on ships when on operations or deployment.
5	Acceptance Management		
5.1	Acceptance Evidence		
5.1.1	The Contractor shall collate acceptable evidence, including but not limited to the quality and details of all painting activities undertaken during a Work Package, and report this to the Authority's authorised representative.	Reports produced to the satisfaction of the Authority.	Work Package Report submitted within agreed timescale and to required standard and format as agreed by the Authority. KPI - Advisor Final Report
5.2	Classification Society approval of products		
5.2.1	The Contractor shall ensure all relevant Technical Coatings are agreed with and have the approval of the Classification Society before they are used.	Technical Coatings provided to the satisfaction of the Classification Society as required.	All relevant Technical Coatings maintained with agreement from the Classification Society.
5.3	Classification Society Support		
5.3.1	The Contractor shall provide appropriate support to the Authority and Ship Cluster Owner to ensure that relevant Classification Society surveys are completed successfully. The Contractor shall provide appropriate evidence to aid this support, including but not limited to paint specifications and systems, product information sheets.	Support provided to the satisfaction of the Authority.	No instances of non-compliance.
5.4	Quality Assurance		
5.4.1	The Contractor shall provide the Authority with free and unfettered access to the Contractor's facilities or its Supplier's production lines to enable the Authority to conduct quality assurance activities.	Access available.	At all times
6	Business Management & Improvement		
6.1	Occupational Health and Safety Standards		

6.1.1	The Contractor shall comply with all rules, regulations, standards, policies and legislation, including but not limited to: a) the Royal Fleet Auxiliary (RFA) and Royal Navy (RN) Safe Systems Of Work - detailed in this SoTR Annex C (Contractor Safety Awareness Form) for RFA and RN, and also BRd167 (The Safety, Health, and Environmental Manual) for RN OSV, which includes regulations and policies laid down by the Ships Safety Officer relating to the safe handling, safe storage, safe application and safe disposal of technical coatings, and a Permit-To-Work system; and b)The contractor shall comply with the site safety standards for the primary contractor as a minimum or any higher standards that may be applicable on other sites (including foreign yards)	Compliance with all relevant rules, regulations, standards, policies and legislation as applicable, including all standards mentioned in this SoTR.	No instances of non-compliance.
6.2	Collaborative Working		
6.2.1	The Contractor shall be required to work collaboratively with the Authority and its associates (e.g. other Market Facing Contractors (MFCs) and ship repair organisations) in line with the principles of ISO44001 Collaborative Business Relationship Management System (CBRM).	To work in line with the principles of ISO44001 (CBRM), and to attend and actively participate in the development meetings for Collaborative Working.	To see growth and score highly on the Relationship Maturity Matrix (RMM), and have the necessary systems and documentation in place to pass a ISO44001 (CBRM) audit.
6.3	Provide updates on new and pending legislation, etc.		
6.3.1	The Contractor shall ensure that all pending legislation relevant to maritime coating applications is constantly reviewed and to ensure that any impact to the Authority's requirements is reviewed and reported.	To ensure coatings utilised by the Authority still satisfy the appropriate health, safety and environmental legislation.	No breach of legislation.
6.4	Presenting innovative ideas/products.		
6.4.1	The Contractor shall maintain a focus on the coatings and preservation markets (including their own research and development) and identify any potential improvements which may result in improved efficiency, enhanced safety/environment outputs or greater effectiveness of coating applications.	A benefits and innovation register is to be produced and updated.	Benefits and innovations register to be reviewed and scrutinised by the Authority. Entries to be found compliant with the rules of Benefit Tracking.
6.5	Provide feedback and Learning From Experience (LFE) into After Action Reviews (AARs), and manage applicable actions.		
6.5.1	The Contractor shall be required to participate within any MoD or Industry led reviews or learning events as agreed by the Authority and ensure that any potential benefits are fed-back to the Authority for review and consideration.	Reports are completed and feedback provided to enable future analysis.	Reports are kept to a quality to enable retrospective analysis and maintain those records for the duration of the contract. They shall be made readily available to the Authority.
7	CONDO		

7.1	The Contractor shall identify and maintain a cadre of suitably trained deployable Contractors on Deployed Operations (CONDO) personnel in accordance with DEFCON 697.	CONDO trained personnel identified and available to deploy.	No issues of non-conformance.
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SCHEDULE 2

CONTRACT MEETINGS

1. STRATEGIC CONTRACT MEETINGS

- 1.1 In accordance with the provisions of Clause 6 (Contract Governance), the meeting hierarchy (Figure 1 below) shows the Strategic Contract Meetings required for this Contract. Tables 1 and 2 detail the terms of reference, objectives, owner, attendees and frequency of the meetings.

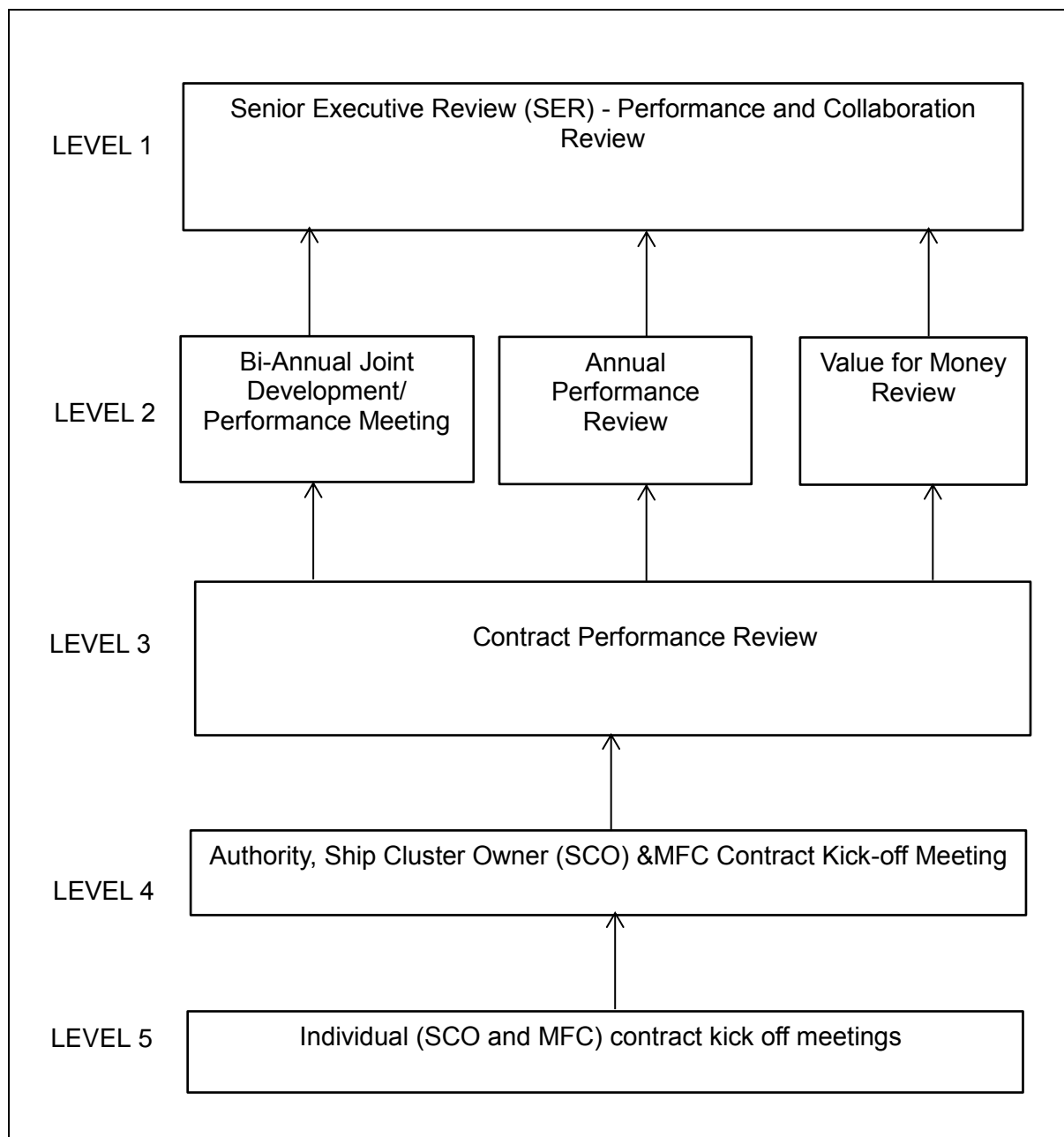


Figure 1: Hierarchy of Strategic Contract Meetings

Table 1: Strategic Contract Meeting Details

Level	Serial	Meeting Title	Purpose/Objective	Owner Key Attendance	Frequency Location
1	1.1	Senior Executive Review (SER) - Performance and Collaboration	Address and provide strategic direction and guidance regarding requirements, finance, performance & collaboration. Promote knowledge-sharing and best practice across all contracts.	Head of CSS CEO/MD of each Ship Cluster Owner (SCO) and Market Facing Contractor (MFC) CSS Senior Commercial representative	Annual SCO and MFC/ premises on rotation
2	2.1	Annual Performance Review	Provide a contract performance report for senior management review. Instigate any corrective action. Informs the continuous Value for Money (VFM) review.	CSS Availability Lead Waterfront teams CSS Commercial representative MFC CEO CSS provided Meeting Secretary	Annual – end of month 12 (p/contract year) MFC premises
2	2.2	Bi-Annual Joint Development	Review: - Joint Development plans (incl. continuous improvement and cost reduction). -Relationship Maturity Matrix across all SCO and MFC contracts. Identify and exploit key learning opportunities and mitigate risks.	CSS Waterfront Leads CSS Availability representative SCO MFC Owners CSS Commercial representative ICSM CMT Facilitator Meeting Secretary	Bi-Annual – end of month 6 (p/contract year) SCO site
2	2.3	Value for Money (VFM) Review	To conduct a deep dive validation exercise into the savings and efficiency register maintained by the Contractor, providing a robust and consistent approach to determining if the contract should be extended. Data gathered from this review will inform the follow-on Business Case	CSS Availability Leads CSS Waterfront Leads MFC representative CSS Commercial representative Meeting Secretary	3.5 years after the Commencement Date No. of meetings as required. Authority and MFC premises on rotation
3	3.1	Contract Performance Review	Review contract performance (Programme progress, Safety, KPIs, risks, issues, opportunities and finance) in order to identify progress and areas for improvement and brief upwards as appropriate.	CSS Waterfront Leads CSS Commercial representative CSS Waterfront representatives MFC representatives Meeting Secretary	Monthly – end of month 1,2,3,4,5,7,8,9,10, & 11 (p/contract year) Authority and MFC premises on rotation
4	4.1	Authority, SCO & MFC Contract Kick-off Meeting	To facilitate the initial meeting of the MFC, the Authority and each SCO to implement the transition plan and build the collaborative relationships.	CSS Availability Lead CSS Waterfront Leads CSS Commercial representative Each SCO and all MFC Owners FISS representatives	Within one month of contract placement SCO site

5	5.1	Individual Contract Kick-off meeting	To ensure that all parties understand the contract requirements and start to instigate the ways of working.	CSS Availability Lead Waterfront teams Commercial Each individual SCO and MFC owner	Within one month of contract placement SCO site
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- 1.2 The Contractor shall comply with the following Terms of Reference for the Strategic Contract Meetings required as part of this contract and in accordance with Clause 6 (Contract Governance).
- 1.3 The Contractor shall note that the Authority reserves the right to amend Table 1 and 2 and these Terms of Reference.
- 1.4 The sequencing of the meetings will follow the dependencies shown in the hierarchy in Figure 1 to optimise the currency of management information

Table 2: Terms of Reference for Strategic Contract Meetings

Level	Serial	Meeting Title	Terms of Reference
3	3.2	Contract Performance Review	<p>The purpose of the meeting is for the Authority to review the Contract Performance with the MFC, in order to identify issues, risks, agree corrective action and areas for improvement, and agree action plans moving forward. Data to be provided (the Contract Performance Review report) by the Supplier should be agreed with the Authority one week before the meeting. Data to be reviewed during the meeting includes (but is not limited to):</p> <ul style="list-style-type: none"> • Planning (Master Schedule). • Progress / Performance against: <ul style="list-style-type: none"> ○ 1 and 5 Year Plan ○ RPs, DPs, AMPs etc. • Logistics and Supply Service <ul style="list-style-type: none"> ○ Routine supply performance ○ Quality Issues ○ Cost reductions • Development of future Project Work Packages <ul style="list-style-type: none"> ○ PUMAs ○ Specifications and Tasks • Financial Performance & Incentivisation • Performance (KPI report) <ul style="list-style-type: none"> ○ Score against each criteria aggregated to one overall marking for Contract performance • Value for Money activities and plans <ul style="list-style-type: none"> ○ Continuous cost reduction activities • Risks, Issues and opportunities <ul style="list-style-type: none"> ○ Summary of CST Project Risks and Issues applicable to the MFC requirement. ○ Summary of those Risks and Issues that need resolving at the CSS Deputy Head, Availability and SCO level. • Health and Safety and Environmental • Training • Review of jointly agreed action plan – updated monthly by the contractor to highlight future actions required to fulfil the Authority's requirement(s). <p>Secretariat duties (meeting organisation, minute taking, capturing meeting actions, etc.) to be provided by the contractor.</p>

1	1.1	Bi-annual Joint Development (JD1) Meeting (Authority & MFC)	<p>The Purpose of this meeting is for the Authority to review progress against the Relationship Maturity Matrix and to undertake a strategic review of the Joint Development Activities & Cost Improvements Register.</p> <p>Data to be reviewed includes (but is not limited to):</p> <ul style="list-style-type: none"> • Relationship Maturity Matrix • Joint Development Plan (which includes the continuous cost reduction plan) <p>Secretariat duties (meeting organisation, minute taking, capturing meeting actions, etc.) to be provided by the contractor.</p>
2	2.2	Bi-annual Joint Development (JD2) Meeting (Authority, all Ship Cluster Contractors & MFCs)	<p>The Purpose of this meeting is to review pan Ship Cluster Contract issues including reviewing Strengths, Opportunities, Weaknesses and Threats (SWOT), and exploiting/mitigating them as required.</p> <p>Data to be reviewed includes (but is not limited to):</p> <ul style="list-style-type: none"> • SWOT analysis • BEEF analysis • BS11000/ISO44001 • Communications <p>Secretariat duties (meeting organisation, minute taking, capturing meeting actions, etc.) to be provided by the contractor.</p>
2	2.1	Annual Performance Review	<p>The purpose of the Annual Performance Review is to provide a brief report on Contract performance during the previous contract year, and provide a documented status for management review. It provides an opportunity to review the data collected through the Contract Performance Reviews and Contract Performance Review reports to ensure the planned objectives are on course, or if necessary instigate appropriate corrective action. The annual reports will inform the VFM review as required and ensure documentary evidence is available to validate future decision making.</p> <p>Content of the Annual Report:</p> <p>This will take a similar format to the monthly report but will contain aggregated data showing overall performance of the contract in the 12 (twelve) month period.</p> <ul style="list-style-type: none"> • Executive Summary <ul style="list-style-type: none"> ◦ Insert narrative to provide analysis of the results, highlighting any changes to the Contract over the 12 (twelve) months and to include comments on the plans moving forward. • Planning & Delivery • Summary showing achievement against planned milestones • Health & Safety (H&S) and Environmental • Companies to provide accident statistics data <ul style="list-style-type: none"> ◦ Discuss other H&S issues • Financial Performance & Incentivisation <ul style="list-style-type: none"> ◦ End of year Performance against TCIF measuring <ul style="list-style-type: none"> a. Target Cost against

			<ul style="list-style-type: none"> • b. Actual costs • Output Performance (KPIs) <ul style="list-style-type: none"> a. Breakdown of aggregated monthly contract performance b. High level analysis of performance against model and narrative of actions moving forward. • Cost reduction plans & improvements • Collaborative Working & Master Actions Log status • Relationships • Assessment of Relationship Maturity Matrix extracted from the Collaborative Working (CW1) Review. • Corporate Social Responsibility <ul style="list-style-type: none"> ○ Sustainable Procurement ○ Sustainable Development • Risks, Issues and opportunities <p>Secretariat duties (meeting organisation, minute taking, capturing meeting actions, etc.) to be provided by the contractor.</p>
1	1.1	Senior Executive Review (SER) - Performance and Collaboration	<p>The Purpose of the Meeting is to provide a forum (akin to an Executive Board) for the Authority, the Market Facing Contractors (MFC) and the Ship Cluster Owners (SCO) to address the strategic requirements of the RFA and RN, which are to provide through life support to the Flotilla, at reduced cost, whilst maintaining or improving output.</p> <p>The purpose of the meeting is also to promote the sharing of knowledge and best practice.</p> <p>Data to be reviewed includes (but not limited to):</p> <ul style="list-style-type: none"> • Monthly Benchmarking Dashboard (KPIs, RPIX & Commodities) • Joint Business Agreement data • Annual Performance Reports • Forward Upkeep Programme • Financial Status <p>Secretariat duties (meeting organisation, minute taking, capturing meeting actions, etc.) to be provided by the Authority.</p>
2	2.3	Value for Money Reviews (Authority and MFC)	<p>To conduct a deep dive validation exercise into savings and efficiency details provided by the Contractor, along with other data stated in Section 9 (Value For Money Review) of the Terms and Conditions, providing a robust and consistent approach to determining if the Contract should be continued. The data collected will be benchmarked against industry costs and price changes.</p> <p>Secretariat duties (meeting organisation, minute taking, capturing meeting actions, etc.) to be provided by the Authority.</p>
4	4.1	Authority, SCO & MFC Contract Kick-Off meeting	<p>To facilitate the initial meeting of the MFCs, the Authority and the SCOs and to implement the transition plan, and agree processes and procedures leading up to the Commencement Date. These meetings will eventually migrate into the Contract Performance Review.</p> <p>Secretariat duties (meeting organisation, minute taking, capturing meeting actions, etc.) to be provided by the Authority.</p>

5	5.1	Individual Contract Kick-off meeting	<p>To facilitate the initial meeting of the Individual MFC, the Authority and the SCOs and to implement the transition plan, and agree processes and procedures leading up to the Commencement Date. These meetings will eventually migrate into the Contract Performance Review.</p> <p>Secretariat duties (meeting organisation, minute taking, capturing meeting actions, etc.) to be provided by the Authority.</p>

SCHEDULE 3

DEFINITIONS

1. In accordance with Clause 1, the following definitions shall apply to the Contract, unless the context otherwise requires;

"Acceptance Certificate" means a certificate issued by the Authority pursuant to Clause 11 confirming that the Project Work Package Requirements have been met (Authority's Requirements);
"Actual Acceptance Date" means the date on which the Authority accepts the Vessel from the Contractor following the issue of the Acceptance Certificate relating to the final Project Work Package to be undertaken in any period in which the Vessel is subject to Non-Fleet Time conditions;
"Actual Cost" means the receipted and agreed cost outturn of a Project Work Package;
"Affected Party" is as defined in the definition of Force Majeure Event;
"Affiliate" means, in relation to any person, any Holding Company or subsidiary of that person or any subsidiary of such holding company, and "Holding Company" and "subsidiary" shall have the meaning given to them in Section 736 of the Companies Act 1985;
"Alteration and Addition (A&A)" means a change to a Vessel that alters the structure, systems and/or layout of a ship. A&As are classified as: a. 'Type A' to increase the capability of the Vessel; or b. 'Type B' to maintain the Vessel.
"Annual Certification Period (ACP)" means the annual period whereby a Vessel is re-certified by the classification authority in line with the relevant legal/statutory requirements;
"Appropriate Limit" means the capped value for undertaking FOIA investigations;
"Articles" means all goods (excluding Services) which the Contractor is required under the Contract to supply;
"As fitted" is a status describing the validity of information following an activity that has physically changed the Vessel. Post change there are a number of documents that will be required to be updated, including but not limited to: drawings, handbooks, technical documentation, plans and information boards held onboard, and ShipHaz boards. Once updated these documents can be considered to reflect the 'as fitted' configuration of the ship;
"Assets" means, all assets and rights to enable the Authority or a successor contractor to own, operate and maintain the Project in accordance with this Contract, including: a. any equipment; b. any books and records (including operating and maintenance manuals, health and safety manuals and other know-how);

<ul style="list-style-type: none"> c. any spare parts, tools and other assets (together with any warranties in respect of assets being transferred); d. any IPR; and/or e. any Contractor's equipment, <p>but excluding any assets and rights in respect of which the Authority is the full legal and beneficial owner;</p>
<p>"Assisted Maintenance Period (AMP)" means a Fleet Time Support Period not covered by other types of Fleet Time Support Periods;</p>
<p>"Authority's Authorised Representative" means those persons on the CSS Fleet Time Support Team authorised to approve the placement of orders;</p>
<p>"Authority's Commercial Officer" is the individual identified in the DEFFORM 111;</p>
<p>"Authority Background IPR" means, the Background IPR owned by the Authority whether arising before or after the Commencement Date;</p>
<p>"Authority Inspection Teams" means outside authorities who may be required to inspect any work. e.g: Statutory or Mod Inspections;</p>
<p>"Authority Foreground IPR" means a piece of equipment or documentation which is subject to redesign under the terms of this Contract. In such instances the Foreground IPR shall remain the property of the Authority;</p>
<p>"Authority Property" means property belonging to the Authority and shall for the purposes of this Contract include the RFA Vessels;</p>
<p>"Authority Related Parties" means:</p> <ul style="list-style-type: none"> a. an officer, servant or agent of the Authority, or any affiliate of the Authority; and/or b. the Subcontractors and/or any Subcontractor of the same NOT directly contracted under this Framework Agreement; and/or; c. any person on or at any of the Authority Sites at the express or implied invitation of the Authority (other than a Contractor Related Party); and/or d. any officer, servant or agent of such a person;
<p>"Authority's Representative" in any provision of the Contract means the person duly authorised by the Authority to act for the purposes of the provision and identified in the Contract or in any subsequent notice to act for the purposes of the provision; this term should NOT be taken as synonymous with "Authority's Authorised Representative".</p>
<p>"Authority Sites" means any site owned by the Authority and shall for the purposes of this Contract include the Vessels;</p>
<p>"Background IPR" means any IPR created or subsisting prior to or outside the scope of this Contract;</p>
<p>"Baseline Cost" means the Authority's approved financial value for the duration of the contract period;</p>

<p>"Baseline Price" means the price of a unit of a Type B item of stores which has been previously purchased by the Authority, and is recorded on the MOD Stores Inventory System;</p>
<p>"Baseline Specification" means the content of the SoTR and associated rates/tariffs priced by the Contractor during the tender process, and accepted by the Authority at Contract Award;</p>
<p>"Benchmarking" means the process the Authority will use to identify best practice (in terms of performance and cost reduction) across the Ship Cluster and Market Facing Category contracts;</p>
<p>"Benefit Tracking" means the process of capturing all benefits and progress them (monthly) including identification of Innovation, Benefits costing, Return on Investment, Benefits Realisation (to record the benefits of Collaboration) and ideally some form of Learning From Experience.</p>
<p>"Breach of Security" means any breach of the Security Provisions;</p>
<p>"Business Day" means any day excluding:</p> <ul style="list-style-type: none"> a. Saturdays, Sundays and public and statutory holidays in the jurisdiction of either Party; and/or b. privilege days notified in writing by the Authority's Representative to the Contractor's Representative at least 10 (ten) Business Days in advance; and/or c. such other periods of holiday closure of the Contractor's premises notified in writing by the Contractor's Representative to the Authority's Representative at least 10 (ten) Business Days in advance;
<p>"Calendar" means the 12 (twelve) month period from and including a day to and including the day preceding the day bearing the same number in the same month of the following year (or, in the case only of a period commencing on 29 February, ending on the next following 28 February);</p>
<p>"Capital Expenditure" means any expenditure which falls to be treated as capital expenditure in accordance with generally accepted accounting principles in the United Kingdom from time to time;</p>
<p>"Cardinal Date Plan" means Key Milestones that affect the critical path;</p>
<p>"Change" means any change pursuant to Clause 45 (Authority Change) or Clause 46 (Contractor Change);</p>
<p>"Change in Law" means the coming into effect after the Commencement Date of:</p> <ul style="list-style-type: none"> a. Legislation, other than any Legislation which on the Commencement Date has been published: <ul style="list-style-type: none"> (1) in a draft Bill as part of a Government Departmental Consultation Paper; (2) in a Bill;

<p>(3) in a draft statutory instrument; or</p> <p>(4) as a proposal in the Official Journal of the European Union;</p> <p>b. any Guidance; or</p> <p>c. any applicable judgement of a relevant court of law which changes a binding precedent (where relevant).</p>
<p>“Claim” means any claim, demand, proceeding, complaint of any nature or kind;</p>
<p>“Cluster” means the group of ships supported by the Contractor following Contract Award, in accordance with the Framework Agreement;</p>
<p>“Cluster Support Team” means a collective support organisation for communication between CSS Staff, Ship's Staff, the Ship Cluster Owner and the Market Facing Contractors to facilitate decisions on support activities. Its principal role will be to undertake, direct and manage all support activities for the ships in that Cluster in accordance with defined guidelines on a through-life basis. The CST will report to the CSS Deputy Head Availability;</p>
<p>“Cluster Support Team Leader (CSTL)” means the Authority's senior representative with management responsibility for the Cluster Support Team;</p>
<p>"Commanding Officer" means the member of Ship's Staff who, at the relevant time, is in command of the Vessel for the purposes of the Authority;</p>
<p>"Commencement Date" means the date of Contract placement. The expected Commencement Date is 23 June 2018 {UPDATE AS APPROPRIATE};</p>
<p>“Commencement of Services” is when the Contractor assumes full responsibility for the delivery of the Contract following Transition, and the previous Contractor's contract has expired, excluding any pre-arranged completion activities placed prior to the previous contract's expiry;</p>
<p>“Commencement of Services Date” means the date of the Commencement of Services. The expected Commencement of Services Date is 01 January 2019 {UPDATE AS APPROPRIATE};</p>
<p>“Commercial Officer” means the authority so designated in the Contract;</p>
<p>“Condition Monitoring (CM)” means the process of monitoring a parameter of condition in machinery (vibration, temperature etc.), in order to identify a significant change which is indicative of a developing fault. It is a major component of predictive maintenance;</p>
<p>"Confidential Information" means</p> <ul style="list-style-type: none"> a. Information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and may include Commercially Sensitive Information, trade secrets, IPR, know-how, of either party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1988; and/or; b. Commercially Sensitive Information;

<p>"Contract" means the agreement concluded between the Authority and the Contractor, including all specifications, plans, drawings, Schedules and other documentation, expressly made part of the agreement. In the event of contradiction, precedence shall be given to DEFCON 537 (Edn 06/02) followed by the special conditions of Contract, followed by the DEFCONs referenced in the Contract (other than DEFCON 537) and then the Schedule of Requirements;</p>
<p>"Contract Acceptance Date" shall, in the terms of this Contract, be synonymous with "Project Work Package Acceptance Date", as defined below;</p>
<p>"Contract Period" means the period from the Commencement Date to the Expiry Date or Termination Date, whichever is the earlier;</p>
<p>"Contract Price" means the price exclusive of Value Added Tax, payable to the Contractor by the Authority under the Contract for the full and proper performance by the Contractor of his part of the Contract as determined under the provisions of the Contract;</p>
<p>"Contract Year" means a period of 12 (twelve) months commencing on the Commencement Date or an anniversary of the Commencement Date;</p>
<p>"Contract Financial Year" means a period of 12 (twelve) months commencing on 1st April and expiring on 31st March the following year;</p>
<p>"Contractor" means the company who, by the Contract, undertakes to supply the Articles or perform the Service or both for the Authority as is provided by the Contract. Where the Contractor is an individual or a partnership, the expression shall include the personal representatives of the individual or of the partners, as the case may be, and the expression shall also include any person to whom the benefit of the Contract may be assigned by the Contractor with the consent of the Authority;</p>
<p>"Contractor Background IPR" means the Background IPR owned by the Contractor at the time it is licensed to the Authority;</p>
<p>"Contractor Default" means any one or more of the following:</p> <ul style="list-style-type: none"> a. a breach by the Contractor of any of its obligations under this Contract which materially and adversely affects the performance of the Services; b. a Persistent Breach occurs; c. a breach as described in Clause 60 (Breach of Security) occurs; d. a breach by the Contractor of its obligations under Clause 40.6 to 40.14 (Approval of Change to Subcontractors and Terms of Subcontracts) occurs; e. the Contractor fails to comply with Clause 24.2b (Change of Ownership); and/or; f. Contractor default for performance as described in Clause 66 occurs;
<p>"Contractor Foreground IPR" means any IPR which are created by the Contractor or its Subcontractors and their Holding Companies or Subsidiaries from time to time for the purposes of this Contract (excluding the manifestations of any Contractor Background IPR and/or any Third Party IPR and/or Authority Background IPR);</p>
<p>"Contractor's Quality Plan" means the plan provided by the Contractor detailing all their quality management systems and processes;</p>

<p>"Contractor Related Parties" means:</p> <ul style="list-style-type: none"> a. an officer, servant or agent of the Contractor, or any Affiliate of the Contractor; and/or b. the Subcontractors and/or any Subcontractor of the same; and/or c. any person on or at any of the Authority Sites at the express or implied invitation of the Contractor (other than an Authority Related Party); and/or d. any officer, servant or agent of such a person;
<p>"Contractor's Sites" means those sites or parts of sites which are not Authority Sites but which are used by Contractor Related Parties in connection with the Project;</p>
<p>"Contractor Support Period (CSP)" means a period in which a Vessel is taken in hand for a limited Upkeep work package where Contractor support is provided to undertake maintenance. A small Update/Upgrade package may also be authorised.</p>
<p>"Corrective Action Plan" means the method and process the Contractor shall use when the Authority determines that the Contractor's performance is below a satisfactory standard as detailed in Clause 13;</p>
<p>"Critical Path" means all task(s) whereby a delay in the completion of any of those said task(s) would directly result in a delay in the completion of the Project Work Package.</p>
<p>"Damage Control" means the limiting of any damage caused by an incident and controlling any repercussions;</p>
<p>"Dangerous Goods" means hazardous articles or substances, pyrotechnics, explosives, gasoline and other highly flammable materials;</p>
<p>"Deep Upkeep Documentation" means documentation that the Contractor provides to the Authority as deliverables in support of a Deep Upkeep Period;</p>
<p>"DEFCON" means a standard defence condition, as published by the Authority under that name, and "DEFCONs" shall be construed accordingly;</p>
<p>"Delegated Design Authority" means the person with responsibility for holding a complete set of information about a part of a Vessel;</p>
<p>"Delivery Label" means a label attached to any packages for delivery for the Vessel identifying the contents and destination;</p>
<p>"Design" means a plan or drawing produced to show the look and function or workings of a building, garment, or other object before it is made;</p>
<p>"Design Authority" means the entity appointed by the Authority to be responsible for the adequacy and fitness for purpose of the design and certification of the Vessel(s);</p>
<p>"Dii(f)" stands for Defence Information Infrastructure (Future), and is the IT network that the Authority currently utilises;</p>
<p>"Dimension Reports" means a record of the dimensional measurements of an item;</p>

"Direct Losses" means all Losses other than Indirect Losses;
"Disclosed Data" means information relating to the Project disclosed to the Contractor and its Shareholders and advisers;
"Discriminatory Change in Law" means a change in Law, the terms of which apply expressly to: <ul style="list-style-type: none"> a. all work carried out under this Contract; and/or b. the Contractor and not to other persons;
"Dispute" means any difference or dispute between the Authority and the Contractor arising out of or in connection with the Contract (including any question as to the validity or interpretation of the Contract arising before or after termination of the Contract);
"Dispute Resolution Procedure" means the procedure for the resolution of disputes set out in DEFCON 530 (Edn 12/14) and Clause 30 of this Contract;
"Docking Period (DP)" means a pre-determined period of maintenance activity where the docking of a Vessel in a graving dock for a significant period is a prerequisite to conducting upkeep activity;
"Docking Plan" means an approved (by the Authority) arrangement to dock the Vessel;
"DPA" means the Data Protection Act 1998;
"Earned Value (EV)" means the budgeted cost of work performed for the period which includes overheads but is exclusive of profit;
"Earned Value Management (EVM)" means the objective management of how much work has been accomplished on a Project Work Package;
"Effective Date" means the date upon which the relevant required insurance risk commences;
"EMS" means Environmental Management System part of ISO 14001:1996;
"Engineering Load" means the work associated with Maintenance Periods;
"Engineering Load Plan/Engineering Support Plan" means a plan containing the estimated dates for each Maintenance Period. Dates are indicative only and subject to change;
"Environmental Information Regulations" means the Environmental Information Regulations 2004;
"Environmental Regulations" means all Legislation relating to environmental matters;
"Equipment" means equipment, books, records, spare parts and tools comprising the Assets;
"Estimated Change in Project Costs" means the aggregate of any estimated increased Capital Expenditure, Operating Expenditure and financing costs less the aggregate of any estimated reduced Capital Expenditure, Operating Expenditure and financing costs;

"Expert" means the person selected in accordance with Clause 30 (Disputes);
"Expiry Date" means the date that is 10 (ten) years from the Commencement Date. The anticipated Expiry Date is 22 June 2028 {UPDATE AS APPROPRIATE}
"Failed Status" means a corrective action plan that is irremediably behind schedule for completion;
"Failing Status" means a corrective action plan that is behind schedule for completion but not irremediably so;
"Fees Regulations" means the Freedom of Information Data Protection (Appropriate Limit Fees) Regulations 2004, as amended from time to time;
"Finance Records" means documents and records relating to the Finances of either the project or Contractor, pursuant to the Clause in question;
"Fire Check" means a check to ensure there are no fires or fire hazards;
"Firm Price" means a price, agreed for the Articles or Services, or both, which is not subject to variation;
"Fixed Price" means a price, agreed for the Articles or Services, or both, that is subject to variation in accordance with the variation of price provisions of the Contract;
<p>"Fleet Time Support (FTS)" is the term applied to any maintenance and engineering support carried out on a Vessel, including but not limited to:</p> <ul style="list-style-type: none"> a. Annual Certification Period (ACP) b. Assisted Maintenance Period (AMP) c. Contractor Support Period (CSP) d. Update and Upgrade Work e. Provision of Type C spares f. OPDEF Rectification <p>whilst it is operational and under the direct tasking and authority of the user (Fleet Commander and Deputy Chief of the Naval Staff);</p>
"Fleet Time Support Period (FTSP)" means a period of Fleet Time Support;
"FOIA" means the Freedom of Information Act 2000 and any subordinate legislation (as defined in Section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such Act;
"Follow-on Contractor" means a subsequent Contractor that shall take over provision of the services to the Authority following termination of this Contract according to Clause 67 (Exit Provisions);
"Force Majeure Event" means the occurrence after the Commencement Date of an event, as defined in Clause 20.

<p>"General Change in Law" means a change in law which is not a Discriminatory Change in Law or a Specific Change in Law;</p>
<p>"Good Industry Practice" means that degree of skill, care, prudence, foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced operator engaged in the same type of undertaking as that of the Contractor and/or any Subcontractor under the same or similar circumstances;</p>
<p>"Government Furnished Assets (GFA)" GFA means any or all of the following:</p> <ul style="list-style-type: none"> a. Government Furnished Equipment (GFE) is the generic term for materiel loaned to a Contractor. These are tangible items that the Contractor must manage and account for. GFE consists of: <ul style="list-style-type: none"> (1) Jigs, Tools and Test Equipment (JTTE): plant and equipment, jigs, tools, gauges, test equipment, moulds and dies required for production. The MOD may agree to fund the purchase of JTTE by the Contractor where it is specific to the contract. DEFCON 23 (Edn 08/09) covers management of JTTE. The RCA should identify whether the supplier may need to procure JTTE; (2) Issued Property: the defined contract term used for all GFE provided to a contractor under DEFCON 611 (Edn 02/16). Joint Service Publication (JSP) 886 – The Defence Logistic Support Chain Manual, Vol 4, Part 4, subdivides GFE into several categories, according to why they are issued. b. Government Furnished Resources (GFR) is personnel, most commonly Service Personnel on long-term loan or secondment. c. Government Furnished Information (GFI) is generally technical information, in any media format, supplied to a contractor to tender for or perform a contract e.g. for equipment delivery. It may also comprise of requirements information, software, commercially sensitive information, or personnel related information where the contractor needs that type of information to provide a particular service to the MOD. d. Government Furnished Facilities (GFF) is facilities, which in this context means 'hard' infrastructure such as buildings or test sites and facilities;
<p>"Guidance" means:</p> <ul style="list-style-type: none"> a. British Standards and Codes of Practice; b. Joint Service Publication 440; c. the Montreal Protocol on substances that deplete the ozone layer as agreed on 16 September 1987 as amended as at the Commencement Date; d. all relevant local requirements pursuant to the environment in which the goods and services are performed as relevant to the provision of the Services;
<p>"Holding Company" is as defined in Section 736 of the Companies Act 1985, as amended by section 144 of the Companies Act 1989;</p>

<p>"Hot Work Operations" means any operation that involves raising the temperature above ambient, for which a hot work permit is required;</p>
<p>"Identified Project Work Packages" means any and/or all substantive Project Work Packages identified by the Pre-Upkeep Material Assessment (PUMA) and other requirements;</p>
<p>"Incentive Fee (IF)" means the percentage share payable to the Contractor of any cost underrun from the target cost to the lower confidence level, once performance against the KPIs has been taken into account;</p>
<p>"Incentivised Reliability Improvements (IRI)" means incentivising the Contractor to reduce the likelihood and cost of Upkeep occurrences and further reduce cost by developing modifications which improve equipment reliability. The Contractor manages the reliability improvement aspects of Upkeep occurrences.</p> <p>Having reduced the cost of providing spares to upkeep (Spares Inclusive Upkeep - SIU), and having reduced the 'engineering' cost per occurrence (Incentivised Upkeep Cost Reduction - IUCR), this design focuses the Contractor's engineering expertise on reducing the volume of corrective maintenance Upkeep occurrences. The assumption is that the engineering challenge of improving equipment reliability is greater than improving the efficiency of upkeep. Hence this design is considered to be a distinct next step from IUCR.</p>
<p>"Incentivised Upkeep Cost Reduction (IUCR)" means incentivising the Contractor to reduce Upkeep cost by:</p> <ul style="list-style-type: none"> a. rationalising work scope; b. generating component repair schemes to reduce cost of spares consumed; c. challenging test acceptance limits; <p>Having taken advantage of the Contractor's ability to plan/procure spares effectively (Spares Inclusive Upkeep - SIU), this design focuses Industry's engineering expertise on reducing the cost per Upkeep occurrence.</p>
<p>"Inclining Experiments" means trials to determine the transverse (heel) stability of the Vessel and centre of gravity;</p>
<p>"Inclining Officer" means Officer appointed by the Authority to be in charge of the Inclining Experiment;</p>
<p>"Incremental Design" means an item of Equipment which can only be bought with another item, or a modification to an item of Equipment;</p>
<p>"Indirect Losses" means loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, loss of revenue, loss of contract, loss of goodwill or any claim for consequential loss or for indirect loss of any nature;</p>
<p>"Information" has the meaning given under Section 84 of the Freedom of Information Act 2000;</p>
<p>"Insurances" means each of the contracts of insurance which the Contractor is required to procure and to maintain, pursuant to Clause 63 and Schedule 11 to this Contract and "Insurances" means all such contracts of insurance collectively;</p>

"Insured" means any party or parties (as the context so requires) receiving the benefit of coverage under any of the insurances;
"Insurer" means the persons providing the insurances;
"Intellectual Property Rights (IPR)" means all trade marks, trade and business names, patents, copyright (including copyright in computer programs), database rights, design rights, registered designs, utility models, semi conductor topography rights, inventions, know-how, moral rights, confidential information and all other intellectual property and rights of a similar or corresponding nature in any part of the world, whether or not registered or capable of registration. In respect of such rights which are registerable the right to apply for registration and all applications for registration of any of the foregoing rights;
"Joint Commissioning" means any installation, commissioning, testing or running in of plant, machinery or facilities as shown in the Statement of Technical requirements as being carried out by the Contractor and the Authority together;
"Joint Development (JD)" means the process of strengthening the performance of both the Authority and the Contractor to enable both parties to acquire new skills to assist in the process of continuous improvement and reducing costs;
"Joint Development Plan" means a plan developed jointly by the Authority and the Contractor to document performance improvement and cost reduction activities over the life of the Contract;
"Key Performance Indicators (KPIs)" means a list of indicators made to monitor the Contractor's performance, all of which are key to the Project Work Package;
"Key Personnel" means personnel that are vital to the completion of the Project Work Package;
"Lay Apart Secure Areas" means secure area(s) to store valuable equipment removed from the Vessel during a Project Work Package;
"Lay Apart Stores" means area(s) to store equipment removed from the Vessel during a Project Work Package;
<p>"Legislation" means:</p> <ul style="list-style-type: none"> a. any Act of Parliament; or b. any subordinate legislation within the meaning of Section 21 of the Interpretation Act 1978; or c. any exercise of the Royal Prerogative; or d. any enforceable community right within the meaning of Section 2 of the European Communities Act 1972; <p>in each case in the United Kingdom;</p>
"Liquidated Damages (LDs)" means the remedy available to the Authority to compensate for financial loss suffered by the Authority as a result of the late completion of a Project Work Package to which LDs apply. As set out in Clause 17 and Schedule 7;

"List X Organisation" means a Government-approved commercial body authorised to handle protectively marked information as further detailed in the Manual of Protective Security;
"Live On Board" means In Fleet Time, the Ship Staff will be living on Board whilst the Project Work Package is being undertaken; In Non Fleet Time it is the point in the Project Work Package at which Ship Staff will take up residency on board the Vessel;
"Losses" means all damages, losses, liabilities, costs, expenses (including legal and other professional charges and expenses) and charges whether arising under statute, contract or at common law, or in connection with judgements, proceedings, internal costs or demands;
"Lower Confidence Level" means the level at which the Contractor no longer gains a percentage of any cost underrun;
"Maintenance Management System (MMS)" means a system that maintains information about an organisation's maintenance operations. This information is intended to help maintenance workers do their jobs more effectively;
"Maintenance Specification" means a specification to aid the contractor on how to cost the coating's work required following inspection by the paint manufacturer's representative by using a Work Requisition Form(WRF) specifying the location, product specification, application standards, required areas of rectification/application of paint and acceptance criteria.
"Maintenance Period" means any period of Fleet Time Support / Non Fleet Time Support;
"Major Fire Fighting Equipment" means non-portable fire-fighting equipment;
"Manual of Protective Security" means the Manual of Protective Security issued by the Cabinet Office as amended from time to time;
"Market Facing Contractor (MFC)" means (as relevant) one of: <ul style="list-style-type: none"> a. Classification, Lloyd's Register EMEA; b. Furnishings, Trimline Limited; c. Technical Coatings, International Paint Limited;
"Materiel" is a generic term meaning equipment (including fixed assets), stores, supplies and spares;
"Maximum Price (MP)" means the Maximum Price that the Authority will be liable to pay for the work;
"Measures in a Crisis (MIAC)" means any measures taken by the Authority pursuant to Clause 21.4 (Effect of Implementation of Measures in a Crisis) and/or Clause 21.6 (Authority's Overriding Rights) if the circumstances in Clause 21.2 (Measures in a Crisis) apply;
"MFC Contract" means a contract relating to the provision of certain Services entered into on or about the Commencement Date between the Authority and an MFC;

"MIAC Required Action" is as defined in Clause 21.7 (Authority's Indemnity on Measures in a Crisis);
"Milestone Payment Plan" is a list of predetermined cost-neutral advances against the agreed Project Work Package Target Cost, to be paid at the listed predetermined milestones in the programme;
"Minimum Ship Definition (MSD)" is a sub set of the total design information and document set held for each ship, that will be funded for update post a period of physical change to the ship. Those documents/drawings outside of the 'Minimum Ship Definition' will be updated if funding allows and/or priorities dictate;
"MoD Purple Gate" means a process to ensure the regulation of materiel flow into the MOD Joint Support Chain (JSC) for the sustainment of Operational Theatres;
"MoD Share (MS)" means the element of the Share Line Ratio applicable to the MoD;
"Montreal Protocol" means the Montreal Protocol on Substances That Deplete the Ozone Layer;
"Monitoring Reports" means a report that details the outcome of the monitoring that has taken place on the work package;
"Month" means calendar month;
"Named Employee" means, where the Project includes, or shall involve, the disclosure of information about a Secret Matter, any of the Contractor's and/or a Subcontractor's employees, staff, directors or officers performing Asset Provision and/or Service Provision (other than Relevant Employees/Transferring Employees), who has or may have access to the Secret Matter. For the purposes of this definition, "Subcontractor" shall mean a Subcontractor to the Contractor, a Subcontractor of a Subcontractor to the Contractor, and any other Subcontractor of whatever tier involved in Asset Provision and/or Service Provision who has or may have access to the Secret Matter;
"NATO" means the North Atlantic Treaty Organisation;
"Naval Authority Certification" is essential to provide assurance to Duty Holders and thus via the Defence Maritime Regulator to the Secretary of State for Defence, of those areas of ship safety for which JSP 430 Part 1& 2 Regulations requires the rigor of a certificatory regime to manage safety risk. Responsibility for the process and issuing of Naval Authority Certification rests with the Head of the Naval Authority. A Naval Authority Certification is required to provide safety assurance for the period when the hazard addressed by the Naval Authority Certification is present and the Platform Duty Holder is responsible for ensuring the ship is safe to operate. The Platform Duty Holder shall agree with the Naval Authority in the Naval Authority Certification Strategy when Certification is required.
"Necessary Consents" means all permits, licences, permissions, consents, approvals, certificates and authorisations (whether statutory or otherwise) which are required for the performance of any of the Contractor's obligations under this Contract, whether required in order to comply with Legislation or as a result of the rights of any third party;
"New Standalone Design" means an item of Equipment which has a separate market so that it can be bought as an individual item;
"Non-Fleet Time Support (NFTS)" is the term applied to any maintenance and

<p>engineering support carried out on a Vessel including but not limited to;</p> <ul style="list-style-type: none"> a. Docking Periods b. Refit Periods c. Upgrade and Update work d. Provision of Type C spares <p>During these times the ship will be out of operational service and CSS will become the scheduling authority;</p>
<p>“Notice of Retention” means the notification that shall be provided by the Authority to the Contractor, when payment is being retained due to a defined number of Red and/or Amber KPI scores being reported.</p>
<p>“Not to Exceed Price” means the Maximum Price agreed between the Authority and Contractor at the Commencement of each Project Work Package;</p>
<p>"Operating Expenditure" means operating costs including maintenance costs, staffing costs and utility costs;</p>
<p>“Operational Defect (OPDEF)” means a defect that occurs to a Vessel of varying severity, causing corrective action to be completed within the timeframe as described in Schedule 1 Annex A;</p>
<p>“Operational Upkeep” means the rectification of OPDEFs and other voyage repair outside of Non-Fleet Time;</p>
<p>"Out of Service Date (OSD)" means the date at which a platform or item is retired/temporarily unavailable;</p>
<p>"Ozone Depleting Gases" means the gases stipulated in the Montreal Protocol;</p>
<p>"Parties" means the parties to this Contract;</p>
<p>“Party’s Representative” means the person duly authorised by the Party to the Contract to act for the purposes of the provision of the Contract and identified in the Contract or in any subsequent notice to act for the purposes of the provision;</p>
<p>"Payment Period" means an agreed length of time at the end of which payment will be received;</p>
<p>“Performance Data Analysis” means the statistical data produced by the Authority to determine the Contractor’s level of performance as part of review processes detailed in Clauses 12 and 13 and Schedules 6 and 7.</p>
<p>“Performance Failure” means the Contractor’s performance has been assessed as below standard, against the Performance Indicators detailed in Schedule 6, by the Authority, during the monthly review process;</p>
<p>“Person” includes any legal or natural person or persons;</p>
<p>"Personal Data" means personal data as defined in the DPA which is supplied to the Contractor by the Authority or obtained by the Contractor in the course of the Project;</p>

<p>"Planned Efficiency" represents an area identified for cost reduction with a high degree of confidence but not yet implemented;</p>
<p>"Planning of Project Work Packages" refers to the activities of Clause 11.25 and 11.26, and the activities required to develop detailed proposed methodologies for the implementation of all substantive Project Work Packages identified by the PUMA;</p>
<p>"Planned Project Work Package Acceptance Date" means the date planned for the inspection of the Planned Project Work Package with a view to achieving an Acceptance Certificate;</p>
<p>"Portable Fire Extinguisher" means a handheld fire extinguisher, which can be readily detached from its fixings;</p>
<p>"Pre-Upkeep Material Assessment (PUMA)" means a comprehensive series of static and limited dynamic assessments undertaken to ascertain a Vessel's precise material state. This will ensure the Project Work Package reflects the Vessel requirements;</p>
<p>"Prescribed Rate" means the rate of statutory interest set out by the UK government and the Late Payment of Commercial Debts (Interest) act, 1988. Further information can be found via: www.gov.uk;</p>
<p>"Programme Plan" means a plan showing current and future projects being undertaken through the Contract, together with their key milestones and dates planned and achieved in a mutually agreed format;</p>
<p>"Prohibited Act" means:</p> <ul style="list-style-type: none"> a. offering, giving or agreeing to give to any servant of the Crown any gift or consideration of any kind as an inducement or reward: <ul style="list-style-type: none"> (1) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Contract or any other contract with the Crown; or (2) for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Crown; b. entering into this Contract or any other contract with the Crown in connection with which commission has been paid or has been agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Authority's representative; or c. committing any offence: <ul style="list-style-type: none"> (1) under the Prevention of Corruption Acts 1889-1916; (2) under Legislation creating offences in respect of fraudulent acts; or (3) at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Crown; d. defrauding or attempting to defraud or conspiring to defraud the Crown; or a Breach of Security.

"Project" means, the provision of the Through Life Support Services;
"Project Acceptance Certificate" means a document for recording outstanding items of work in preparation for acceptance of the Vessel;
"Project Data" means: <ul style="list-style-type: none"> a. all Design Data; and b. any other materials, documents or data acquired or brought into existence or used in relation to Asset Provision, Service Provision or this Contract;
"Project Documents" means this Contract;
"Project Manager" and "Equipment Support Manager" mean the authority so designated in the Contract;
"Project Management Plan" means a plan provided by the Contractor detailing how they plan to manage the Project;
"Project Records" means documents and records relating to the project;
"Project Quality Assurance Focal Point" in any provision of the Contract means the person duly authorised by the Authority to act as the point of contact for any Quality Assurance matters detailed within Clause 34 or any related Clauses or Schedules;
"Project Work Package" means a discrete package of work or packages of work which: <ul style="list-style-type: none"> a. bear(s) a unique reference number and is contained in Schedule 1; and/or; b. is otherwise described in sufficient detail for the Contractor to be reasonably able to propose a price for the undertaking of such task or set of tasks and is notified to the Contractor by the Authority as being a Requirement;
"Project Work Package Acceptance Date" means an Acceptance Certificate is issued in relation to a Package of Work pursuant to Clause 11;
"Project Work Package Price" means, in relation to any Project Work Package, the Maximum Price payable by the Authority in respect of such Project Work Package, as set out in the Schedule 5;
"Project Work Package Programme" means the programme for the individual Work Package provided pursuant to Clause 11 (Initiation of Project Work Packages);
"Project Work Package Specification" means the specification of the relevant requirement;
"Proprietary Software" means standalone private venture software;
"Public Domain" means the sharing of documentation across Ship Cluster Owner, Market Facing Category providers, and any other external stakeholders to the MoD;
"Qualifying Change in Law" means;

<p>a. a Discriminatory Change of law; and/or</p> <p>b. a Specific Change in law;</p> <p>which was not foreseeable at the date of this Contract;</p>
<p>"RAG Status" means the status (being Red, Amber or Green) of the Contractor's performance against a KPI, as determined by reference to the information contained in the table at Schedule 6;</p>
<p>"Receipt" means the date and time that either party receives documentation from the other party. For the purposes of performance monitoring the Contractor shall stamp each Definition of Project Work Package Form and Confirmation of Project Work Package Form with the date and time it arrives by any means, including e-mail;</p>
<p>"Refit Period (RP)" means a pre-determined period of maintenance, upkeep and upgrade activity necessary to sustain and improve a Vessel's capability. A Refit Period is likely to require a significant period of docking followed by a lengthy period alongside to complete all engineering activity;</p>
<p>"Relationship Maturity Matrix" is a means of measuring the a relationship maturity between 2 (two) or more parties;</p>
<p>"Relevant Authority" means any court with the relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union;</p>
<p>"Relevant Day" means the day which is 30 (thirty) Business Days after the later of:</p> <p>a. the day upon which a valid request for Payment Approval is received by the Authority's Representative; and</p> <p>b. the day upon which a valid delivery label is received by the Authority's Representative; and</p> <p>c. the date of completion or performance of the part of the Services for the relevant Payment Period;</p>
<p>"Remedial Step" means the individual steps taken by the Contractor that can be tracked and reported against in order to report to the Authority on the progress of a Corrective Action Plan;</p>
<p>"Representative of the Authority" in any provision of the Contract means the person duly authorised by the Authority to act for the purposes of the provision and identified in the Contract or in any subsequent notice to act for the purposes of the provision;</p>
<p>"Request for Information" shall have the meaning set out in the FOIA or any apparent request for information under the FOIA;</p>
<p>"Required Action" is as defined in Clause 22.4 (Authority Step-In);</p>
<p>"RET" means Relationship Evaluation Tool;</p>
<p>"Risk and Opportunity Management Plan (ROMP)" means a plan (in the form described in Schedule 8) setting out the ways in which the Parties intend that the risks identified in the Risk Register will be mitigated and/or avoided;</p>

<p>"Risk Register" means a register (in the form set out in Schedule 09) listing certain risks affecting the provision of the Services, and, for the avoidance of doubt, such risks (and the identification thereof) are not intended to:</p> <ul style="list-style-type: none"> a. consist of the risks specifically dealt with and allocated as between the Parties under this Contract; nor; b. derogate from such risk allocation;
<p>"Root Cause Analysis" means the implementation of a logical and systematic process for solving a problem through the identification of the actions, activity or phenomena responsible for a specific issue or incident;</p>
<p>"RPIX" or "the index" means the index published monthly by the Office for National Statistics in table RP05 (All Items Retail Prices Index (RPI) excluding Mortgage Interest Payments (RPIX)) or failing such publication such other index or adjustments to the Index as the Parties may agree;</p>
<p>"S2022" means Defect & Shortcomings report. It is used by ships staff to report to the Shore Side Support organisations any shortcomings or deficiencies in Material (structure, equipment or systems), Design (how the equipment or systems perform, functionally and safely), Support (availability of spares, calibration & test equipment, support arrangements) and Documentation (maintenance information, technical handbooks, manufacturers documents).</p>
<p>"Safety Officer" means the Ship's Safety Officer, the Officer on the Ship in charge of safety, and the Contractor's Safety Personnel;</p>
<p>"Safety Plan" means a plan detailing the safety provisions of the Contractor for the Project Work Package;</p>
<p>"Schedule of Requirements" means that part of the Contract which identifies, either directly or by reference, the Articles, Services or Contract Deliverables to be supplied or carried out, the quantities involved and the price or pricing terms in relation to each Article, Service or Contract Deliverable;</p>
<p>"SCO" means the Ship Cluster Owner(s)</p>
<p>"SCOBY" (Should Cost of Ownership By Year) is the Authority's modelling tool used to predict upkeep costs based on price information and a list of work required;</p>
<p>"SCRIA" means Supply Chains Relation In Action tool and is a means of agreeing the codes of best practice for better working relationships;</p>
<p>"Sea Trials" means a period of time at sea to test Vessel equipment worked on during the Project Work Package;</p>
<p>"Secret Matter" means any matter connected with any Project Document or the performance of the Project which is designated in writing by the Authority as "Top Secret", "Secret", or "Confidential", and shall include any information concerning the content of such matter and anything which contains or may reveal that matter;</p>
<p>"Security Provisions" means the security aspects of the provision of the Services as set out in Clause 60 and DEFCON 659A (Edn 02/17);</p>
<p>"Security Requirements" means the requirements of the Authority in relation to the</p>

security aspects of the provision of the Services set out in the Contract;
"Senior Ship Staff" means members of Ship Staff holding the rank of 1 st Officer (RFA), or equivalent (RN), or higher;
"Service Provision" means the provision of the Services which satisfies the Tasking request agreed between the parties;
"Services" means all steps required to be undertaken by the Contractor to ensure compliance with the Authority's Requirements, the Contractor's Proposals, and all other relevant obligations of the Contractor (pertaining to the Vessel) under this Contract;
"Shareholder" means any person from time to time holding share capital in the Contractor or a Subcontractor;
"Share Line (SL)" will be expressed as a Ratio by which the Incentivisation Element will be shared between the MoD and the Contractor. The first figure of the ratio will always be that which is applicable to the MoD;
"Ship Cluster Owner (SCO)" means, after the Competition, the Contractor. At the Offer of Contract Stage, all references to 'Ship Lot Owner' will revert to 'Ship Cluster Owner' to ensure continuation of terminology post Contract Award;
"Ship Lot" means a group of Ships available to be Tendered for. At the Offer of Contract Stage, all references to 'Ship Lot' will revert to 'Ship Cluster' to ensure continuation of terminology post Contract Award;
"Ship Lot Owner" means, during the Competition, the successful Tenderer. At the Offer of Contract Stage, all references to 'Ship Lot Owner' will revert to 'Ship Cluster Owner' to ensure continuation of terminology post Contract Award;
"Ship" means Vessel;
"Ship Cluster" means the Vessels identified in Schedule 1 of this Contract;
"Ship's Programme" means the programme detailing the location of the Vessel over a set period of time;
"Ship's Staff" means all Authority employees whose employment relates primarily to a Vessel;
"Ship Staff Move On Board" means the time at which the Ship's Staff (or a significant proportion thereof) occupy the Vessel in anticipation of taking the Vessel out of Non-Fleet Time conditions;
"Sites" means the Authority Sites and/or the Contractor's Sites;
"Snagging Items" means minor defects, deficiencies or omissions of a snagging nature which do not impact upon the operational capability of the Vessel and which do not prevent the Inspection Officer from issuing an Acceptance Certificate in respect of a given Service Level;
"Spares Inclusive Upkeep (SIU)" means the Contractor planning the spares requirement and procuring spares for Upkeep occurrences (refits, AMP's, docking periods etc.). The Contractor continues the development of their spares provisioning capability;

<p>"Spares Supply Service" means the contracted service to supply spare parts to the RFA Flotilla to sustain operations, either by direct demand from specified RFA ships, or by demand from the Authority for the replenishment of stock;</p>
<p>"Specially Written Software" means programs or databases or modifications to existing programs or databases comprising Contractor Foreground IPR;</p>
<p>"Specific Change in Law" means any Change in Law which specifically refers to the provision of services the same as, or similar to, the Service, or to the holding of shares in companies whose main business is providing services the same as or similar to the Service;</p>
<p>"Strategic Contract Meetings" means the meetings required by this Contract at monthly, quarterly and bi-annual periodicity;</p>
<p>"Subcontractor" (or "Sub-Contractor") means each Contractor or any other person engaged by the Contractor from time to time as may be permitted by this Contract to perform the provision of the Services;</p>
<p>"Subcontractor Breakage Costs" means Losses that have been or shall be reasonably and properly incurred by the Contractor as a direct result of the termination of this Contract, but only to the extent that the Authority has approved such pre provisioning:</p> <ul style="list-style-type: none"> a. the Losses are incurred in connection with the Project and in respect of the provision of Services or completion of works, including: <ul style="list-style-type: none"> (1) any materials or goods ordered or Subcontracts placed that cannot be cancelled without such Losses being incurred; and/or (2) any expenditure incurred in anticipation of the provision of the Services in the future; and/or (3) the cost of demobilisation including the cost of any relocation of equipment used in connection with the Project; and/or b. the Losses are incurred under arrangements and/or contracts that are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms; and c. the Contractor and the relevant Subcontractor has each used its reasonable endeavours to minimise and mitigate the Losses;
<p>"Subcontracts" (or "Sub-Contracts") means the contracts entered into between the Contractor and the Subcontractors;</p>
<p>"Subcontractor IPR Provisions" means those provisions set out in Clause 41.2 (Subcontractor IPR);</p>
<p>"Suitable Substitute Subcontractor" means a person who is a Suitable Third Party and who is approved by the Authority's Representative (such approval not to be unreasonably withheld or delayed) as:</p> <ul style="list-style-type: none"> a. having the legal capacity, power and authority to become a party to and perform the obligations it is proposed to undertake in relation to the Project;

and
<p>b. employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and Subcontracts) which are sufficient to enable it to perform the obligations it is proposed to undertake in relation to the Project;</p> <p>If the Project includes, or shall involve, the disclosure of information about a Secret Matter, for the purposes of this definition, "Subcontractor" shall mean a Subcontractor to the Contractor, a Subcontractor of a Subcontractor to the Contractor, and any other Subcontractor of whatever tier involved in Asset Provision and/or Service Provision who has or may have access to the Secret Matter;</p>
" Suitable Third Party " means, any person who is not an Unsuitable Third Party;
" Suitably Qualified and Experienced Personnel (SQEP) " means a person or people that have appropriate qualifications and experience to perform a particular task;
" Supplier and Customer Performance Measurement Process " means the Authority's supplier development scheme used to provide a consistent uniform means of reporting performance achievement across Ministry of Defence-wide business, against pre-determined activities at various times throughout the life of a contract;
" TAGOUT Procedure " means a procedure for the isolation of equipment so that such equipment is safe to work on, in accordance with Good Industry Practice;
" Take In Hand (TIH) Date " means the date the Contractor takes responsibility for the care and protection of the Vessel and may start work;
" Take In Hand of the Vessel " is when a Vessel becomes the responsibility of the Contractor (as above);
" Target Cost (TC) " means the cost agreed between the Authority and the Contractor for the completion of a Project Work Package. This cost is inclusive of overhead but exclusive of profits;
" Target Fee (TF) " means the profit payable to the Contractor at the completion of a Project Work Package expressed as a percentage of the Target Cost;
" Target Price (TP) " means the cost agreed between the Authority and the Contractor for the completion of a Project Work Package. This can be calculated as the Target Cost plus any Target Fee applicable.
" Tax " means any kind of tax, duty, levy or other charge (other than VAT) whether or not similar to any in force at the Commencement Date and whether imposed by a local, governmental or other Relevant Authority in the United Kingdom or elsewhere;
" Technical Assistance Agreement " means an agreement for the performance of a defence service(s) or the disclosure of technical data.
" Technical Dispute " means a Dispute that is, in the reasonable opinion of either Party, of such a nature that it requires specialist technical knowledge for its proper and efficient resolution;
" Tempest Testing " means the testing of computer equipment which handles

information protectively marked CONFIDENTIAL and above, for the phenomenon of the unintentional emanation of compromising signals from the equipment;
"Termination Date" means the date of early termination of this Contract in accordance with its terms;
"Termination Notice" means a notice of termination issued in accordance with this Contract;
"Termination Sum" means any compensation payable by the Authority to the Contractor on an early termination of this Contract under Clause 68 (Compensation on Termination);
"The Authority" means the Secretary of State for Defence, acting on behalf of the Crown;
"Third Party IPR" means IPR owned by a third party;
"Transition" means the period between Contract Award and the Commencement of Services, during which achievement of full support capability/readiness shall be achieved such that the supplier can discharge all of the requirements of the Contract (including the SoTR) from the Commencement of Services date;
"Type B Support" means the support of Type B items. Type B items are codified and have a Nato Stock Number (NSN). They are supported by commercial handbooks supplemented by a separate document that cross-references selected parts and equipment to their NATO stock numbers across the configuration of the Vessels. All spares and equipment are supplied from stock against demands placed on Naval Bases/Dockyards;
"Type C Support" means the support of Type C items. Type C items are uncoded and do not have a Nato Stock Number (NSN). They are supported by commercial handbooks, and the Vessels supported by uncoded spare gear. Given their sometimes unique nature, a greater level of detail is required in order to demand a replacement (e.g. maker, makers details, equipment description). The lack of commonality dictates that spares are not held ashore in reserve, which are demanded and supplied on a Just-In-Time basis. Spares are not held ashore in reserve, but carried by each individual vessel;
"UK Generally Accepted Accounting Practice" means the body of accounting standards and other guidance published by the UK's Financial Reporting Council (FRC);
"Unsuitable Third Party" means any person: <ul style="list-style-type: none"> a. whose activities, in the reasonable opinion of the Authority, pose or could pose a threat to national security, providing that the Authority's opinion shall be deemed to be reasonable if personally confirmed to the Contractor by a Senior Civil Servant at 2* level (or equivalent grade) or above; and/or b. whose activities are, in the reasonable opinion of the Authority, incompatible with any operations or activities carried out by the Authority for the purposes contemplated by this Contract or any other of the Authority's legal duties or other functions; and/or c. who is, in the reasonable opinion of the Authority, inappropriate because the Authority has received specific information from the Crown, the Serious

<p>Fraud Office or the Crown Prosecution Service about the suitability of the proposed new third party to act in relation to the Project; and/or</p> <p>d. if the Project includes, or shall involve, the disclosure about a Secret Matter, who is not a List X Organisation;</p>
<p>“Update” means to maintain current capability but to overcome obsolescence and changes in legislation. Update is the term used to describe modification or ‘Type B’ Alteration and Addition (A&A) activity that is undertaken to maintain an existing level of capability, but will involve material changes to overcome obsolescence, improve safety and operability or to reduce the cost of ownership by the introduction of new types of equipment. Update is funded by the Authority;</p>
<p>“Upgrade” means to add a new capability. Upgrade is the term used to describe a modification, UOR, or ‘Type A’ A&A activity that is undertaken to improve the Vessel capability. Upgrade normally involves the fitting of new equipment and is funded by the Authority;</p>
<p>“Upkeep” means the use of any or all resources required to assure or restore a vessel to a specified material condition or level of performance.</p>
<p>"Upkeep Plan" means the detailed plan of when Vessels are programmed for Upkeep work;</p>
<p>“Upper Confidence Level” means the level at which the Authority will no longer contribute to a cost overrun;</p>
<p>"Use" means use, copy, disclose or distribute to third parties, amend and/or keep;</p>
<p>"VAT" means any value added taxes;</p>
<p>"Vessels" means the Vessels listed in Schedule 1 which may be removed from or added to by the Authority from time to time in accordance with this Contract;</p>
<p>“Value For Money” means the process under which the Authority’s procurement, projects and processes are systematically evaluated and assessed to provide confidence about suitability, effectiveness, prudence, quality, value and avoidance of error;</p>
<p>“Value For Money (VFM) Review” means the process the Authority will undertake to assure itself that the Contractor is providing Value For Money;</p>
<p>“Waterfront Services” means the services, facilities, utilities and resources deployed by the incumbent Contractor to conduct all planning, management and implementation activity necessary to fulfil the engineering maintenance, upkeep and upgrade obligations;</p>
<p>“Work Package” means the same as the definition set out in “Project Work Package”</p>

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ANNUAL TECHNICAL REQUIREMENT	RATES FOR CONTRACT YEAR 1	RATES FOR CONTRACT YEAR 2	RATES FOR CONTRACT YEAR 3
	Daily Rate Per Person	Daily Rate Per Person	Daily Rate Per Person
Technical Advisors	██████	██████	██████
Overseas Technical Advisors	██████	██████	██████

DEFFORM 47 Annex F Table B

SCHEDULE 4

PRICING AND PAYMENT

SECTION 1 – TERMS AND CONDITIONS

1. PRICING

- 1.1 The monies payable by the Authority for all work completed under the terms of this Contract shall be through a Firm Price arrangement pursuant to Schedule 4 Annex A (Costs of Technical Coatings) and Schedule 4 Annex B (Provision of Technical Coating Advisor), with years' 4-10 subject to Variation of Price, as per paragraphs 1.6 – 1.17.

Variation on Volume

- 1.2 The Authority is not bound to place any Project Work Packages in any given period and does not guarantee the frequency or value of orders, nor that any orders will be placed.
- 1.3 In the event of an amendment by the Authority to a Project Work Package agreed price, the Authority shall pay for any work which has commenced under an agreed Project Work Package, but which has not been completed at the time of the amendment.

Variation of Requirement

- 1.4 In the event of a Technical Coating product and/or requirement that is in addition to that within Schedule 4 Annex A (Cost of Technical Coatings), then the Authority and the Contractor shall agree a Firm Price. The Authority reserves the right to include the Technical Coating product within Schedule 4 Annex A (Cost of Technical Coatings) at the agreed Firm Price. No work shall be put in hand without the prior agreement of the Authority.

Firm Price Arrangements

- 1.5 All work completed under this Contract shall be priced using the rates detailed at Annex A (Cost of Technical Coatings) and Schedule 4 Annex B (Provision of Technical Coatings Advisor). The rates detailed at Schedule 4 Annex A (Cost of Technical Coatings) and Schedule 4 Annex B (Provision of Technical Coatings Advisor) are made up of Firm Price (Year 1 to Year 3 inclusive) and Fixed Price (Year 4 to Year 10 inclusive).

- 1.6 All prices quoted are:

- a. Exclusive of UK VAT in accordance with DEFCON 513;
- b. Inclusive of delivery to the location as stated within the Tasking Form;
- c. Inclusive of all appropriate transit and packaging requirements; and
- d. Inclusive of any UK custom and excise or duty payable.

Variation of Price

- 1.7 Prices recorded in Schedule 4 Annex A (Costs of Technical Coatings) and Schedule 4 Annex B (Provision of Technical Coatings Advisor) as Firm are not subject to variation in any respect (including on account of fluctuations in wages, and/or cost of materials, interest

rates or currency exchange rates) save as provided for in Clause 44 (Changes to the Contract).

- 1.8 Prices for Year 4 to Year 10 for all articles included within Schedule 4 Annex A (Costs of Technical Coatings) and Schedule 4 Annex B (Provision of Technical Coatings Advisor) are Fixed at Contract Year 1 price levels, i.e. the Year 1 Firm Price will be used as the baseline for Year 4 to Year 10, which will be subject to Variation of Price. The prices do not include provision beyond this date for increases or decreases in the market price of the Articles being purchased.
- 1.9 For the purposes of agreeing Firm Prices for Year 4 to Year 10 of the Contract for all Articles included within Schedule 4 Annex A (Costs of Technical Coatings) the following price formula shall apply:

$$V = P (a+b(O_i/O_0)) - P$$

Where:

V represents the variation of price

P represents the FIRM price for Year 1 as stated in Schedule 4 Annex A (Costs of Technical Coatings)

O₀ represents the monthly average of index 'K3BI – All Manufacturing' OUTPUT for the base period (12 months before the Commencement Date to the Commencement Date).

O_i represents the monthly average of index 'K3BI – All Manufacturing' OUTPUT across the 12 months prior to the period for which the variation is being added

a represents the Non Variable Element (NVE) which shall be 10%

b represents the Variable Element which shall be 90%

$$a+b=1$$

- 1.10 The Index referred to in Clause 1.9 above shall be taken from the following Tables: Price Index 'K3BI – All Manufacturing'.
- 1.11 For the purposes of agreeing Firm Prices for Year 4 to Year 10 of the Contract for all articles included within Schedule 4 Annex B (Provision of Technical Coatings Advisor) the following price formula shall apply:

$$V = P (a+b(O_i/O_0)) - P$$

Where:

V represents the variation of price

P represents the FIRM price for Year 1 as stated in Schedule 4 Annex B

O₀ represents the monthly average of index K8ZU OUTPUT for the base period (12 months before the Commencement Date to the Commencement Date).

O_i represents the monthly average of index K8ZU OUTPUT across the 12 months prior to the period for which the variation is being added

a represents the Non Variable Element (NVE) which shall be 10%

b represents the Variable Element which shall be 90%

$a+b=1$

- 1.12 The Index referred to in Clause 1.11 above shall be taken from the following Tables: Price Index K8ZU (All Services Gross Sector).
- 1.13 Indices published with a 'B' or 'F' marker, or a suppressed value, in the last 3 (three) years are not valid for Variation of Price clauses and shall not be used. Where the price index has an 'F' marker or suppression applied to it during the term of the Contract, the Authority and the Contractor shall agree an appropriate replacement index or indices. The replacement index or indices shall cover, to the maximum extent possible, the same economic activities as the original index or indices.
- 1.14 In the event that any material changes are made to the indices (e.g. a revised statistical base date) during the period of the Contract and before final adjustment of the final Contract price, then the re-basing methodology outlined by the Office for National Statistics (ONS, the series providers) to match the original index to the new series shall be applied.
- 1.15 In the event the agreed index or indices cease to be published (e.g. because of a change in the Standard Industrial Classification) the Authority and the Contractor shall agree an appropriate replacement index or indices, which shall cover to the maximum extent possible the same economic activities as the original index or indices. The methodology outlined by the Office for National Statistics used for rebasing indices shall then be applied.
- 1.16 Notwithstanding the above, any extant index / indices agreed in the Contract shall continue to be used as long as it is / they are available and subject to ONS revisions policy. Payments calculated using the extant index / indices during its / their currency shall not be amended retrospectively as a result of any change to the index or indices.
- 1.17 The Contractor shall notify the Authority of any significant changes in the purchasing / manufacturing plan on the basis of which these provisions were drawn up and agreed, or of any other factor having a material bearing on the operation of these provisions such as to cause a significant divergence from their intended purpose, in order that both parties may consider whether any change in this provision would be appropriate.
- 1.18 Prices shall be adjusted taking into account the effect of the above formula as soon as possible after publication of the relevant indices or at a later date if so agreed between the Authority and the Contractor. Where an index value is subsequently amended, the Authority and the Contractor shall agree a fair and reasonable adjustment to the price, as necessary.

Amendment to a Project Work Package

- 1.19 Where a Contract Change is agreed under the provisions of Clauses 44 (Changes to the Contract), 45 (Authority Change), 46 (Contractor Change) or 47 (Qualifying Change in Law) of the Terms and Conditions of Contract, that requires a change in the Project Work Package Firm Price, these shall be incorporated by way of an amendment to Contract. Such changes to a Project Work Package Firm Price, as appropriate, shall use the rates detailed at Schedule 4 Annex A.

2. PAYMENT PROVISIONS

General

- 2.1 Stage Payment Plans shall be created as appropriate by the Authority and agreed with the Contractor prior to the initiation of each Project Work Package and shall be tailored to meet the specific business requirements. The Authority shall, subject to and in accordance with the provisions of DEFCON 522 (Edn 11/17), Payment and Recovery of Sums Due, pay the Contractor the agreed Project Work Package price in respect of each Project Work Package in accordance with the agreed Stage Payment Scheme or payment terms and the Contractor shall be entitled to claim such payment in accordance with: DEFCON 129J (Edn 18/11/16), The Use of the Electronic Business Delivery Form; DEFCON 522 (Edn 11/17), Payment and Recovery of Sums Due; and DEFCON 649 (Edn 12/16), Vesting.

Payment of Compensation Sums

- 2.2 If, under this Contract, the Authority is required to make payments to the Contractor, other than in respect of a Project Work Package, then Clause 22.3 of the Terms and Conditions of Contract shall apply. Such instances may include:
- a. If a Compensation Event has occurred, any amounts payable to the Contractor other than by way of an adjustment to the agreed Project Work Package Price pursuant to Clause 18 (Compensation Events) of the Terms and Conditions of Contract.
 - b. If the Authority has confirmed a Notice of Change pursuant to Clause 45 (Authority Change) of the Terms and Conditions of Contract any amounts payable to the Contractor other than by way of an adjustment to the agreed Project Work Package price pursuant to Clause 45 (Authority Change) of the Terms and Conditions of Contract and falling due within the previous month.
- 2.3 The Delivery Label shall be accompanied by a report (and all relevant evidence in accordance with Clause 32 (Contractor's Information, Documents and Records) of the Terms and Conditions of Contract certified by the Contractor's Representative showing that such payments are due to the Contractor pursuant to this Contract.

Billing Process

- 2.4 Subject to Clauses 3 (Disputed Amounts) and 4 (Set Off: Disputed Sums) of this Schedule 4, and Clause 4.1-4.4 to Schedule 6 (Retention), the Authority shall, on or before the Relevant Day, pay the amount stated in any valid, properly completed claim for payment submitted to the Authority within 30 (thirty) calendar days.
- 2.5 All invoices must clearly state the Project Work Package reference, description of work and agreed price together with documentary evidence showing the Authority's certificate of completion. Failure to comply shall result in delay in the approval process and payment of the Contractor's invoice. The Authority shall not be responsible for any delayed payments in this instance.

Use of the Contracting, Purchasing and Finance (CP&F) electronic procurement tool.

- 2.6 All invoices cleared for payment shall be processed through the Contracting, Purchasing and Finance (CP&F) electronic procurement tool.

Processing of any KPI related Retention

- 2.7 Where, following monthly KPI evaluation, any Notice of Retention has been served on the Contractor, the full milestone payment or the full Technical Coatings Advisor's Fee shall be withheld by the Authority in CP&F for the Project Work Package or Advisor Fee in question.

3. DISPUTED AMOUNTS

- 3.1 The Authority may withhold payment of any amount it believes the Contractor is not entitled to pursuant to this Contract, here on referred to as the "Disputed Amount", pending agreement or determination of the Contractor's entitlement in relation to the Disputed Amount, but shall pay any undisputed amounts on or before the Relevant Day, in accordance with DEFCON 522 (Edn 11/17), Payment and Recovery of Sums Due.
- 3.2 Within 5 (five) Business Days following receipt by the Contractor's Representative of any notice served by the Authority's Representative, the Contractor's Representative shall respond by notifying the Authority's Representative as to whether or not it agrees with the statements made in that notice and the grounds for such agreement or disagreement. If the Contractor indicates that it does agree, or if the Contractor's Representative fails to make such a response within that time limit, the Authority shall be entitled:
- a. to retain on a permanent basis any amounts withheld pursuant to Clause 3.1 above; and
 - b. to reclaim from the Contractor the amount of any over-payment which may have been made to the Contractor together with interest on any such amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which the over-payment was made until that amount has been paid in full and whether before or after judgement.
- 3.3 If the Contractor's Representative responds pursuant to Clause 3.2 above that it does not agree with all or any of the statements made in any notice served by the Authority, the matter or matters in question shall be determined under the Dispute Resolution Procedure.
- 3.4 If the determination of any Dispute conducted pursuant to this Clause 3 shows that:
- a. the Authority has withheld any amount which the Contractor was entitled to be paid; or
 - b. the Contractor has claimed under DEFCON 522 (Edn 11/17) (Payment and Recovery of Sums Due) any amount which it was not entitled to be paid,

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

4. SET-OFF: DISPUTED SUMS

- 4.1 If the payment or deduction of any amount referred to in DEFCON 522 (Edn 11/17) (Payment and Recovery of Sums Due) is disputed, then any undisputed element of that amount shall be

paid and the disputed element shall be dealt with in accordance with the Dispute Resolution Procedure.

5. EARNED VALUE MANAGEMENT (EVM)

- 5.1 The Contractor is to undertake Earned Value Management (EVM) as a part of its Project Management obligations under this Contract.
- 5.2 The Project Work Packages to which EVM will apply shall be agreed by both parties on a case by case basis. Those Project Work Packages that will qualify for consideration for use of EVM are either:
 - a. longer than 3 (three) months in duration; and/or
 - b. anticipated to be above £100k (One Hundred Thousand Pounds) in value;

and will be explicit to the Project Work Package in question.

- 5.3 Any agreement, in accordance with Clause 5.2, should be made before any such price is agreed upon, to allow the Contractor to factor in such requirements into their Project Work Package cost.
- 5.4 Any outputs from the Contractors EVM and financial and schedule management information system will be used to assess performance in conjunction with the KPIs at Schedule 6.

6. TRAVEL AND SUBSISTENCE RATES

- 6.1 Travel and Subsistence rates for the Contractor, its employees and Subcontractors, when required to travel/be accommodated when carrying out delivery of the Services away from the usual business place of work, are stated below.

Travel

- 6.2 If personnel have been asked to travel to an event, and are clear that attendance is required, they are first to consider how to ensure best value for money in achieving the business output:
 - a. Only those necessary to deliver should travel.
 - b. Investigate how you can maximise outcomes, eg: include multiple tasks.
 - c. Choose the best value for money means of transport, taking into account potential subsistence costs.
 - d. Investigate whether you can share means of travel (car hire, taxi, private vehicle etc.) with the Authority, SCO, or another MFC (if applicable).
 - e. All staff will travel in Economy class for air, rail and other travel by public transport.
 - f. Car: When using a private vehicle, fuel costs will be reimbursed according to the current MOD rates, as stated in the table below, and will update along with MOD guidance.

Up to 10000 miles	
Over 10000 miles	
Motorcycle allowance	
Passenger supplement	
First passenger	
Second & additional passenger	

Subsistence

- 6.3 Subsistence covers the reimbursement of the necessary additional costs of working away from your normal place of work or home on official duty, (business travel), and is normally defined as meaning food, drink (excluding alcoholic beverages) and temporary living accommodation costs. Subsistence rates are as follows:

Over 5 hours	
Over 10 hours	
Over 12 hours	
Evening meal (overnight stay)	
Breakfast	

Reasonable accommodation expenses will be paid according to actual receipted costs. No alcohol may be claimed via subsistence by either Contractor or any tier of Subcontractor.

- 6.4 The above rates will be updated along with MOD policy.

Annex A to Schedule 4

Please see separate document for Annex A and B to Schedule 4

SCHEDULE OF RATES

1. The rates set out in Annex A of this Schedule 4 are FIRM for the first 3 (three) years of the Contract from the Commencement Date and FIXED for the remaining 7 (seven) years of the Contract, and are for global supply.

COATING SPECIFICATIONS		UPPER BOUND (UB) OF PRICE BREAK (PB) IN LITRES				PRICE BREAKS (PB) FOR CONTRACT YEAR 1				PRICE BREAKS (PB) FOR CONTRACT YEAR 2				PRICE BREAKS (PB) FOR CONTRACT YEAR 3			
Unique List of Product Name/Reference	Annex A to Schedule 1 SOTR Technical Coatings Generic Coatings Requirements	PB1 UB (ltrs)	PB2 UB (ltrs)	PB3 UB (ltrs)	PB4 UB (ltrs)	PB1 £s	PB2 £s	PB3 £s	PB4 £s	PB1 £s	PB2 £s	PB3 £s	PB4 £s	PB1 £s	PB2 £s	PB3 £s	PB4 £s
	Shop/Weldable Primer				>												
	Blast Primer				>												
	Primer (external)				>												
	Primer (internal spaces)				>												
	Primers for non-ferrous metals				>												
	Tie-coat/sealer				>												
	Anti-fouling System				>												
	Weatherwork Top Coat				>												
	Weather Deck Non-slip				>												
	Hangar Deck Non-slip				>												
	Flight Deck				>												
	Internal Spaces Top Coat				>												
	Cleansing Stations				>												
	Internal Spaces – Fixtures & Fittings				>												
	Cable Lockers, Cofferdams and Bilges				>												
	Potable Water Tank Coatings				>												
	Water Ballast Tank Coatings				>												
	Other Tank Coatings				>												
Thinners																	
	Thinners for Alkyds and Polyurethanes				>												
	Thinners for Expoxies				>												

Annex B to Schedule 4 – Provision of Technical Coatings Advisors

ANNUAL TECHNICAL REQUIREMENT	RATES FOR CONTRACT YEAR 1	RATES FOR CONTRACT YEAR 2	RATES FOR CONTRACT YEAR 3
	Daily Rate Per Person	Daily Rate Per Person	Daily Rate Per Person
Technical Advisors			
Overseas Technical Advisors			

CONFIRMATION OF PROJECT WORK PACKAGES

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SCHEDULE 6

KEY PERFORMANCE INDICATORS

KEY PERFORMANCE INDICATORS (KPIs)

- 1.1 This Schedule sets out the KPIs to be applied to the assessment of the Contractor's Performance in delivery of the requirements of the Contract in accordance with Section 3 (Performance Management) of the Terms and Conditions of Contract. The KPI performance management system covers the performance against the Timeliness and Quality of the key contractor deliverables detailed within the Statement of Technical Requirement – Schedule 1.

OUTPUTS FROM THE PERFORMANCE MANAGEMENT PROCESS (USE OF KPIs)

- 2.1 The enclosed Key Performance Indicators (KPIs) (at Annex A) shall be used to monitor the Contractor's performance throughout the period of this Contract. The Contractor's performance against the KPIs will determine any retention (see below), inform the Contract Performance Review and be aggregated to provide an overall contract performance status.

The KPI data shall be used as follows:

- a. the retention associated with KPIs 1, 2, and 3 shall be measured upon every occurrence pursuant to paragraph 4 below and Schedule 4 (Pricing and Payment) of the Contract.
 - b. The aggregation of occurrences of each individual KPI within a month shall be directly related to the KPI status. This shall inform the Exit Strategy in accordance with Clause 66.5 (Termination for Contractor Default for Performance) of the Terms and Conditions of Contract.
- 2.2 In addition to the above, the results from the KPIs will inform the Authority's Joint Development Activities as detailed in Clause 4 (Joint Development) of the Terms and Conditions of Contract.

PERFORMANCE MEASUREMENT PROCESS

- 3.1 The KPIs have been developed to measure performance in 2 (two) key business areas:
- a. Timeliness and quality of Technical Coatings commodity deliverables and
 - b. Timeliness and quality of Technical Coatings Advisor deliverables.
- 3.3 Each KPI will be measured by considering the individual KPIs performance throughout each calendar month, using the methodology detailed below in clause 3.4 – 3.8 and the KPI marking scheme shown in Annex A.
- 3.4 Performance data will be collected by the Contractor on a continuous basis and placed on a central performance management database provided by the Authority. Each database should hold one month's worth of performance data. The following information shall be used to compile the monthly performance report:
- a. The number of KPI occurrences within the month;
 - b. The number of times the performance was compliant with the standards set in the Performance Indicator;
 - c. The number of times the performance was non-compliant with the standards set in the Performance Indicator (AMBER);

- d. The number of times the performance was significantly non-compliant with the standards set in the Performance Indicator (RED);
- 3.5 The database will automatically calculate the RED/AMBER/GREEN (RAG) status of the KPI. If there is no activity on a KPI in any 1 (one) month, the KPI will be excluded for measurement purposes for that period.
- 3.6 The number of RAG occurrences will be multiplied by the following factors to give a score for each KPI:
- GREEN occurrences shall be multiplied by a factor of 3 (three)
 - AMBER occurrences shall be multiplied by a factor of 2 (two)
 - RED occurrences shall be multiplied by a factor of 1 (one)
- 3.7 This will be shown against the maximum number of available points as a percentage.
For example:
If there were 10 (ten) occurrences of KPI 1 in one month, then the maximum potential number of points would be 30 (thirty) (10 GREENS = 10 x 3).
If in those 10 (ten) occurrences of KPI 1 the Contractor achieved 4 x, 2 x AMBER and 4 x red the sum of the multiplied occurrences would be 20 $[(4 \times 3) + (2 \times 2) + (4 \times 1)] = 20$.
The KPI overall performance for the month would be 67% (actual achieved / maximum achieved = $20/30 = 67\%$).
- An example of a KPI data collection sheet is at Annex B1 to this Schedule.
- 3.8 The overall performance score for each KPI is then automatically fed into the KPI spreadsheet shown at Annex B2.
- 3.9 The individual KPI and overall contract performance status will fall into 1 (one) of 3 (three) bandings and have been designed to encourage improved performance across the life of the Contract:

Contract Year	RED	AMBER	GREEN
1-3	<65%	65-85%	>85%
4-7	<70%	70-90%	>90%
8-10	<75%	75-95%	>95%

Schedule 6 Table 1 – KPI Performance Bandings

- 3.10 The resultant final scores and RAG assessments for the month will be shown in the template at Annex B3.
- 3.11 The period of assessment for all KPIs will be from the first calendar day of the month to the last day of the month.

RETENTION

4.1 Not Used

KPIs 1, 2 and 3

4.2 When a payment for a Project Work Package is due, the Contractor is measured against KPIs 1, 2 or 3 respectively, and if against each individual Project Work Package the Contractor has either:

- a. Fallen into the AMBER band; or
- b. Fallen into the RED band,

then the Authority will write to the Contractors Representative to inform them of such via a **Notice of Retention**, and will retain the full deliverable payment or milestone payment amount for the effected individual Project Work Package via the CP&F system.

4.3 In circumstances that any retention is due, the Contractor will, as a sign that they can remedy the performance, complete a Corrective Action Plan as per the Terms and Conditions of the Contract Clause 13 (Corrective Action Plan).

4.4 No retention shall apply to KPI 4.

RELEASE OF RETENTION

5.1 Upon agreement or determination of the above Corrective Action Plan, the Authority will release the retained amount:

- a. where the Contractor scored an AMBER the retained amount will be released once they have successfully completed a Corrective Action Plan.
- b. where the Contractor scores consecutive AMBERS, the retained amount will be released 60 (sixty) calendar days after the **Notice of Retention**, or once they have successfully completed a Corrective Action Plan, whichever happens later.
- c. where the Contractor scored a RED, the retained amount will be released 60 (sixty) calendar days after the **Notice of Retention**, or once they have successfully completed a Corrective Action Plan, whichever happens later.

5.2 The Authority reserves the right to withhold the release of any retention if any **Remedial Step** in the Corrective Action Plan is considered of **Failing** or **Failed Status**, as detailed in Terms and Conditions Clause 13.5, until such processes as detailed in Terms and Conditions 13.6 – 13.8 have been undertaken.

5.3 If the Authority, on any individual KPI, has to serve a second **Notice of Retention** within 12 (twelve) calendar months, the Authority will extend the minimum period of retention detailed in clause 5.1 to 90 (ninety) calendar days. The first occurrence of an AMBER will not count towards this accumulation.

5.4 Any dispute to the KPI evaluation or process detailed above should be undertaken in accordance with Term and Condition 30 (Disputes).

IMPLICATIONS FOR DEFAULT PERFORMANCE

6.1 In the event that the Contractor's performance is in accordance with Clause 66.5 (Termination for Contractor Default for Performance) of the Terms and Conditions of the

Contract, the Authority reserves the right to terminate the Contract on Contractor Performance.

Key Performance Indicators

KPI	Title	Definition	Incidence Measure	Frequency		Performance Levels and Criteria		
				Monitoring	Reporting	Green	Amber	Red

KPI 1	Advisor Inspection Report
-------	---------------------------

	On or before agreed timescale AND signed off at 1st presentation
	Up to five business days late OR signed off at 2nd presentation
	More than five business days late OR signed off at 3rd presentation or later

	Ensure that the inspection/survey deliverables are fit for purpose and completed within the agreed timescale and in accordance with the task form
--	---

No. of Occurrences	Multiplier	Score	Maximum Possible Score	Contractor's Overall Performance
Red	1	Occurrences x 1	1	
Amber	0	Occurrences x 2	0	
Green	3	Occurrences x 3	9	
Total Occurrences	4		10	83.33%

Ship	Task Form Reference	Agreed delivery date	Date delivered	Variance	RAG Status	Comments
Ft Victoria	REF#1	30/01/2018	30/01/2018	0	1.00	
Ft Rosalie	REF#2	24/02/2018	21/03/2018	25	3.00	Delayed Due to staff changeover
HMS Scott	REF#3	28/07/2018	27/07/2018	-1	1.00	
Argus	REF#4	30/06/2018	30/05/2018	-31	1.00	

Annex B2 to Schedule 6

Company Title	
Date	

Advisor Inspection Report	
KPI Number	
1	Advisor Inspection Report

KPI Totals

PI Performance	KPI Percentage
83.33%	
	83.33

Advisor Final Report	
KPI Number	
2	Advisor Final Report

KPI Totals

PI Performance	KPI Percentage
100.00%	
	100.00

Supply of Coatings	
KPI Number	
3	Supply of Coatings

KPI Totals

PI Performance	KPI Percentage
100.00%	
	100.00

Corrective Orders	
KPI Number	
4	Corrective Orders

KPI Totals

PI Performance	KPI Percentage
0.00%	

Overall Total

Overall KPI Percentage
96.30

Overall KPI Score sheet template from EXCEL spreadsheet

Company Title	
Date	

Banding	Audit Evaluation	Result
>85%	Compliant	X
65%-85%	Non Compliant	
<65%	Significantly Non Compliant	

		10%	20%	30%	40%	50%	60%	70%	80%	90%	100%
KPI	Final Score										
Advisor Inspection Report	83.33										
Advisor Final Report	100.00										
Supply of Coatings	100.00										
Corrective Orders											
Overall Contract Performance	96.30										

SCHEDULE 10

TRANSFER OF UNDERTAKINGS PROTECTION OF EMPLOYMENT REGULATIONS

PART 1 - EMPLOYEE TRANSFER ARRANGEMENTS ON ENTRY

1 DEFINITIONS

1.1 In this Schedule 10 Part 1, save where otherwise provided, words and terms defined in Schedule 3 (Definitions) of the Contract shall have the meaning ascribed to them in Schedule 3 (Definitions) of the Contract.

1.2 Without prejudice to Schedule 3 (Definitions) of the Contract, in this Schedule 10 Part 1 unless the context otherwise requires:

"DPA" means Data Protection Act 1998 as amended or replaced from time to time;

"Employing Subcontractor" means any Subcontractor of the Contractor providing any part of the Services who is or is to be the employer of an Authority Employee, a Previous Contractor Employee or an Unexpected Employee;

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

"Previous Contractor" means the Contractor responsible for provision of the Services prior to the New Provider and whose employees may be subject to a Relevant Transfer to the New Provider. This includes Subcontractors with employees engaged in delivering the Services and who may also be subject to a Relevant Transfer.

"Previous Contractor Employee" means an employee of a Previous Contractor who immediately before the Relevant Transfer Date is assigned to carry out the services to be carried out by the Contractor or Subcontractor under this Contract and who has not been dismissed, resigned, been reassigned or objected to the Relevant Transfer;

"Relevant Transfer" means a transfer to the Contractor or an Employing Subcontractor of a Previous Contractor Employee pursuant to this Contract and the Transfer Regulations;

"Relevant Transfer Date" means the date on which a Relevant Transfer is effected for Previous Contractor Employees;

"Relevant Statutory Scheme" has the same meaning as in Regulation 8 of the Transfer Regulations;

"Transfer Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time and/or the Service

2 PREVIOUS CONTRACTOR EMPLOYEES

2.1 Employee Information

- 2.1.1 No later than three months prior to the Relevant Transfer Date the Authority shall provide to the Contractor the information listed in Appendix 1 of this Schedule 10 Part 1 in respect of Previous Contractor Employees to the extent that such information has been provided to the Authority by the Previous Contractor.
- 2.1.2 The Authority shall provide the Contractor with any update to the information provided under paragraph 2.1.1 as soon as is reasonably practicable, to the extent that such information has been provided to the Authority by the Previous Contractor.
- 2.1.3 The Contractor shall provide any information provided to it by the Authority pursuant to paragraph 2.1.1 to an Employing Subcontractor within seven Business Days of receipt to the extent that such Previous Contractor Employees are to transfer to an Employing Subcontractor under a Relevant Transfer on the Relevant Transfer Date.
- 2.1.4 Paragraph 2.1.1 is subject to the Authority and any Previous Contractor's obligations in respect of the DPA and any data provided by the Authority in accordance with paragraph 2.1.1 shall be provided in anonymous form in order to enable its disclosure. To the extent anonymous data has been provided by the Authority pursuant to its obligations under Paragraph 2.1.1 above, the Authority shall provide full data no later than 28 days prior to the Relevant Transfer.
- 2.1.5 The Authority does not warrant the accuracy of the information provided under paragraph 2.1.1.

2.2 Obligations in respect of Previous Contractor Employees

- 2.2.1 The Contractor and the Authority acknowledge (and the Contractor shall procure that the Employing Subcontractor acknowledges) that the provision of the Services under this Contract will constitute a Relevant Transfer.
- 2.2.2 The Contractor agrees (and will procure that the Employing Subcontractor agrees) that from the Relevant Transfer Date the contracts of employment of any Previous Contractor Employees together with any collective agreements (save insofar as such contracts and such agreements relate to benefits for old age, invalidity or survivors under any occupational pension scheme or otherwise do not transfer pursuant to regulation 4A of the Transfer Regulations) will take effect as if originally made between the Contractor or an Employing Subcontractor and the Previous Contractor Employees (or the relevant trade union, as the case may be) subject to any variations to such contracts of employment made pursuant to Regulation 9 of the Transfer Regulations, where applicable.
- 2.2.3 The Contractor agrees that it will comply with its obligations under sections 257 and 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005.
- 2.2.4 Save for any liabilities in respect of Previous Contractor Employees under a Relevant Statutory Scheme or Schemes, the Contractor or Employing Subcontractor (as the case may be) shall have responsibility for all emoluments and outgoings (including

without limitation all wages, bonuses, commissions, payments in respect of holiday taken after the Relevant Transfer Date as appropriate, PAYE, national insurance contributions and contributions to retirement benefit schemes) in relation to the Previous Contractor Employees with effect from and including the Relevant Transfer Date and shall indemnify the Authority and the Previous Contractor in respect of the same.

2.3 Indemnities

2.3.1 The Contractor shall indemnify and hold harmless the Authority and any Previous Contractor against all demands, claims, liabilities, losses and damages, costs and expenses (including all interest, penalties, legal and other costs and expenses) together with any applicable Value Added and similar taxes or liability for deduction of PAYE tax properly incurred by the Authority or any Previous Contractor arising out of or in connection with:

- a. any breach by the Contractor and/or any Employing Subcontractor of their obligations under Regulation 13 of the Transfer Regulations;
- b. any act or proposal by the Contractor or any Employing Subcontractor prior to or following the Relevant Transfer Date which amounts to a repudiatory breach of contract as referred to in Regulation 4(11) of the Transfer Regulations and/or to make a substantial change in working conditions of any Previous Contractor Employee to the material detriment of that employee. For the purposes of this sub-clause the expressions “repudiatory breach”, “substantial change” and “material detriment” shall have the same meanings as for the purposes of Regulation 4(9) and 4(11) of the Transfer Regulations; and
- c. any collective agreement or any arrangement with any trade union or staff association after the Relevant Transfer Date.
- d. any variations or proposed variations to any Previous Contractor Employee’s terms and conditions of employment pursuant to regulations 4(5) and 4(5B).

3 GENERAL PROVISIONS APPLICABLE TO PREVIOUS CONTRACTOR EMPLOYEES AND CONTRACTOR PERSONNEL

3.1 Contractor Indemnity

3.1.1 The Contractor shall indemnify the Authority and any New Provider against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with the employment or termination of employment by the Contractor or any Employing Subcontractor of any person (including the Previous Contractor Employees) engaged in connection with the provision of the Services during the term of this Agreement.

3.2 Post Transfer Reporting

3.2.1 The Contractor shall upon request by the Authority provide (or shall procure that an Employing Subcontractor shall provide) the Authority with the following information in respect of the employees who are wholly or mainly employed, assigned or engaged in providing the Services:

- a. any proposed, agreed or imposed changes to terms and conditions of service;

- b. disputes relating to compliance with the Transfer Regulations which are regarded as unresolved by a recognised Trade Union;
- c. any court action or tribunal proceedings relating to compliance with the Transfer Regulations;
- d. completed court action or tribunal proceedings relating to compliance with the Transfer Regulations; and
- e. out of court settlements relating to compliance with the Transfer Regulations if possible having regard to the wording of the settlement.

PERSONNEL INFORMATION TO BE RELEASED PURSUANT TO THIS AGREEMENT

PART A

1. Pursuant to paragraph 2.1.1 of this Schedule 10 Part 1, the written statement of employment particulars as required by section 1 of the Employment Rights Act 1996 together with the following information (save where that information is included within that statement) will be provided to the extent it is not included within the written statement of employment particulars:

1.1 Personal, Employment and Career

- a. Age;
- b. Security Vetting Clearance;
- c. Job title;
- d. Work location;
- e. Conditioned hours of work;
- f. Employment Status;
- g. Details of training and operating licensing required for Statutory and Health and Safety reasons;
- h. Details of training or sponsorship commitments;
- i. Standard Annual leave entitlement and current leave year entitlement and record;
- j. Annual leave reckonable service date;
- k. Details of disciplinary or grievance proceedings taken by or against transferring employees in the last two years;
- l. Information of any legal proceedings between employees and their employer within the previous two years or any such proceedings that the transferor has reasonable grounds to believe that an employee may bring against the transferee arising out of their employment with the transferor;
- m. Issue of Uniform/Protective Clothing;
- n. Working Time Directive opt-out forms; and
- o. Date from which the latest period of continuous employment began.

1.2 Performance Appraisal

- a. The current year's Performance Appraisal;
- b. Current year's training plan (if it exists); and
- c. Performance Pay Recommendations (PPR) forms completed in the current reporting year, or where relevant, any bonus entitlements;

1.3 Superannuation and Pay

- a. Maternity leave or other long-term leave of absence (meaning more than 4 weeks) planned or taken within the last two years;
- b. Annual salary and rates of pay band/grade;
- c. Shifts, unsociable hours or other premium rates of pay;
- d. Overtime history for the preceding twelve-month period;
- e. Allowances and bonuses for the preceding twelve-month period;
- f. Details of outstanding loan, advances on salary or debts;
- g. Cumulative pay for tax and pension purposes;
- h. Cumulative tax paid;
- i. National Insurance Number;
- j. National Insurance contribution rate;
- k. Other payments or deductions being made for statutory reasons;
- l. Any other voluntary deductions from pay;
- m. Pension Scheme Membership;
- n. For pension purposes, the notional reckonable service date;
- o. Pensionable pay history for three years to date of transfer;
- p. Percentage of any pay currently contributed under additional voluntary contribution arrangements; and
- q. Percentage of pay currently contributed under any added years arrangements.

1.4 Medical

- a. Sickness and absence records for the immediately preceding four-year period; and
- b. Details of any active restoring efficiency case for health purposes.

1.5 Disciplinary

- a. Details of any active restoring efficiency case for reasons of performance; and
- b. Details of any active disciplinary cases where corrective action is on going.

1.6 Further information

- a. Information about specific adjustments that have been made for an individual under the Disability Discrimination Act 1995 or the Equality Act 2010;
- b. Short term variations to attendance hours to accommodate a domestic situation;
- c. Individuals that are members of the Reserves, or staff may have been granted special leave as a School Governor; and
- d. Information about any maternity or other statutory leave or other absence from work.

PART B

1.7 Information to be provided 28 days prior to the Relevant Transfer Date:

- a. Employee's full name;
- b. Date of Birth
- c. Home address;
- d. Bank/building society account details for payroll purposes Tax Code.

PART 2 – STAFF TRANSFER ARRANGEMENTS ON EXIT

1. DEFINITIONS

- 1.1 In this Schedule 10 Part 2, save where otherwise provided, words and terms defined in Schedule 3 (Definitions) or Schedule 10 Part 1 of the Contract shall have the meaning ascribed to them in Schedule 3 (Definitions) or Schedule 10 Part 1 of the Contract.
- 1.2 Without prejudice to Schedule 3 (Definitions) of the Contract or Schedule 10, Part 1, in this Schedule 10 Part 2 unless the context otherwise requires:

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

"Employing Subcontractor" means any Subcontractor of the Contractor providing all or any part of the Services who employs or engages any person in providing the Services;

"Subsequent Relevant Transfer" means a transfer of the employment of Subsequent Transferring Employees from the Contractor or any Employing Subcontractor to a New Provider or the Authority under the Transfer Regulations;

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

"Subsequent Transferring Employee" means an employee wholly or mainly employed or otherwise assigned to the Services (or in respect of partial termination, the relevant part of the Services) whose employment transfers under the Transfer Regulations from the Contractor or any Employing Subcontractor to a New Provider;

"Transfer Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time and/or the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 (as amended from time to time), as appropriate .

2. EMPLOYMENT

2.1 Information on Re-tender, Partial Termination, Termination or Expiry

2.1.1 No earlier than two years preceding the termination, partial termination or Expiry of this Contract or a potential Subsequent Transfer Date or at any time after the service of a notice to terminate this Contract or the provision of any of the Services (whether in whole or part) or on receipt of a written request by the Authority, the Contractor shall (and shall procure that any Employing Subcontractor shall):

- a. supply to the Authority such information as the Authority may reasonably require in order to consider the application of the Transfer Regulations on the termination, partial termination or expiry of this Contract;
- b. supply to the Authority such full and accurate and up-to-date information as may be requested by the Authority including the information listed in Appendix 1 to this Schedule 10 Part 2 relating to the employees who are wholly or mainly employed, assigned or engaged in providing the Services

or part of the Services under this Contract who may be subject to a Subsequent Relevant Transfer;

- c. provide the information promptly and in any event not later than three months from the date when a request for such information is made and at no cost to the Authority;
- d. acknowledge that the Authority will use the information for informing any prospective New Provider for any services which are substantially the same as the Services or part of the Services provided pursuant to this Contract;
- e. inform the Authority of any changes to the information provided under paragraph 2.1.1 a. or 2.1.1 b. up to the Subsequent Transfer Date as soon as reasonably practicable.

2.1.2 Three months preceding the termination, partial termination or expiry of this Contract or on receipt of a written request from the Authority the Contractor shall:

- a. ensure that Employee Liability Information and such information listed in Part A of Appendix 2 of Part 2 of this Schedule 10 (Personnel Information) relating to the Subsequent Transferring Employees is provided to the Authority and/or any New Provider;
- b. inform the Authority and/or any New Provider of any changes to the information provided under this Paragraph 2.1.2 up to any Subsequent Transfer Date as soon as reasonably practicable;
- c. enable and assist the Authority and/or any New Provider or any sub-contractor of a New Provider to communicate with and meet those employees and their trade union or other employee representatives.

2.1.3 No later than 28 days prior to the Subsequent Transfer Date the Contractor shall provide the Authority and/or any New Provider with a final list of the Subsequent Transferring Employees together with the information listed in Part B of Appendix 2 of Part 2 of this Schedule 10 (Personnel Information) relating to the Subsequent Transferring Employees. The Contractor shall inform the Authority and/or New Provider of any changes to this list or information up to the Subsequent Transfer Date.

2.1.4 Paragraphs 2.1.1 and 2.1.2 of this Appendix are subject to the Contractor's obligations in respect of the DPA and the Contractor shall use its best endeavours to obtain the consent of its employees (and shall procure that its Subcontractors use their best endeavours to obtain the consent of their employees) to the extent necessary under the DPA or provide the data in an anonymous form in order to enable disclosure of the information required under paragraphs 2.1.1 and 2.1.2. Notwithstanding this paragraph 2.1.4, the Contractor acknowledges (and shall procure that its Subcontractors acknowledge) that they are required to provide sufficient information to the Authority to enable the Authority to determine the nature of the activities being undertaken by employees engaged in providing the Services, to assess whether there is an organised grouping for the purposes of the Transfer Regulations and to assess who is assigned to such organised grouping. To the extent that anonymous data has been provided by the Contractor pursuant to its obligations under Paragraph

2.1.1 or 2.1.2 above, the Contractor shall provide full data to the Authority no later than 28 days prior to the Subsequent Transfer Date.

2.1.5 On notification to the Contractor by the Authority of a New Provider or within the period of six months prior to the Termination Date or after service of a notice to terminate this Contract (whether in whole or in part), whichever is earlier and in any event on receipt of a written request by the Authority, the Contractor shall not and shall procure that an Employing Subcontractor shall not:

- a. materially amend or promise to amend the rates of remuneration or other terms and conditions of employment of any person wholly or mainly employed or engaged in providing the Services under this Contract; or
- b. replace or re-deploy from the Services any person wholly or mainly employed or engaged in providing the Services, or materially increase or decrease the number of persons performing the Services under this Contract or the working time spent on the Services (or any part thereof); or
- c. reorganise any working methods or assign to any person wholly or mainly employed or engaged in providing the Services (or any part thereof) any duties unconnected with the Services (or any part thereof) under this Contract; or
- d. terminate or give notice to terminate the employment of any person wholly or mainly employed or engaged in providing the Services (or any part thereof) under this Contract other than in the case of serious misconduct or for poor performance,

save in the ordinary course of business and with the prior written consent of the Authority (not to be unreasonably withheld or delayed) and the Contractor shall indemnify and keep indemnified the Authority in respect of any reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any breach of paragraphs 2.1.1, 2.1.2, 2.1.3 or 2.1.5 of this Schedule 10 Part 2.

2.1.6 The Authority may at any time prior to the period set out in paragraph 2.1.5 of this Schedule 10 Part 2 request from the Contractor any of the information in sections 1 a. to d. of Appendix 1 and the Contractor shall and shall procure any Subcontractor will provide the information requested within 28 days of receipt of that request.

2.2 Obligations in Respect of Subsequent Transferring Employees

2.2.1 To the extent that the Transfer Regulations apply on expiry, termination or partial termination of this contract, the Contractor shall and shall procure any Employing Subcontractor shall and the Authority shall and shall procure that a New Provider shall in such circumstances:

- a. before and in relation to the Subsequent Transfer Date liaise with each other and shall co-operate with each other in order to implement effectively the smooth transfer of the Subsequent Transferring Employees to the Authority and/or a New Provider; and

- b. comply with their respective obligations under the Transfer Regulations including their obligations to inform and consult under Regulation 13 of the Transfer Regulations.

2.3 Unexpected Subsequent Transferring Employees

2.3.1 If a claim or allegation is made by an employee or former employee of the Contractor or any Employing Subcontractor who is not named on the list of Subsequent Transferring Employees provided under paragraph 2.1.3 (an "Unexpected Subsequent Transferring Employee") that he has or should have transferred to the Authority and/or New Provider by virtue of the Transfer Regulations, the Party receiving the claim or allegation shall notify the other Party (or the Contractor shall notify the Authority on the Subcontractor's behalf and the Authority shall notify the Contractor on the New Provider's behalf) in writing as soon as reasonably practicable and no later than ten Business Days after receiving notification of the Unexpected Subsequent Transferring Employee's claim or allegation, whereupon:

- a. the Contractor shall (or shall procure that the Employing Subcontractor shall), as soon as reasonably practicable, offer and/or confirm continued employment to the Unexpected Subsequent Transferring Employee or take such other steps so as to effect a written withdrawal of the claim or allegation; and
- b. if the Unexpected Subsequent Transferring Employee's claim or allegation is not withdrawn or resolved the Contractor shall notify the Authority (who will notify any New Provider who is a party to such claim or allegation), and the Authority (insofar as it is permitted) and/or New Provider (as appropriate) shall employ the Unexpected Subsequent Transferring Employee or as soon as reasonably practicable, (subject to compliance with its obligations at paragraph 2.3.1 c. (3)), serve notice to terminate the Unexpected Subsequent Transferring Employee's employment in accordance with his contract of employment; and
- c. the Contractor shall indemnify the Authority against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any of the following liabilities incurred by the Authority or New Provider in dealing with or disposing of the Unexpected Subsequent Transferring Employee's claim or allegation:
 - (1) any additional costs of employing the Unexpected Subsequent Transferring Employee up to the date of dismissal where the Unexpected Subsequent Transferring Employee has been dismissed in accordance with paragraph 2.3.1 b.;
 - (2) any liabilities acquired by virtue of the Transfer Regulations in relation to the Unexpected Subsequent Transferring Employee;
 - (3) any liabilities relating to the termination of the Unexpected Subsequent Transferring Employee's employment but excluding such proportion or amount of any liability for unfair dismissal, breach of contract or discrimination attributable:

- (A) to a failure by the Authority or a New Provider to act reasonably to mitigate the costs of dismissing such person);
 - (B) directly or indirectly to the procedure followed by the Authority or a New Provider in dismissing the Unexpected Transferee; or
 - (C) to the acts/omissions of the Authority or a New Provider not wholly connected to the dismissal of that person;
- (4) any liabilities incurred under a settlement of the Unexpected Subsequent Transferring Employee's claim which was reached with the express permission of the Contractor (not to be unreasonably withheld or delayed);
 - (5) reasonable administrative costs incurred by the Authority or New Provider in dealing with the Unexpected Subsequent Transferring Employee's claim or allegation, subject to a cap per Unexpected Subsequent Transferring Employee of £5,000; and
 - (6) legal and other professional costs reasonably incurred;

2.3.2 the Authority shall be deemed to have waived its right to an indemnity under paragraph 2.3.1 c., if it fails without reasonable cause to take, or fails to procure any New Provider takes, any action in accordance with any of the timescales referred to in this paragraph 2.3.

2.4 Indemnities on Subsequent transfer under the Transfer Regulations on Partial Termination, Termination or Expiry of the Contract

2.4.1 If on the expiry, termination or partial termination of the Contract there is a Subsequent Relevant Transfer, the Contractor shall indemnify the Authority and any New Provider against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any claim by any employee or trade union representative or employee representative arising whether before or after the Subsequent Transfer Date out of any failure by the Contractor or any Subcontractor to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Subsequent Transferring Employee or any other employee of the Contractor or any Subcontractor affected by the Subsequent Relevant Transfer (as defined by Regulation 13 of the Transfer Regulations), save to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities are a result of the act or omission of the Authority or the New Provider.

2.4.2 If there is a Subsequent Relevant Transfer, the Authority shall indemnify the Contractor against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of, or in connection with:

- a. any claim or claims by a Subsequent Transferring Employee at any time on or after the Subsequent Transfer Date which arise as a result of an act or omission of the Authority or a New Provider or a sub-contractor of a New Provider during the period from and including the Subsequent Transfer Date;

- b. subject to paragraph 2.4.1 any claim by any employee or trade union representative or employee representative arising whether before or after the Subsequent Transfer Date out of any failure by the Authority or a New Provider or a sub-contractor of a New Provider to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Subsequent Transferring Employee or any other employee engaged wholly or mainly in connection with the Services by the New Provider or any other employee of the Authority or any New Provider affected by the Subsequent Relevant Transfer effected by this Contract (as defined by Regulation 13 of the Transfer Regulations),

save to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities are a result of the act or omission of the Contractor or any Employing Subcontractor.

2.4.3 In the event of a Subsequent Relevant Transfer, the Authority shall indemnify the Contractor in respect of all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and other liabilities arising out of or in connection with or as a result of a substantial change by the Authority [or a New Provider or any sub-contractor of a New Provider] on or after the Subsequent Transfer Date to the working conditions of any Subsequent Transferring Employee to the material detriment of any such Subsequent Transferring Employee. For the purposes of this paragraph 2.4.3, the expressions "substantial change" and "material detriment" shall have the meanings as are ascribed to them for the purposes of Regulation 4(9) of the Transfer Regulations.

2.5 Contracts (Rights of Third Parties) Act 1999

2.5.1 A New Provider may enforce the terms of paragraph 2.3 and 2.4 against the Contractor in accordance with the Contracts (Rights of Third Parties) Act 1999.

2.5.2 The consent of a New Provider (save where the New Provider is the Authority) is not required to rescind, vary or terminate this Contract.

2.5.3 Nothing in this paragraph 2.6 shall affect the accrued rights of the New Provider prior to the rescission, variation, expiry or termination of this Contract.

2.6 General

2.6.1 The Contractor shall not recover any Costs and/or other losses under this Schedule 10 where such Costs and/or losses are recoverable by the Contractor elsewhere in this Contract and/or are recoverable under the Transfer Regulations or otherwise.

CONTRACTOR PERSONNEL-RELATED INFORMATION TO BE RELEASED UPON RE-TENDERING WHERE THE TRANSFER REGULATIONS APPLIES

1. Pursuant to paragraph 2.1.1 b. of Part 2 of this Schedule 10, the following information will be provided:
 - a. The total number of individual employees (including any employees of Subcontractors) that are currently engaged, assigned or employed in providing the Services and who may therefore be transferred. Alternatively the Contractor should provide information why any of their employees or those of their Subcontractors will not transfer;
 - b. The total number of posts or proportion of posts expressed as a full-time equivalent value that currently undertakes the work that is to transfer;
 - c. The preceding 12 months total pay costs – (Pay, benefits employee/employer ERNIC and Overtime);
 - d. Total redundancy liability including any enhanced contractual payments;
2. In respect of those employees included in the total at 1 a., the following information:
 - a. Age (not date of Birth);
 - b. Employment Status (i.e. Fixed Term, Casual, Permanent);
 - c. Length of current period of continuous employment (in years, months) and notice entitlement;
 - d. Weekly conditioned hours of attendance (gross);
 - e. Standard Annual Holiday Entitlement (not "in year" holiday entitlement that may contain carry over or deficit from previous leave years);
 - f. Pension Scheme Membership;
 - g. Pension and redundancy liability information;
 - h. Annual Salary;
 - i. Details of any regular overtime commitments (these may be weekly, monthly or annual commitments for which staff may receive an overtime payment);
 - j. Details of attendance patterns that attract enhanced rates of pay or allowances;
 - k. Regular/recurring allowances;
 - l. Outstanding financial claims arising from employment (i.e. season ticket loans, transfer grants);
3. The information to be provided under this Appendix 1 should not identify an individual employee by name or other unique personal identifier unless such information is being provided 28 days prior to the Subsequent Transfer Date.

4. The Contractor will provide (and will procure that the Subcontractors provide) the Authority/tenderers with access to the Contractor's and Subcontractor's general employment terms and conditions applicable to those employees identified at paragraph 1 a. of this Appendix 1.

PERSONNEL INFORMATION TO BE RELEASED PURSUANT TO THIS CONTRACT

Part A

1. Pursuant to paragraph 2.1.2 of this Schedule 10, part 2, the written statement of employment particulars as required by section 1 of the Employment Rights Act 1996 together with the following information (save where that information is included within that statement) which will be provided to the extent it is not included within the written statement of employment particulars:
 - a. Personal, Employment and Career
 - b. Age;
 - c. Security Vetting Clearance;
 - d. Job title;
 - e. Work location;
 - f. Conditioned hours of work;
 - g. Employment Status;
 - h. Details of training and operating licensing required for Statutory and Health and Safety reasons;
 - i. Details of training or sponsorship commitments;
 - j. Standard Annual leave entitlement and current leave year entitlement and record;
 - k. Annual leave reckonable service date;
 - l. Details of disciplinary or grievance proceedings taken by or against transferring employees in the last two years;
 - m. Information of any legal proceedings between employees and their employer within the previous two years or such proceedings that the transferor has reasonable grounds to believe that an employee may bring against the transferee arising out of their employment with the transferor;
 - n. Issue of Uniform/Protective Clothing;
 - o. Working Time Directive opt-out forms; and
 - p. Date from which the latest period of continuous employment began.

1.2 Performance Appraisal

- a. The current year's Performance Appraisal;
- b. Current year's training plan (if it exists); and
- c. Performance Pay Recommendations (PPR) forms completed in the current reporting year, or where relevant, any bonus entitlements.

1.3 Superannuation and Pay

- a. Maternity leave or other long-term leave of absence (meaning more than 4 weeks) planned or taken during the last two years;
- b. Annual salary and rates of pay band/grade;
- c. Shifts, unsociable hours or other premium rates of pay;
- d. Overtime history for the preceding twelve-month period;
- e. Allowances and bonuses for the preceding twelve-month period;
- f. Details of outstanding loan, advances on salary or debts;
- g. Cumulative pay for tax and pension purposes;
- h. Cumulative tax paid;
- i. National Insurance Number;
- j. National Insurance contribution rate;
- k. Other payments or deductions being made for statutory reasons;
- l. Any other voluntary deductions from pay;
- m. Pension Scheme Membership;
- n. For pension purposes, the notional reckonable service date;
- o. Pensionable pay history for three years to date of transfer;
- p. Percentage of any pay currently contributed under additional voluntary contribution arrangements; and
- q. Percentage of pay currently contributed under any added years arrangements.

1.4 Medical

- a. Sickness and absence records for the immediately preceding four-year period; and
- b. Details of any active restoring efficiency case for health purposes.

1.5 Disciplinary

- a. Details of any active restoring efficiency case for reasons of performance; and
- b. Details of any active disciplinary cases where corrective action is on going.

1.6 Further information

- a. Information about specific adjustments that have been made for an individual under the Disability Discrimination Act 1995 or the Equality Act 2010;

- b. Short term variations to attendance hours to accommodate a domestic situation;
- c. Individuals that are members of the Reserves, or staff that may have been granted special leave as a School Governor; and
- d. Information about any maternity or other statutory leave or other absence from work.

Part B

1.7 Information to be provided 28 days prior to the Subsequent Transfer Date:

- a. Employee's full name;
- b. Date of Birth
- c. Home address;
- d. Bank/building society account details for payroll purposes Tax Code.

SCHEDULE 11

REQUIRED INSURANCES

1. Pursuant to Clause 63 of the Contract, the Contractor is required to have the insurances set out in the Annex to this Schedule 11 in place from the date of this Contract. The insurance policies shall be in place for the duration of the Contract.

THIRD PARTY PUBLIC & PRODUCTS LIABILITY INSURANCE

1.1 Insured

1.1.1 The Contractor.

1.2 Interest

1.2.1 To indemnify the Insured in respect of all sums that the Insured may become legally liable to pay as damages (including claimants' costs and expenses) in respect of accidental:

1.2.1.1 death or bodily injury to, or sickness, loss of sight, anguish or shock whether mental or otherwise, or illness or disease contracted by any person;

1.2.1.2 loss of or damage to property;

happening during the period of insurance (as set out below in paragraph 1.5 below) and arising out of or in connection with the Contract.

1.3 Limit of indemnity

1.3.1 Not less than fifteen million pounds (£15,000,000) in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period, but fifteen million pounds (£15,000,000) for any one occurrence and in the aggregate per annum in respect of products and pollution liability.

1.4 Territorial limits

1.4.1 Worldwide.

1.5 Period of insurance

1.5.1 From the date of the Contract for the duration of the Contract and renewable on an annual basis unless agreed otherwise with the Authority.

1.6 Cover features and extensions

1.6.1 Health & Safety at Work Act(s) clause.

1.6.2 Defence, appeal and prosecution costs relating to the Corporate Manslaughter and Corporate Homicide Act.

1.6.3 Legal defence costs in addition to the limit.

1.6.4 Indemnity to principals clause or additional insured equivalent under which the Authority shall be indemnified in respect of claims made against the Authority arising from death or bodily injury and/or third party property damage for which the Contractor is legally liable under this Contract.

1.7 Principal exclusions

1.7.1 Nuclear/radioactive risks.

- 1.7.2 War and related perils.
- 1.7.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insured arising out of the course of their employment.
- 1.7.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles.
- 1.7.5 Liability in respect of predetermined penalties or liquidated damages imposed under the Contract entered into by the Insured.
- 1.7.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.
- 1.7.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- 1.7.8 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.
- 1.7.9 Cyber liability.

1.8 Maximum deductible threshold

- 1.8.1 Not to exceed €450,000 each occurrence in respect of loss of or damage to third party property. Personal injury claims to be paid in full.

2. PROFESSIONAL INDEMNITY INSURANCE

2.1 Insured

- 2.1.1 The Contractor.

2.2 Interest

- 2.2.1 To indemnify the Insured for all sums which the Insured shall become legally liable to pay (including claimants costs and expenses) as a result of any claim or claims first made against the Insured during the period of insurance (in paragraph 2.5 below) by reason of any act, error and/or omission arising from the conduct and execution of the Contractor's professional activities and duties or in connection with the Contract.

2.3 Limit of indemnity

- 2.3.1 Not less than one million pounds (£1,000,000) in respect of any one occurrence and in the aggregate per annum.

2.4 Territorial limits

- 2.4.1 Worldwide.

2.5 Period of insurance

- 2.5.1 From the date of the Contract for the duration of the Contract Period and renewable on an annual basis unless otherwise agreed with the Authority and a period of 6 (six) years following the Expiry Date or the Termination Date, whichever occurs earlier.

2.6 Cover features and extensions

- 2.6.1 In respect of any cover provided on a claims made policy wording retroactive cover from the date of the Contract.

2.7 Principal exclusions

- 2.7.1 Nuclear/radioactive risks.
- 2.7.2 War and related perils.
- 2.7.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insured arising out of the course of their employment.
- 2.7.4 Liability arising out of the use of mechanical propelled vehicles which required to be compulsorily insured by legislation in respect of such vehicles.
- 2.7.5 Liability in respect of predetermined penalties or liquidated damages imposed under the Agreement entered into by the Insured.

2.8 Maximum deductible threshold

- 2.8.1 Not to exceed €450,000 each and every claim

3. COMPULSORY INSURANCES

- 3.1 The Contractor is required to meet their United Kingdom and other territory statutory insurance obligations in full. Insurances required to comply with all statutory requirements relating to the Contract including, but not limited to, United Kingdom employers' liability and motor third party liability insurance.
- 3.2 The limit of indemnity for the employers' liability insurance shall not be less than £10,000,000 (ten million) (or such other limit as may be required by law from time to time) for any one occurrence inclusive of costs, the number of occurrences being unlimited in any annual policy period.
- 3.3 Compulsory insurances shall contain an indemnity to principals clause or additional insured equivalent under which the Authority shall be indemnified in respect of claims made against the Authority arising from death or bodily injury to employees of the Contractor for which the Contractor is legally liable under this Contract.

SCHEDULE 12

SUSTAINABLE PROCUREMENT CHARTER

The parties below are fully committed to the principles of Sustainable Procurement (SP) and to using their purchasing power to promote good SP practice. Industry understands the importance for companies to become more sustainable in order to remain competitive in the market, bringing benefit to their shareholders, employees and customers. Whilst delivery of operational capability must always be the primary goal, MOD wishes to work actively and in partnership with its Suppliers and their Trade Associations to capitalise on industry's enterprise and innovation to develop and embed SP principles into acquisition and through life management practices.

In this context signatories agree to define SP as a process whereby organisations meet their needs for goods, services, works and utilities in a way that achieves best value for money on a through life basis with minimal adverse impacts on the environment and society. It follows that SP will consider the environmental, social and economic consequences of design, non-renewable material, energy use, use of hazardous substances, manufacture and production methods, logistics, service delivery, use, operation, maintenance, emissions, reuse, recycling and recovery options, disposal, and suppliers' capabilities to address these consequences throughout the supply chain.

With the aim of continual improvement to their economic, environmental and social performance, Commercially Supported Shipping and [the successful Tenderer] will, in accordance with this charter, agree to support joint MOD-Industry activity to:

- Educate all layers of the supply chain in the principles of SP;
- Ensure an informed decision-making process to maintain a balance between economic, social and environmental priorities in making purchasing choices, whilst meeting the required operational and business outputs;
- Develop appropriate SP performance measurement criteria;
- Develop and disseminate SP processes and tools that will enable the supply chain to work towards sustainable development and share best practice.

Commercially Supported Shipping and [the successful Tenderer] will promote sustainability-enhancing processes that represent good practice wherever they are found.



Mr D. Farmer
CSS Head

Director
International Paint Limited

SCHEDULE 13

COLLABORATIVE WORKING

- 1.1 The Collaborative Working Principles at Annex A to this Schedule will come into effect on the Commencement Date of this Contract and will continue in force until the Expiry Date. These Collaborative Working Principles are enshrined in the Collaborative Working Charter at Schedule 14.
- 1.2 For the purpose of this Schedule only, the term “Parties” shall apply to Commercially Supported Shipping (the Authority), Ship Cluster Owners (Contractors) and Market Facing Contractors (MFCs).
- 1.3 The Parties will agree to the principles contained in the Collaborative Working Principles and will endeavour to act in good faith to work collaboratively with all Parties.
- 1.4 The Parties will actively participate in Joint Development and the Supplier Collaborative in accordance with Clause 6 (Contract Governance), and Schedule 2 (Strategic Contract Meetings) which details the Terms of Reference and associated timescales for the meetings.

COLLABORATIVE WORKING PRINCIPLES

Introduction

1. For the purpose of these Collaborative Working Principles the term “Parties” referred to herein shall mean the Commercially Supported Shipping Team, the Ship Cluster Owner and the Technical Coatings Provider, and the term “Authority” referred to herein shall mean the Commercially Supported Shipping Team.

Mission Statement

2. The joint aim of these Collaborative Working Principles is to provide for the planning, procurement and supply of technical coatings services to support x13 RFA and x1 RN platforms (defined as Ship Clusters). Services to include: technical coating systems (internal and external); technical services, including an on-site technical coating advisor; surveying capability; research and development. Achieving these within the required parameters of cost, performance, time and quality, within a framework offering continuous improvement, at the same time as achieving continuous cost reduction and improved output to the Fleet in accordance with the contracted agreed targets and timescales.
3. These Collaborative Working Principles supplement the following Through Life Support Contracts placed with the Ship Cluster Owner and the Technical Coatings Provider.

CSS/0145- Cammell Laird Shiprepairers and Shipbuilders Limited

CSS/0146- A&P Group Limited

CSS/0147- Cammell Laird Shiprepairers and Shipbuilders Limited

CSS/0124- Trimline Limited

CSS/0125- International Paint Limited

CSS/0126- Lloyd's Register EMEA

Vision/High Level Principles

4. The Ship Cluster Owner and Market Facing Contractors agree to carry out their core obligations, warranties and undertakings in accordance with the provisions of their respective Through Life Support Contracts, integrating at all levels within their respective organisations to provide a cohesive and holistic service to the Authority, thus ensuring that the requirements of Navy Command (The Customer) are met.
5. To achieve the integrated working and strategic collaborative working relationship desired by the Parties, and in working towards the joint aims of the collaborative working arrangements, the Parties agree that they must and will work together in an open and honest environment. The Parties agree that they are dedicated to successful collaborative working with the goal of achieving value for money and continually improving the quality and standard of the service provided to the RFA Flotilla.
6. In particular the Parties are committed to ensuring that the following overarching and general principles defined below are upheld in the Parties conduct during the Term of this Contract, in carrying out their respective obligations under these Collaborative Working Principles, and in their dealings with the other Parties at all times:

- **Mutual Objectives** – The Parties shall strive to meet their agreed mutual objectives, whilst at the same time recognising each others' own objectives.
- **Working Together** – The Parties are committed to working together in an open and honest way, to develop shared values and mutual trust, and the assumption will be made that people are well intentioned.
- **Sharing Information** – The Parties are committed to the timely sharing of information to the greatest extent possible. The Parties shall define the IT systems to be used and shall agree procedures e.g. for the provision of data, access to databases and responsibilities for maintenance. Such arrangements shall be implemented in accordance with the change procedures contained within this Contract. The Parties shall work towards the adoption of common databases with multiple users for data and shall use EDI/SWE where practical to do so.
- **Safety** – The Parties are committed to maintaining a sound safety culture and to ensure that joint endeavour is undertaken to the highest standards when on Contractors' premises or Ship Repair Facilities.
- **Innovation** – The Parties shall work together through the use of the Joint Development Plan to encourage and enable innovation at all levels. The aim of each Party is to learn from the others' skills and talents, and to foster a climate of knowledge sharing and promoting best practice.
- **Integration** – The Ship Cluster Owner shall at all times have due regard to the Technical Coatings Provider's requirements, and shall incorporate the Technical Coatings Provider's plans into its own plans. Likewise the Technical Coatings Provider shall have due regard to the Ship Cluster Owner's requirements and both shall integrate their requirements into the overall plan, mitigating risk and incorporating lean practices to reduce costs.
- **Sharing Risk** – The parties are committed to the effective management and mitigation of risk and acknowledges that the Terms and Conditions of this Contract and Collaborative Working Principles embodies and represents an effective structure for dealing with risk.
- **Resolving Problems** – Subject to the Terms of these Collaborative Working Principles the Parties shall jointly develop and evolve a management process for resolving problems. The Parties shall actively promote a no-blame culture with the aim of learning from mistakes and moving forward.
- **Continuous Improvement and Cost Reduction** – The Parties shall monitor performance against targets using the data provided from the Performance Measurement Reviews.
- **Collaborative Working** – The Parties shall develop, maintain and strengthen this Strategic Collaborative Working Relationship during the term of this Contract.

Supplier Collaborative

7. The Parties agree to actively participate in the Supplier Collaborative in accordance with the requirements of their respective Through Life Support Contracts referenced in paragraph 3.
8. The Parties acknowledge that this Collaborative Working Principles Document (CWPD) is not entered into as a legally binding agreement, nor does it create rights or obligations

enforceable under law. Neither in this PPD nor in any agreement that results from this CWPD nor in the working out of the agreement nor its subsequent management is there any intention on the part of the Parties to create a partnership as defined in the Partnership Act 1890.

COLLABORATIVE WORKING CHARTER



October 2018

The parties below are committed to ensuring that the following overarching and general principles are upheld in the Parties' conduct at all times:

Mutual Objectives – The Parties shall strive to meet their agreed mutual objectives, whilst at the same time recognising each other's own objectives.

Working Together – The Parties are committed to working together in an open and honest way to develop shared values and mutual trust, and the assumption will be made that people are well intentioned.

Sharing Information – the Parties are committed to the timely sharing of information to the greatest extent possible.

Safety – The Parties are committed to maintaining a sound safety culture and to ensure that joint endeavour is undertaken to the highest standards when on Contractor's premises or Ship Repair Facilities.

Innovation – The Parties shall work together through the use of the Joint Development Plan to encourage and enable innovation at all levels. The aim of each Party is to learn from the other's skills and talents, and to foster a climate of knowledge-sharing and promoting best practice.

Integration – The Ship Cluster Owner (SCO) shall at all times have due regard to the Market Facing Contractor (MFC) requirements, and shall incorporate the MFC plans into its own plans. Likewise the MFCs shall have due regard to the SCO's requirements and both shall integrate requirements into the overall plan, mitigating risk and incorporating lean practices to reduce costs.

Sharing Risk – The Parties are committed to the effective management and mitigation of risk.

Resolving Problems – The Parties shall jointly develop and evolve a management process for resolving problems. The Parties shall actively promote a no-blame culture with the aim of learning from mistakes and moving forward.

Continuous Improvement and Cost Reduction – The Parties shall monitor performance against targets using the data provided from the Performance Measurement Reviews.

Collaborative Working – The Parties shall develop, maintain and strengthen this Strategic Collaborative Working Relationship and work to the principles of BS11000/ ISO44001.

	Failing	Reactive	Performing	Co-operative	Collaborative
Communication Planning	Meetings are limited and irregular and communication structure is ad hoc with no defined points of contact.	One way (transactional) communication. No agreed points of contact. Meetings are planned as and when required and focus on addressing problems.	Regular meetings and communication structure are planned i.a.w. the TLS Business Manual with clear and consistent points of contact. A Stakeholder and Communication Plan has been documented.	Frequent communication. Points of contact are known and mapped. Meetings focus on both short term actions and long term planning. All goals are clear and understood by both parties.	Joint strategic governance focussed on communication, relationship and performance planning. Integrated stakeholder maps define roles and responsibilities. Goals are developed together from the outset.
Information Exchange	Secrecy prevails. No sharing of information. Reliant on formal, written communication.	Information provision on request although often ambiguous and inconclusive.	Information provision is limited to contractual obligations - clarification may still be required.	High quality information (clear, accurate and timely) is provided in advance of requirements.	High quality information is freely available in a shared open environment.
Problem Solving	Blame culture prevails. No acknowledgement of problems.	Fire-fighting culture, focused on resolution rather than prevention.	Identifies problems early and communicates recovery plans in advance. Uses problem-solving tools and techniques.	Proactively suggests solutions to emergent and potential problems.	Joint activity to pre-empt and mitigate any problems or issues.
Responsiveness	No / poor response to enquiries and requests.	Responses to enquiries are reactive and often lack definition. Responds to predicted requirements.	Responses to enquiries are timely and compliant.	Responds to predicted requirements	Organisation anticipates a need for response and works jointly with the team to deliver responses that provide suggestions for improvement.
Behaviours	Little / no behavioural standards exist.	Recognition of different behavioural standards. A jointly agreed charter of behavioural standards is in place.	Behaviours demonstrate appreciation of professional and ethical standards	Behavioural standards agreed, managed and maintained. Confidence, Openness and Respect are embedded in the culture and widely spread throughout the supply chain.	Joint behavioural charter deployed.
Strategic Alignment	No awareness of each others business strategy.	Limited awareness of the other party's strategy. No activity to capture benefit or capture opportunities.	Shared awareness of each other's strategy and understand impact on own strategic planning process.	Some joint, project-specific, strategic planning between the parties.	Full visibility, understanding and alignment of strategies. Impacts are known and jointly managed.
Through Life Support	TLS not considered.	Recognition of TLS concept. Activities limited to specific project requirements.	TLS limited to contractual obligations.	TLS concept jointly integrated at a project level.	TLS is jointly embedded within business processes.
Solution Development	Little / no participation in developing solutions.	Little, or late, participation in developing solutions. Requirements modified to fit current products / processes.	Solutions reflect the participation of both parties. Investment to meet development milestones.	Parties engaged at early stage of solution definition. Investment to improve performance.	Full collaborative participation. Investment focussed on Joint Objectives.
Value	Focus is solely on cost / price. Value is not defined.	Concept of 'Value' is recognised and defined.	'Value' is considered in decision making	'Value Added' is jointly measured and targets are established.	Sophisticated measures of 'Value Added' are employed. Targets achieved / exceeded.

SCHEDULE 16
PARENT COMPANY GUARANTEE

DEFFORM 24
Edition 10/14

THIS DEED OF GUARANTEE AND INDEMNITY GIVEN BY A PARENT COMPANY IN RESPECT OF A SUBSIDIARY

is made the [] day of [] 20[]

BETWEEN:

- (1) [Insert the name of the name of the Guarantor] [[a company incorporated in England and Wales with number [] whose registered office is at []] **or** [a company incorporated under the laws of [insert country] registered in [insert country] with number [] at [insert place of registration] whose principal office is at []] (“the **Guarantor**”); in favour of
- (2) THE SECRETARY OF STATE FOR DEFENCE (“the **Authority**”)

WHEREAS:

- (A) The Authority proposes to award contract number [insert number] (“the **Contract**”) to [insert contractor’s full corporate name] [insert company registration number] whose registered office is at [insert details] (“the **Contractor**”).
- (B) It is a condition precedent of the Authority entering into the Contract with the Contractor that the Guarantor must first execute and deliver this Deed of Guarantee and Indemnity to the Authority.

Now in consideration of the Authority entering into the Contract, the Guarantor hereby irrevocably and unconditionally agrees with the Authority as follows:

- 1. The Guarantor shall provide all resources and facilities whether financial or otherwise to enable the Contractor duly to fulfil its obligations in and arising from the Contract subsisting between the Authority and the Contractor at the date of this deed or which shall be entered into at any time after the date of this deed between the Authority and the Contractor (the **'Indemnified Obligations'**);
- 2. If:
 - a. the Contractor shall fail in any respect duly to perform and observe, or shall otherwise be in breach of, any of the Indemnified Obligations; or
 - b. any of the Indemnified Obligations are or become void, voidable, unenforceable or otherwise ineffective; or
 - c. the Contract is terminated owing to a breach or an event of default on the part of the Contractor; or
 - d. a receiver, administrative receiver, administrator, liquidator or similar officer is appointed over any or all of the Contractor's undertaking or assets;

then, forthwith on demand from the Authority the Guarantor shall, as a primary obligation, indemnify the Authority against all losses, claims, liabilities, damages, expenses and costs which may be incurred, met or suffered by the Authority and which arise from or in connection with (whether directly or indirectly) any such matters save that, subject to the other provisions of this deed, the liability of the Guarantor under this clause shall not exceed the liability of the Contractor to the Authority under the Contract.

3. The Guarantor irrevocably and unconditionally undertakes that all sums received or recovered by the Authority:
 - a. by way of dividend, composition or payment arising from the liquidation, bankruptcy or otherwise of the Contractor may be taken and applied by the Authority in part satisfaction of the losses, claims, liabilities, damages, expenses and costs referred to in paragraph 2 above, and the Guarantor's obligations under this deed shall stand good in respect of the balance;
 - b. under this deed, may be credited to a suspense account and held in such account for so long as the Authority thinks fit pending the application of such monies towards the payment of the Indemnified Obligations;
 - c. from the Contractor in respect of any of the Indemnified Obligations, may be applied by the Authority in any manner and in any order towards any debts owed by the Contractor to the Authority (whether or not relating to the Indemnified Obligations) as the Authority may determine (notwithstanding any appropriation or purported appropriation by any person);
4. The Guarantor shall have no right to be subrogated to the Authority and shall not make any claim against the Contractor (unless instructed so to do by the Authority, in which event the Guarantor shall make such a claim) in respect of the Guarantor's performance under this deed, until the Authority has received payment in full of its claim against the Contractor;
5. This deed shall not be affected by any insolvency (including, without limitation, winding up, administration, receivership or administrative receivership), amalgamation, reconstruction, change of name, ownership, control or status or any legal limitation relating to, by or of the Contractor or any other person or, where the Contractor is a partnership, by any change in the partners;
6. The Guarantor shall not be discharged or released from its obligations under this deed:
 - a. by any arrangement or agreement made between the Authority and the Contractor or a receiver, administrative receiver, administrator, liquidator or similar officer of the Contractor: or
 - b. by any renegotiation, substitution, alteration, amendment or variation (however fundamental) and whether or not to the Guarantor's disadvantage, to or of, the obligations imposed upon the Contractor or any other person; or
 - c. by any forbearance granted by the Authority to the Contractor or any other person as to payment, time, performance or otherwise; or
 - d. by any release or variation (however fundamental) of, any invalidity in, or any failure to take, perfect or enforce any other indemnity, guarantee or security in respect of the obligations to which this deed relates; or

- e. by any other matter or thing which but for this provision might exonerate the Guarantor and this notwithstanding that such arrangement, agreement, renegotiation, substitution, alteration, amendment, variation, forbearance, matter or thing may have been made, granted or happened without the Guarantor's knowledge or assent;
- 7. No failure to exercise or any delay in exercising on the Authority's part any right or remedy under this deed or under the Contract or any other agreement shall operate as a waiver of such right or remedy;
- 8. Any certificate or determination by the Authority of the amount due under this deed or under the Contract shall be, in the absence of manifest error, conclusive evidence of the matters to which it relates;
- 9. No settlement or discharge between the Authority and the Guarantor or the Contractor shall be effective if any payment to the Authority in respect of the Contractor's or the Guarantor's obligations to the Authority is avoided or reduced by virtue of any provisions or enactments relating to bankruptcy, insolvency, liquidation or similar laws of general application from time to time and if such payment is so avoided or reduced, the Authority shall be entitled to recover from the Guarantor the amount of such payment as if such settlement or discharge had not occurred;
- 10. The Authority shall not be obliged, before exercising any of its rights under this deed, to take any action against, or make any demand from, the Contractor or any other person;
- 11. The Guarantor's obligations under this deed are continuing obligations and shall not be considered satisfied, settled or terminated by the Authority giving any approvals, or taking delivery of any goods, or accepting any performance under the contract and no single, cumulative or partial exercise by the Authority of any right or remedy under or arising from this deed shall prevent any further exercise;
- 12. All payments under this deed shall be made without set-off, counter-claim or other deduction;
- 13. The Guarantor shall be bound by all court judgments or arbitration awards relating to the contract or any dispute or matter between the Authority and the Contractor;
- 14. This deed shall be governed by and construed in accordance with English law. The parties irrevocably submit to English jurisdiction to the exclusion of all foreign jurisdiction, save that foreign jurisdictions may apply solely for the purposes of giving effect to this paragraph and for the enforcement of any judgment, order or award given under English jurisdiction.

[The following clause should only be used where the Guarantor is a company incorporated outside of England and Wales]

- 15. The Guarantor irrevocably appoints Messrs [insert name and address of firm of Solicitors in England or Wales], Solicitors as its agents to accept on its behalf service of all process and other documents of whatever description to be served on the Guarantor in connection with this Deed or any related matter.

Delivered as a deed on the date of this document.

Executed as a deed by [insert corporate name].

in the presence of Director

..... Director or Company Secretary

SCHEDULE 17

BANK GUARANTEE

Name of Issuing Bank:

Address:

To: The Secretary of State for Defence

We refer to the Contract number [insert number] (the 'Contract'), as may be amended at any time, to be awarded / awarded on [insert Contract date] to [insert Contractor's full corporate name] whose registered number is [insert company registered number] (the 'Contractor') and we hereby irrevocably and unconditionally agree:

1. to pay you any amount or amounts not exceeding in aggregate the sum of £[insert sum] upon receipt by us at [insert address] of your first demand in writing certifying that any one or more of the following has occurred:
 - a. the Contractor has failed in any respect duly to perform and observe, or is otherwise in breach of any of its obligations in and arising from, the Contract; or
 - b. any of the Contractor's obligations in and arising from the Contract are or become void, voidable, unenforceable or otherwise ineffective; or
 - c. the Contract has been terminated owing to a breach or an event of default on the part of the Contractor; or
 - d. a receiver, administrative receiver, administrator, liquidator or similar officer is appointed over any or all of the Contractor's undertaking or assets;

For the purposes of this bond any such demand and certification(s) shall be conclusive evidence (and admissible as such) of the statements and the amounts claimed therein;

2. that this bond shall not be affected by any insolvency (including, without limitation, winding up, administration, receivership or administrative receivership), amalgamation, reconstruction, change of name, ownership, control or status or any legal limitation relating to, by or of the Contractor or any other person or, where the Contractor is a partnership, by any change in the partners;
3. that we shall not be discharged or released from our obligations under this bond by any arrangement or agreement made between you and the Contractor or a receiver, administrative receiver, administrator, liquidator or similar officer of the Contractor, or by any renegotiation, substitution, alteration, amendment or variation (however fundamental) and whether or not to our disadvantage, to or of, the obligations imposed upon the Contractor or any other person or by any forbearance granted by you to the Contractor or any other person as to payment, time, performance or otherwise or by any release or variation (however fundamental) of, any invalidity in, or any failure to take, perfect or

enforce any other indemnity, guarantee or security in respect of the obligations to which this bond relates or by any other matter or thing which but for this provision might exonerate us and this notwithstanding that such arrangement, agreement, renegotiation, substitution, alteration, amendment, variation, forbearance, matter or thing may have been made, granted or happened without our knowledge or assent;

4. that no failure to exercise or any delay in exercising on your part any right or remedy under this bond or under the Contract or any other agreement shall operate as a waiver of such right or remedy;
5. that no settlement or discharge between you and us or the Contractor shall be effective if any payment to you in respect of the Contractor's or our obligations to you is avoided or reduced by virtue of any provisions or enactments relating to bankruptcy, insolvency, liquidation or similar laws of general application from time to time and if such payment is so avoided or reduced, you shall be entitled to recover from us the amount of such payment as if such settlement or discharge had not occurred;
6. that you shall not be obliged, before exercising any of your rights under this bond, to take any action against, or make any demand from, the Contractor or any other person;
7. that our obligations under this bond are continuing obligations and shall not be considered satisfied, settled or terminated by your giving of any approvals, or taking delivery of any goods, or accepting any performance under the Contract and no single, cumulative or partial exercise by you of any right or remedy under or arising from this bond shall prevent any further exercise;
8. that any demand(s) complying with all the requirements hereof must be received by us on or before [insert date];
9. that all payments under this bond shall be made without set-off, counter claim or other deduction;
10. that this bond shall be governed by and construed in accordance with English law. The parties irrevocably submit to English jurisdiction to the exclusion of all foreign jurisdiction, save that foreign jurisdictions may apply solely for the purposes of giving effect to this paragraph and for the enforcement of any judgment, order or award given under English jurisdiction.

(The following clause should only be used where the bank is outside of England and Wales)

11. we irrevocably appoint Messrs [insert name and address of firm of Solicitors in England or Wales], Solicitors as our agents to accept on our behalf service of all process and other documents of whatever description to be served on us in connection with this bond or any related matter.

Dated this [] day of [] 20[]

Executed as a deed by [full name of party] as Attorney and on behalf of [bank]¹ in the presence of:

.....[signature of party]

..... [Signature of Witness (Bank Official)]
[Address of Witness]
[Occupation of Witness]

¹ This execution clause should be changed if the bank or other corporate entity giving the bond is executing it in one of the other methods listed in the accompanying guidance (see Execution).

SCHEDULE 18 – PROJECT WORK PACKAGE TASKING FORM

Schedule 18 - Part 1

COMMERCIALLY SUPPORTED SHIPPING PROJECT WORK PACKAGE **TASKING FORM - CONTRACT CSS/0125**

Ship Name		Contractor name and Task No.	
CSS Reference			
Sponsor		Priority (delete as applicable)	High/Medium/Low

PART A – PROPOSAL (The Authority)
<u>Task Title</u>
<u>Task Description</u>
<u>Deliverables</u>
Signature: Name (Block Capitals):
Post: Date:

Note: If a Project Work Package requires the Contractor to provide goods and services, please use two Tasking Forms, one for goods and one for services.

Your quotation should be in the form of a full price breakdown, including: No. of days or hours of work required, associated activity and anything else contributing to your final quoted price.

This is not an instruction to proceed and nothing in this letter constitutes acceptance. No work shall commence on this task until authorisation has been given at part C.

PART B – RESPONSE (Contractor)
<u>Firm Price</u> This firm price has been built up using rates as stated in the Contract. The price is built up as follows:
<u>Firm Completion Date</u>
<u>Scope of Work</u>

Deliverables

Signature: Name (Block Capitals):

Post: Date:

Note: No work is to be put in hand until authorised to do so by Commercially Supported Shipping Commercial of the DE&S (the Authority).

Schedule 18 Part 2

COMMERCIALY SUPPORTED SHIPPING PROJECT WORK PACKAGE
TASKING FORM - CONTRACT CSS/0125

PROJECT - APPROVAL FOR WORK UNDER TASK TO PROCEED (The Authority)

The time-scale and level of work reported in the Contractor's quote are acceptable for this task.

A completion date of _____ is therefore appropriate for this task.

Project Management approval is hereby given for this task to proceed at a Firm price of:

Authorisation and financial approval for this Task Form has been made via CP&F.

Signature: Name (Block Capitals):

Post: Date:

PART C – APPROVAL FOR WORK UNDER TASK TO PROCEED (The Authority)

Commercial Officer:

(Insert Contractor's name) is hereby authorised to proceed with this Task as at Part A above, at the Price and Delivery timescales identified at Part B above of £_____, in accordance with the Terms and Conditions of the CSS/0125 Contract dated xx/xx/2018.

RCA:

RFA:

ASD/

RAC:

Signature: Name (Block Capitals):

Post: Date:

Please Note: No work is authorised, or to be put in hand, without the full completion of Part B and C above.

Appendix - Addresses and Other Information

[REDACTED]
[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[illegible]

[REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

[REDACTED]
 [REDACTED] [REDACTED]
 [REDACTED]
 [REDACTED] [REDACTED]
 [REDACTED] [REDACTED]
 [REDACTED] [REDACTED]
 [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]