SCTX/002 CONTRACT IN RESPECT OF THE FUTURE MARITIME SUPPORT PROGRAMME (FMSP) – WAREHOUSING AND DISTRIBUTION (W&D) AT HMNB CLYDE

Dated 30 March 2021

The Secretary of State for Defence for the United Kingdom of Great Britain and Northern Ireland

(Authority)

Babcock Marine (Clyde) Limited

(Contractor)

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Future Maritime Support Programme Contract

relating to the provision of services by the Contractor in relation to warehousing and distribution (W&D) at Her Majesty's Naval Base (HMNB) Clyde

Dated: 30 March 2021

Between:

(1) The Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland (the **Authority**); and

Babcock Marine (Clyde) Limited (Company No SC200243) whose registered office is at Rosyth Business park, Rosyth, Dunfermline, Fine, KY11 2YD (the **Contractor**).

Background:

A The Authority requires the delivery of services in relation to warehousing and distribution at HMNB Clyde for the duration of this Contract.

B The Contractor has agreed to provide the warehousing and distribution at HMNB Clyde in accordance with the terms and conditions set out in this Contract.

It is agreed:

Part 1 – Mechanics

1 Definitions and interpretation

1.1 **Definitions**

In this Contract, capitalised words and expressions shall have the meaning given to them in Schedule 1 (*Definitions*), except where the context requires a different meaning.

1.2 **Interpretation**

In this Contract the following rules of interpretation shall apply unless otherwise stated.

1.2.1 **Accounting terms**: Accounting terms shall be construed so as to be consistent with generally accepted **accounting** principles.

1.2.2 A document **in agreed form** is a document which is agreed in writing by or on behalf of the Authority and the Contractor.

1.2.3 **Authority responsibility**: The Authority shall be responsible for the acts, omissions, defaults or negligence of its directors, officers, employees and agents (other than the Contractor) in respect of its obligations under this Contract as fully as if they were acts, omissions, defaults or negligence of itself.

1.2.4 **Clause, Part**, **Paragraph, Appendix, Annex**, **Schedule** or **Recital**: References to any Clause, Part, Paragraph, Appendix, Annex, Schedule or Recital are to those contained in this Contract. All the Schedules, Appendices, Parts, Paragraphs and Annexes are integral parts of this Contract.

1.2.5 **Contractor responsibility**: The Contractor shall be responsible for the acts, omissions, defaults or negligence of its (and its Sub-Contractors') directors, officers, employees and agents in respect of its obligations under this Contract as fully as if they were acts, omissions, defaults or negligence of itself.

1.2.6 **CPA**: the terms of this Contract shall supersede the terms of the Competition Process Agreement on and from the Effective Date and the Competition Process Agreement is hereby terminated. This does not affect breaches of any obligations under the Competition Process Agreement by the Contractor prior to the Effective Date.

1.2.7 **Dates**: Reference to a date is to the day commencing on such date.

1.2.8 **Expressions not to limit construction**: The words "other" and "otherwise" shall not be construed as being limited by any foregoing words where a wider construction is possible. The words "include", "including" and "in particular" shall be construed as being by way of illustration or emphasis and shall not limit or prejudice the generality of any foregoing words.

1.2.9 **Gender**: Reference to any gender includes any other.

1.2.10 **Headings and background**: Headings and the paragraphs under the heading "Background" are for ease of reference and information only and are to be ignored when interpreting this Contract.

1.2.11 **Inconsistencies**: if:

(a) the Contractor notifies the Authority Contract Manager; or

(b) the Authority Contract Manager otherwise discovers,

an ambiguity, error, omission, discrepancy, inconsistency or other fault in, from or between any of the terms of this Contract, the Authority Contract Manager shall issue such direction (including a direction which involves a Change) as may be necessary to resolve or correct that ambiguity, error, omission, discrepancy, inconsistency or other fault. The Authority shall act reasonably in determining whether the Contractor is entitled to any compensation or extension of time for complying with a direction under this Clause 1.2.11.

1.2.12 **Indexed**: Unless expressly specified otherwise, references to amounts expressed to be (**indexed**) are references to such amounts as indexed in accordance with Part 6 of Schedule 4 (*Pricing and Payment*).

1.2.13 **Interpretation of BS/EN/ISO 9000**: Subject to Clause 1.2.14, where BS/EN/ISO 9000 or documents in the AQAP 100 series form part of this Contract either by reference in the Clauses or as invoked by such Defence Standards (**DEFSTANS**) in the 05-90 series as are called up as part of this Contract the provisions of this Contract shall have effect with such amendments as are required in the given context.

1.2.14 **Living documents**: Unless stated to the contrary, any reference to this Contract or to any other document in this Contract (other than a DEFCON, DEFSTAN, DEFFORM, AQAP, JSP or ISO Standard) are references to this Contract or such other document as varied, amended, novated, supplemented or replaced from time to time. Any variation, amendment, novation, supplement or replacement of this Contract or any DEFCON, DEFSTAN, DEFFORM, AQAP, JSP or ISO Standard (and the impact on this Contract of any variation, amendment, novation, supplement or replacement of any other such document) shall only be effective as between the Parties if processed in accordance with the Change Procedure.

1.2.15 **Living instruments**: Any reference to any Law shall include a reference to:

(a) the Law as:

(i) amended, extended, consolidated or re-enacted;

(ii) supplemented or applied by or pursuant to any other Law before, on or after the Commencement Date,

(b) including without limitation pursuant to the European Union (Withdrawal) Act 2018 and any Act of Parliament to implement the UK's exit from the European Union, or to make changes to the UK law consequent on the same, which amends, replaces, supplements or changes the European Union (Withdrawal) Act 2018 and which becomes law on or about the time of the UK's exit from the EU (a **Second Act**) any Law (including without limitation pursuant to the European Union (Withdrawal) Act 2018 and a **Second Act**) which re-enacts, restates or replaces (in each case with or without modification) that enactment;

(c) any Law identified as "Retained EU law" for the purposes of the European Union (Withdrawal) Act 2018 a **Second Act**; and

(d) any orders, regulations, codes of practice, instruments or other subordinate legislation made under the relevant Law.

1.2.16 **Month**: Any reference to a month is to a calendar month.

1.2.17 **No disadvantage**: in the interpretation of this Contract, no rule of contract interpretation applies to the disadvantage of one Party on the basis that it put forward this Contract or any part of it.

1.2.18 **Person**: Any reference to a "person" includes any individual, partnership, firm, trust, body corporate, government, governmental body, authority, emanation, agency, instrumentality, unincorporated body of persons or association.

1.2.19 **Public organisations**: any reference to a public organisation or representative shall be deemed to include a reference to any successor to such public organisation or representative or any organisation or entity or representative which has taken over the functions or responsibilities of such public organisation or representative in whole or in part. In respect of the European Union and any other body which, following the UK's departure from the European Union will cease to have jurisdiction in respect of UK law, any equivalent UK counterpart which assumes the jurisdiction of that body or organisation in respect of UK law will continue to have such control for the purposes of this Contract.

1.2.20 **References to the Parties**: References to the Parties shall be to the Authority and the Contractor and a reference to a Party shall be to either the Authority or the Contractor (as applicable).

1.2.21 **Related words**: Where this Contract defines a word or expression, related words and expressions have a consistent meaning.

1.2.22 **Requisite authority**: Any decision, act, or thing which the Authority or the Contractor is required or authorised to take or do under this Contract may be taken or done only by any person authorised in accordance with Schedule 6 (*Governance*) by the Authority or the Contractor to take or do that decision, act, or thing on behalf of the Authority or the Contractor.

1.2.23 **Singular and plural**: Any reference to the singular includes the plural and vice versa.

1.2.24 **Successors in title and transferees**: Reference to any person, including a Party, includes that person's lawful successors in title and transferees (unless the transfer to the successor in title or transferee was in breach of this Contract), whether pursuant to contract, statute or otherwise.

1.2.25 **Third parties**: Any reference to "third parties" or a "third party" shall be construed as a reference to any person who is not a Party.

1.2.26 **This Clause**: The expressions **this Clause**, **this Schedule, this Part, this Paragraph, this Appendix** or **this Annex** unless followed by the number of a specific part of the Clause, Paragraph, Schedule, Appendix or Annex, refers to the whole Clause, Schedule, Part, Paragraph, Appendix or Annex in which it occurs.

1.2.27 **Times**: All references to time of day shall be a reference to whatever time of day shall be in force in England, Scotland and Wales. Any reference to day shall, unless otherwise stated, mean the period of time which begins with one midnight and ends with the next. Any reference to a **quarter** means any three (3) Month period in any Contract Year and **quarterly** shall be construed accordingly;

1.2.28 **Costs recovery**: Any reference in this Contract to a cost being treated or recoverable shall be subject and without prejudice to the Authority's right to challenge whether such cost is appropriate, attributable and reasonable, in each case:

(a) in relation to the Service Category in respect of which the Contractor seeks to claim that it is a recoverable cost; and

(b) where applicable, in accordance with Schedule 4 (*Pricing and Payment*).

1.2.29 **Procurement**: Any obligation on the Contractor to do any act, matter or thing includes, unless expressly stated otherwise, an obligation to procure that it is done.

1.3 **Precedence of documentation**

1.3.1 If there is any inconsistency between the provisions of the body of this Contract, the Schedules, any Annexes and any Referenced Document the conflict shall be resolved according to the following descending order of priority:

(a) Schedule 3 (*Lot Specific Conditions*) and its Annexes;

(b) the clauses of this Contract and Schedule 1 (*Definitions*);

(c) the other Schedules, except for Schedule 33 (*Cyber Implementation Plan*);

(d) any Annexes (except for those specified in paragraphs (a) to (c) and (f));

(e) any Referenced Document; and

(f) Annex 1 (Con*tractor's Solution*) to Schedule 2 (*Requirements*), and Schedule 33 (*Cyber Implementation Plan*).

1.3.2 The Contractor shall notify the Authority as soon as reasonably practicable on becoming aware of any inconsistency under Clause 1.3.1.

Part 2 – General Provisions

2 Duration

2.1 Provisions with immediate effect

2.1.1 The following provisions shall take effect on the Effective Date

Clause 1 (*Definitions and Interpretations*), this Clause 2, Clause 3 (*Conditions Precedent*), Clause 4 (*Representations Warranties and Undertakings*), Clause 24 (*Dispute Resolution*), Clause 28 (*Security*), Clause 41 (*Liabilities, Indemnities, Insurance and Conduct of Claims*), Part 18 (*Termination*) and Clauses 73 (*Confidentiality and Freedom of Information*) to 90 (*Governing Law and Jurisdiction*) (inclusive).

2.2 Commencement Date and Contract Period

2.2.1 With the exception of the provisions specified in Clause 2.1 this Contract shall not come into effect until the Authority has given Notice to the Contractor that it is satisfied that the Conditions Precedent set out in Clause 3.1.1 (*Conditions Precedent to Commencement Date*) have been satisfied or it has otherwise determined to waive any or all of such Conditions Precedent (the **Commencement Date**).

2.2.2 Subject to Clause 2.1 and Clause 3, this Contract shall commence on the Commencement Date and continue until the Initial Expiry Date (the **Initial Contract Period**) unless extended pursuant to Clause 2.3 or terminated earlier in accordance with its terms (**Contract Period**).

2.3 Contract Period Extension

2.3.1 The Authority may, in its absolute discretion, extend this Contract beyond the end of the Initial Contract Period by a period of two (2) years and may thereafter extend this Contract by an additional period of one (1) year beyond the end of such additional period by giving not less than six (6) months Notice.

2.3.2 Where the Planned Service Delivery Date is delayed:

(a) in circumstances where the Contractor can demonstrate that the Authority either:

(i) failed to promptly deliver a certificate of readiness when it should have done under Clause 3.2 (b); or

(ii) has not issued a certificate of readiness as referred to in Clause 3.2 (b) as a result of any Third Party FMSP Contract not being ready to commence full operation; or

(b) as a result of a Force Majeure Event, Relief Event or Compensation Event in accordance with Clause 52 (*Force Majeure Events*) or Clause 53 (*Relief Events and Compensation Events*),

the Contract Period shall be extended by a period equivalent to the length of any such delay.

3 Conditions Precedent

3.1 Conditions Precedent to Commencement Date

3.1.1 The Commencement Date is conditional upon:

(a) the delivery by the Contractor to the Authority of the Parent Company Guarantee, duly executed and delivered by the issuing party;

(b) receipt by the Authority (in each case in form and substance satisfactory to it) of the following:

(i) executed leases and licences in respect of the Leased and Licensed Areas;[1]

(ii) Notice from the Contractor that, to the Authority's reasonable satisfaction, it has obtained all Required Consents necessary to enable it to legally carry out the Services;

[1] As notified, this will be amended as part of Amendment 1 to reflect a correct timeframe for receipt.

(iii) resolutions duly passed by the Contractor's board of directors:

(A) approving the entry into, terms of, and transactions contemplated by this Contract and resolving that it execute, deliver and perform this Contract;

(B) authorising a specified person or persons to execute this Contract and (where relevant) the Parent Company Guarantee on its behalf, to give all notices and take all other action in connection with this Contract and the Parent Company Guarantee; and

(C) confirming that entry into this Contract is in the commercial interests of the Contractor (stating the reasons for such conclusion);

(iv) resolutions duly passed by the Parent's board of directors:

(A) approving the entry into, and terms of, the Parent Company Guarantee and resolving that it execute, deliver and perform the Parent Company Guarantee; and

(B) authorising a specified person or persons to execute the Parent Company Guarantee on its behalf, to give all notices and take all other action in connection with the Parent Company Guarantee;

(v) a sample of the signature of each person authorised by the resolutions in (iii), and (iv) above;

(vi) certified copies of the Contractor's memorandum and articles of association;

(vii) a legal opinion addressed to the Authority in respect of the Parent Company Guarantee; and

(viii) certificates of insurance required pursuant to this Contract;

(c) provision to the Authority of evidence that the Relevant Direct Agreements have been duly executed by each party thereto,

(d) the Transition Services Agreement has been duly executed by the parties to it and the Parties have agreed a legally binding agreement in respect of the transfer of the relevant assets;

(e) provision to the Authority of evidence that the Contractor and any employing Sub-Contractor enter into an Admission Agreement in the form set out in Annex A to Part 4 (*Pensions*) of Schedule 10 (*Personnel*);[2]

(f) provision to the Authority of a Cyber Implementation Plan, where required, in response to the Supplier Assessment Questionnaire for the Cyber Risk of the Contract (RAR-YAKY57SF) as defined in DEF STAN 05-138 and demonstration to the Authority that the Cyber Implementation Plan has been complied with.

3.2 Conditions Precedent to Service Delivery Date

The occurrence of the Service Delivery Date is conditional upon:

(a) the Contractor having complied with its obligations under Schedule 13 *(Transition Arrangements)*;

(b) the Authority issuing a certificate of readiness to confirm that the Contractor is ready to commence full operation; and

(c) the Authority confirming that all FMSP Contracts are ready to commence full operation. The Contractor shall fulfil the Conditions Precedent it is responsible for in Clause 3.1 (the **Commencement Date CPs**) and Clause 3.2 (the **Service Delivery Date CPs**). If any of the Conditions Precedent are not fulfilled to the reasonable satisfaction of the Authority or otherwise waived within:

[2] **Note:** Timing of this depends on arrangements relating to employees.

(i) in the case of the Commencement Date CPs, within five (5) Business Days of the Effective Date; and

(ii) in the case of the Service Delivery Date CPs, by the Longstop Date,

the Authority reserves the right to determine that this Contract shall cease to be effective and this Contract will terminate on such date. Where neither Party is at fault for a failure to satisfy a Condition Precedent, each Party shall bear its own costs arising from or connected with this Contract where it is terminated pursuant to this Clause 3.2.

3.3 The Authority may terminate this Contract if the Contractor undergoes a Material Adverse Change between the date of this Contract and the fulfilment or waiver of the Conditions Precedent in Clause 3.1.1 or Clause 3.2. Each Party shall bear its own costs arising from or connected with this Contract where it is terminated pursuant to this Clause 3.2 (c).

4 Representations, Warranties and Undertakings

4.1 Contractor Representations, Warranties and Undertakings

4.1.1 The Contractor represents and warrants to the Authority that, save as set out in the Disclosure Letter:

Corporate

(a) it is a limited liability company, duly incorporated and validly existing under the laws of England and Wales or Scotland (as applicable) and has the corporate power to sue and be sued in its own name and to own assets and to carry on business as it is now being conducted;

(b) as at the date of this Contract, it has the corporate power to enter into and to exercise its rights and perform its obligations under this Contract;

Execution and performance of Contract

(c) as at the date of this Contract, all action necessary to authorise the execution of and the performance of its obligations under this Contract has been taken;

Members of Contractor Group

(d) internal arrangements are in place to allow the Contractor to direct each Contractor Group Member to comply with the requirements of this Contract;

Lawful obligations

(e) the obligations expressed to be assumed by each Contractor under this Contract are legal, valid, binding and enforceable to the extent permitted by law;

(f) the execution, delivery and performance by each Contractor of this Contract:

(i) does not constitute a default under any document or obligation which is binding upon a Contractor Group Member;

(ii) does not conflict with the memorandum and articles of association of any Contractor Group Member; and

(iii) does not conflict with any Law, or official or judicial order applicable to any Contractor Group Member;

Information

(g) all information supplied by or on behalf of each Contractor (and supplied by Contractor Personnel authorised to provide such information) from Babcock Marine (Clyde) Limited on 24 July 2020 to the Authority in connection with the negotiations of, and entry into, this Contract was, to the best of the relevant Contractor's knowledge and belief, complete, true and accurate in all material respects at the date it was supplied and was not misleading in any respect and the opinions, projections and forecasts in such information, and the assumptions on which they were based (acknowledging that any estimates provided were provided as estimates), have been arrived at after due and careful consideration and enquiry and genuinely represent the views of each Contractor;

Accounts

(h) in relation to the latest accounts of the Contractor issued prior to the date of this Contract, such accounts were prepared and audited in accordance with GAAP and give a true and fair view, or fairly represent (as applicable) the financial position of the Contractor as at the date of their preparation and for the period then ended and (in relation to accounts issued prior to the date of this Contract since that date) no event has occurred which has had or could be reasonably expected to have a material adverse effect on the business or financial condition of the Contractor;

No threats to business

(i) no claim is presently being assessed by any Contractor Group Member 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 any Contractor Group Member or any of the assets of any Contractor Group Member which might have a material adverse effect on the ability of the Contractor to perform its obligations under this Contract;

No insolvency

(j) no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, having made all due enquiry, threatened) for the winding-up or dissolution of any Contractor Group Member or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues or the assets and revenues of such Contractor Group Member;

No Prohibited Acts

(k) it has not committed any Prohibited Act;

Bidding Information and CPA

(l) information provided by the Contractor during the ITN bidding process remains true and accurate;

(m) at the Effective Date it has at all times complied with the terms of the CPA;

Tax

(n) it is not materially overdue in the filing of any tax returns;

(o) no claims or investigations are being, or are reasonably likely to be, made or conducted against it with respect to taxes; and

(p) it is resident for tax purposes only [in the United Kingdom];

Cost allocation

(q) the cost allocation for the procurement process for this Contract and for each other FMSP Contract between the Contractor and the Authority (and any other business the Contractor has with the Authority) reflects a full and reasonable allocation of costs to each procurement process such that:

(i) there is no cross subsidy between this Contract and any other FMSP Contract; and

(ii) the cost allocation was not calculated to distort the procurement process for FMSP Contracts (whether for the procurement process for this Contract or procurement processes for other FMSP Contracts as a whole),

and the Authority relies upon such warranties and representations.

Warranties cumulative

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

Times when warranties and representations made

4.1.3 The Contractor makes all the representations, warranties and undertakings in this Clause 4.1 on the Effective Date, Commencement Date and Service Delivery Date.

4.1.4 In addition, the Contractor is deemed to make all the representations, warranties and undertakings in this Clause 4.1 on the first anniversary of this Contract and each anniversary thereafter.

4.1.5 Each representation warranty and undertaking which it is deemed that the Contractor makes after the date of this Contract shall be deemed to be made by reference to the facts and circumstances existing at the date the Contractor is deemed to make it.

4.2 Contractor Undertakings

4.2.1 The Contractor hereby agrees that it will not during the Contract Period without the prior written consent of the Authority:

(a) cease to be tax resident and registered in the United Kingdom;

(b) enter into any other obligation or arrangement, compliance with which, in the reasonable opinion of the Authority, will or is likely to have a material adverse effect on its ability to perform its obligations under this Contract;

(c) whether by a single transaction or by a series of transactions (whether related or not) sell, transfer, lend or otherwise dispose of the whole or any part of its business or assets in a manner which will or is likely to have a material adverse effect on its ability to perform its obligations under this Contract; or

(d) permit any landlord, mortgagee or other third party any remedy (whether by way of lien or otherwise) which would have a material adverse effect on its ability to perform its obligations under this Contract or the Authority's right to legal and beneficial title to anything provided under this Contact.

4.2.2 The Contractor hereby agrees that during the Contract Period it shall as soon as reasonably practicable give the Authority Notice of all litigation before or of any court, arbitrator or adjudicator that the Contractor is a party to and which would or are likely to have a material adverse effect on its ability to perform its obligations under this Contract, such Notice shall be given as soon as it becomes aware that the same are threatened (following a letter before action being issued or received by the Contractor) and immediately after they are commenced, provided that nothing in this Clause shall require the Contractor to disclose legally privileged or confidential information relating thereto.

Part 3 – Commercial Purpose, Scope and Transition

5 Commercial Purpose

5.1 The Authority has appointed the Contractor to perform the Services subject to and in accordance with the terms of this Contract.

5.2 The Authority's purpose (the Commercial Purpose) in appointing the Contractor is:

(a) to contribute to the achievement of the following strategic benefits in the maritime sector (the **FMSP Strategic Benefits**):

(i) improve certainty of delivery and increased resilience in Authority platforms (the Overriding Strategic Objective);

(ii) deliver significant value for money benefits through a transformed, world class maritime support enterprise;

(iii) allow increased investment in Service Delivery Location facilities;

(iv) improve the lived experience of RN Personnel; and

(v) underpin increased resilience and sustainability in the whole force support enterprise across the Royal Navy, the Authority and industry,

and in doing so ensure that the FMSP Strategic Benefits in Clause 5.2 (a) (ii) to Clause 5.2(a)(v) (inclusive) contribute to the Overriding Strategic Objective; and

(b) to achieve the Outputs.

5.3 In performing the Services and its obligations the Contractor shall:

(a) at all times have regard to and act in a manner that supports the achievement of the Commercial Purpose; and

(b) consult with the Authority about the Authority's requirements in relation to the Commercial Purpose.

6 Scope

6.1 Scope

The scope of this Contract is the provision of services by the Contractor in relation to warehousing and on-base distribution at HMNB Clyde, in accordance with Schedule 2 (*Requirements*) and the terms of this Contract.

6.2 No volume guarantee

No volume of work requiring the provision of Services is guaranteed to be awarded to the Contractor under this Contract.

6.3 No exclusivity under this Contract

Nothing in this Contract affords any exclusivity rights to the Contractor in relation to the provision of the Services.

6.4 Limitation of scope

The Contractor shall not be permitted to conduct any activities or take any action at any Service Delivery Location other than as permitted or contemplated under this Contract.

7 Services

7.1 Contract for Services

7.1.1 The Contractor shall:

(a) perform all of the work, services and activity; and

(b) except as is expressly provided to the contrary, provide all tools, materials, items, persons, and other resources of any kind,

that are in each case necessary to comply with and fulfil the Requirements (the **Services**).

7.1.2 The Contractor shall perform the Services in accordance with the Method Statements and the Service Delivery Plans.

7.1.3 The Contractor undertakes that the Outcomes, Outputs, Inputs, Method Statements and the Service Delivery Plans are compatible within and between each other and that:

(a) the Requirements are feasible; and

(b) the Method Statements and the Service Delivery Plans conform with, and will implement in every respect, the Requirements.

7.1.4 Without limiting Clause 7.1.3, the Contractor accepts all risks:

(a) as to consistency and compatibility within or between; and

(b) arising from any discrepancies or errors that are present or subsequently appear within or between, each component of the Requirements, and the Method Statements, and the Service Delivery Plans.

7.1.5 The Contractor acknowledges that the Services may be subject to government review at key stages and all other times. The Contractor shall cooperate with any bodies undertaking such review and shall allow for such reasonable assistance as may be required for this purpose at no extra cost to the Authority,

7.2 Collaboration Principles and Interface Obligations

In performing the Services and its obligations under this Contract the Contractor shall comply with the collaboration principles and interface obligations set out in Schedule 16 (*Collaboration*).

7.3 **Correction of non-conforming Services**

The Parties acknowledge and agree that:

(a) the provisions of Schedule 5 (*Performance Management and Measurement*) shall apply in relation to any failure by the Contractor to provide the Services (or any Goods related to the Services) in accordance with the Requirements. If a Service (or Goods related to a Service) is, or are, found to be deficient, defective or not in conformance with the applicable requirements of this Contract then:

(i) the Authority may at any time notify such deficiency, defect or non-conformance to the Contractor; and

(ii) the Contractor shall promptly proceed to rectify or re-perform such Services (or repair or replace the relevant Goods related to the Services) in order to bring such Services (or Goods related to such Services) into conformance with the applicable requirements of this Contract; and

(b) without prejudice to any ongoing obligation to perform the Services, where;

(i) not used; or

(ii) in respect of Services, the Contractor shall correct any defects, deficiencies or non-conformances (subject to and in accordance with the requirements of that acceptance process) until all the relevant criteria are satisfied and any applicable acceptance certificate has been completed in accordance with that acceptance process.

8 Sovereignty

The Contractor shall perform all Services in the United Kingdom unless required to perform services outside of the United Kingdom by:

(a) an express provision of this Contract; or

(b) a written Notice given by the Authority, at any time and from time to time during the Contract Period.

9 Mobilisation and Transition

The Authority and the Contractor shall comply with the provisions set out in Schedule 13 (*Transition Arrangements*).

Part 4 - Not Used

10 Not Used

Part 5 – Standards of Conduct and Required Consents

11 Standards

11.1 General Standards

11.1.1 Without prejudice to any other provision of this Contract, the Contractor shall perform its obligations hereunder, or ensure that its obligations are performed at all times:

(a) in accordance with Good Industry Practice; and

(b) having regard to and with a view to fulfilment of the Commercial Purpose; and

(c) in a manner that is not likely to be injurious to health or to cause damage to property.

11.1.2 Consistency of approach:

In taking steps to achieve the Commercial Purpose the Contractor shall use all reasonable endeavours to ensure that each part of (each a **Contractor Part**):

(a) its organisation;

(b) the organisation of each Contractor Group Member; and

(c) the organisation of every person acting on each Contractor Group Member's behalf or under its authority or control (including Sub-Contractors),

shall act consistently with each other Contractor Part in:

(i) assessing and dealing with subjects for their consideration; and

(ii) the application of, and compliance with, this Contract.

11.1.3 The Contractor shall use all reasonable endeavours to ensure that its organisational group structure is compatible with the effective and efficient delivery of the Requirements and shall not be an encumbrance to delivering the Commercial Purpose.

11.2 **Specific Standards**

Without prejudice to Clause 11.1 (*General Standards*), where applicable the provisions of Schedule 29 (*Specific Standards*) shall also apply.

12 Observance of Law and Regulations

12.1 The Contractor shall ensure that the Services and all operations and activities carried out by the Contractor and Contractor Personnel pursuant to this Contract shall be conducted in accordance, and comply at all times, with:

(a) all applicable Law; and

(b) each other instrument or code of practice whether or not having the force of law that applies or relates to the Services, including any Authority policy or guidance (each a **Regulation**).

12.2 Should there be any conflict or inconsistency between any of the Regulations, the Contractor shall comply and ensure the compliance by the relevant Contractor Personnel with the provision of the Regulation which requires the higher standard of performance save where this would be in breach of the Law, in which case the requirements of the Law shall prevail.

12.3 The Contractor shall include in its contracts with its Sub-Contractors provisions equivalent to those set out in Clauses 12.1 and 12.2, and shall enforce such provisions should any Sub-Contractor be in breach thereof.

13 Required Consents

13.1 The Contractor shall:

(a) Identify, obtain, maintain and comply with all Required Consents other than Authority Consents, where necessary entering into of any legal agreements necessary for the grant of such Required Consents;

(b) assist the Authority to obtain, maintain, implement and comply with all Required Consents (including any Nuclear Authorisation) that, as a matter of Law or policy, only the Authority is eligible to obtain (the Authority Consents);

(c) be responsible for implementing each Required Consent within the period of its validity in accordance with its terms and relevant Law save for those Required Consents which only the Authority can implement as a matter of Law or policy;

(d) other than in respect of Authority Consents, provide, free of charge, to the Authority Contract Manager a copy of any application for a Required Consent (with a copy of all accompanying drawings and other documents) and a copy of any Required Consents obtained and any associated legal agreement;

(e) comply with the conditions attached to any Required Consent and the terms of any associated legal agreement;

(f) procure that no Required Consent or associated legal agreement is breached by it or any Contractor Group Member; and

(g) preserve each Required Consent and procure that:

(i) each Required Consent is not revoked or quashed due to any act or omission of any Contractor Group Member; and

(ii) (to the extent within the Contractor's control) all Required Consents continue in full force and effect for such time as is necessary for the Contractor to carry out its obligations under this Contract,

and for the purposes of this Clause 13.1 the Contractor shall be deemed to have complied with its obligations to obtain or implement Required Consents to the extent that it has obtained or implemented the relevant Required Consents pursuant to any other agreement or arrangement between the Parties.

13.2 The Contractor shall not (and shall procure that no Contractor Group Member shall) without the prior consent of the Authority Contract Manager (which consent shall not be unreasonably withheld or delayed) apply for or agree to any change, relaxation or waiver of any Required Consent (whether obtained before or after the Commencement Date) or of any condition attached to it. Subject to the compliance by the Contractor with its obligations under this Clause and subject to the provisions of Clause 70 (*Change in Law*), references in this Contract to Required Consents shall be construed as referring to the Required Consents as from time to time varied, relaxed or waived.

13.3 The Contractor shall (subject to the terms of Schedule 12 (*Liabilities, Indemnities, Insurance, and Conduct of Claims*)) indemnify the Authority against all Losses incurred by it in respect of claims made against the Authority by third parties arising as a result of any breach of Clause 13.1 or Clause 13.2 by the Contractor and/or any act or omission of any Sub-Contractor or Contractor Group Member that results in such breach.

13.4 The Authority shall, subject to the Contractor's compliance with Clause 13.1(b), use all reasonable endeavours to obtain and/or maintain all Authority Consents. Any failure by the Authority to obtain and/or maintain any such Authority Consent shall constitute a Compensation Event for the purposes of and subject to Clause 53 (*Relief and Compensation Events*).

13.5 The provisions of Schedule 9 (*Standards of Conduct and Required Consents*) shall apply.

Part 6 – Pricing and Payment

14 Pricing and Payment

The provisions of Schedule 4 (*Pricing and Payment*) shall apply.

15 Contract Pricing Statement

The provisions of Schedule 17 (*Contract* Pricing *Statement*) shall apply.

Part 7 – Reviews, Performance Management, Records and Reporting

16 Progress Reports and Financial Reports

16.1 Progress Reports

16.1.1 The Contractor shall supply the Authority with monthly reports on the progress of this Contract. Such reports shall detail, as a minimum:

(a) performance against PIs, KPIs and delivery of the Services including as required in paragraph 2.1 of Part 3 to Schedule 5 (*Performance Management and Measurement*);

(b) risks and opportunities relating to, and arising from, performance of the Contractor's obligations;

(c) any other information specified in this Contract; and

(d) any other information reasonably requested by the Authority.

16.1.2 The Contractor shall supply reports under Clause 16.1.1 to the addressees, in the form and with the frequency that in each case is specified in Schedule 22 (*Reports*).

16.2 Progress Meetings

16.2.1 The Contractor shall attend progress meetings at the frequency and times specified by the Authority (acting reasonably) including within Schedule 6 (*Governance*).

16.2.2 The Authority Contract Manager and other members of its team that the Authority considers appropriate shall attend each meeting. The Authority Contract Manager shall advise the Contractor in advance of each meeting, the expertise of the Authority's supporting team.

16.2.3 The Contractor Contract Manager shall be required to attend each meeting supported by personnel suitably qualified to respond to the areas of expertise notified by the Authority.

16.2.4 All meetings will be held at a location to be agreed between the Contractor and the Authority or notified by the Authority in default of agreement.

16.2.5 Unless stated otherwise the Contractor shall be responsible for making a record of the discussions and decisions of the meeting, in draft form, to the Authority Contract Manager at the address given in Clause 82 (*Notices*), for agreement prior to the final version being issued.

16.3 Not Used

16.4 Financial Reports

The Contractor shall submit to the Authority, financial reports in the form provided at Schedule 18 (*Forms*) as detailed in and at the times required in Schedule 22 (*Reports*).

17 Annual Report and Review

17.1 Annual Report

17.1.1 The Contractor shall, no later than the day falling twenty (20) Business Days after last day of every Contract Year (in each case the **Reference Contract Year**), provide to the Authority a report which shall include the following information:

(a) the performance of the Contractor against the KPIs set out in Schedule 5 (*Performance Management and Measurement*) during the Reference Contract Year;

(b) a high-level review of the performance of all aspects of this Contract during the Reference Contract Year, including:

(i) its management; and

(ii) the operation of the Services;

(c) the extent to which, in the Contractor’s reasonable opinion, the FMSP Commercial Purpose is being achieved;

(d) Applied Headcount for the Reference Contract Year by grade and function;

(e) Not used.

(f) a summary of Changes made to the Contract in the Reference Contract Year;

(g) a summary of Changes to the Requirements which the Contractor understands are expected to be made to the Contract in the current Contract Year;

(h) a summary of Force Majeure Events, Relief Events and Compensation Events in the Reference Contract Year;

(i) a summary of Disputes (whether resolved or unresolved) which have arisen during the Reference Contract Year;

(j) a summary of any potential Qualifying Changes in Law as set out in Clause 70.4 (*Change in Law*); and

(k) any other information specific to the operation of the Contract in the Reference Contract Year which the Authority may require.

17.2 Not Used

17.3 Annual Contract Review

17.3.1 The Parties shall hold an Annual Contract Review as soon as reasonably practicable after provision of the Annual Contract Report for any Contract Year.

17.3.2 The Contractor shall deliver to the Authority Representative on the Strategic Board as part of the Annual Contract Review all such data, documents, records and information requested by the Strategic Board in accordance with Schedule 6 (*Governance*) in order to assist it to perform the Annual Contract Review.

17.3.3 The Strategic Board in accordance with Schedule 6 (*Governance*) shall consider the information submitted by the Contractor to the Authority Representative pursuant to the Annual Contract Report and Annual Contract Review.

17.4 Proposals, Estimates and Calculations

17.4.1 CAAS shall have rights of audit, check, inspection and examination generally in relation to this Contract as set out in Clause 18 (*Records*).

18 Records

18.1 The Contractor and its Sub-Contractors shall maintain all records specified in and connected with this Contract (expressly or otherwise), and make them available to the Authority when requested on reasonable notice.

18.2 The Contractor and its Sub-Contractors shall also permit access to relevant records that relate to the contractual obligations to Contractor Deliverables, held by or controlled by them and reasonably required by the Comptroller and Auditor General, their staff and any appointed representative of the National Audit Office, and provide such explanations and information as reasonably necessary for the following purposes:

(a) to enable the National Audit Office to carry out the Authority's statutory audits and to examine and/or certify the Authority's annual and interim report and accounts; and

(b) to enable the National Audit Office to carry out an examination pursuant to Part II of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.

18.3 With regard to the records made available to the Authority under Clause 18.1, and subject to Clause 73 (*Confidentiality and Freedom of Information*), the Contractor shall permit records to be examined and if necessary copied, by the Authority or the Authority Representative, as the Authority may require.

18.4 Unless otherwise specified in this Contract, the records referred to in this Clause 18 shall be retained for a period of at least 6 years from:

(a) the end of the Contract Period;

(b) the termination of the Contract; or

(c) the final payment under the Contract,

whichever occurs latest.

19 Not Used

20 Access and Facilities to be provided by the Contractor

20.1 The Contractor's progress and quality standards in performing the Services shall be monitored by the Authority. The Contractor shall provide to the Authority's representatives, relevant accommodation / facilities, at no direct cost to the Authority, and all reasonable access to its premises for monitoring the Contractor's progress and quality standards in performing the Contract.

20.2 Any accommodation provided pursuant to Clause 20.1 shall be adequately furnished, lit, heated and ventilated and shall include suitable cloakroom and communication facilities for the use of the Authority's representatives.

20.3 The Contractor shall use all reasonable endeavours to ensure that the provisions equivalent to those in Clause 20.1 are included in those of its Key Sub-Contracts as are identified by the Authority so that Authority's representatives may have access to and be provided with access and facilities at premises of Key Sub-Contractors that are being used in connection with performance of the Services. Access to such Key Sub-Contractors' premises shall be arranged by the Authority through the Contractor.

21 Performance Management

The provisions of Schedule 5 (*Performance Management and Measurement*) shall apply.

22 Risk Assessment

22.1 The process of risk assessment generally (whether by the Contractor or the Authority), which has been or may be undertaken in connection with this Contract, including the identification of (or failure to identify):

(a) particular risks and their impact; or

(b) risk reduction measures, contingency plans and remedial actions,

shall not in any way limit or exclude any Party's obligations under this Contract and shall be entirely without prejudice to any Party's rights, privileges and powers under this Contract.

22.2 Without prejudice to its rights or remedies under (or pursuant to, or in connection with) this Contract, the Contractor shall be deemed prior to executing this Contract to have, and warrants that it has, generally obtained for itself all necessary information as to:

(a) the risks, contingencies and all other circumstances which may influence or affect the Requirements and its obligation to provide the Services; and

(b) any other factors which would affect its decision to enter into this Contract or the terms on which it would do so.

Part 8 – Governance and Dispute Resolution

23 Governance

The provisions of Schedule 6 (*Governance*) shall apply.

24 Dispute Resolution

Any and all Disputes arising out of or in connection with this Contract shall be dealt with in accordance with the Dispute Resolution Procedure (as set out in Schedule 7 (*Dispute Resolution Procedure*)) unless it is expressly stated elsewhere in this Contract with reference to a particular type of dispute or to a dispute in relation to specific subject matter that:

(a) the Dispute Resolution Procedure shall not apply; or

(b) the Dispute Resolution Procedure shall apply only to a certain extent, in which case it shall apply to that extent.

Part 9 – Conduct at the Service Delivery Locations and other Government Establishments

25 Contractor's Personnel at the Service Delivery Locations and other Government Establishments

25.1 Liability in Respect of Damage to Government Property

Without prejudice to the provisions of Clause 37 (*GFA*) and Schedule 12 (*Liabilities, Indemnities, Insurance and Conduct of* Claims) (and in particular Paragraph 3.4 to Schedule 12 (*Claims relating to Government Establishments*), the Contractor shall make good or, at the option of the Authority, indemnify the Authority for all damage occurring to any Government property or any Third Party Contractor Property occasioned by the Contractor, a Sub-Contractor, or by any of the Contractor's Personnel, arising from its or their presence on a Government Establishment in connection with this Contract, provided that this Clause 25.1 shall not apply to any damage which is the subject of a Nuclear Indemnity.

25.2 Contractor's Property

All property of the Contractor and its Sub-Contractors and Contractor Personnel (each a **Contractor Party**) shall be at the risk of the Contractor whilst it is on any Government Establishment, and the Authority shall accept no liability for any loss or damage howsoever occurring thereto or caused thereby, except as follows and subject always to Paragraph 2.2.2 (*Authority's Liability*) of Schedule 12 (*Liabilities, Indemnities, Insurance and Conduct of Claims*):

(a) where any such loss or damage was caused or contributed to by any act, neglect or default of any H.M. Government servant or agent then the Authority shall accept liability therefor to the extent to which such loss or damage is so caused or contributed to as aforesaid; and/or

(b) where any property of the Contractor has been taken on charge by the Officer in Charge, and a proper receipt has been given therefor, then the Authority shall be liable for any loss or damage occurring to that property while held on such charge as aforesaid; and/or

(c) where such damage is the subject of a Nuclear Indemnity,

in which circumstances the Authority shall make good or, at the option of the Contractor in accordance with the provisions of Schedule 12 (*Liabilities, Indemnities, Insurance and Conduct of Claims*), pay compensation for any damage to such property.

25.3 Contractor Personnel

25.3.1 The Contractor shall submit in writing to the Authority for approval, initially and as necessary from time to time, a list of those Contractor Personnel who are reasonably likely to need to enter a Government Establishment for the purpose of, or in connection with, work under this Contract, giving such particulars as the Authority may require, including full details of birthplace and parentage of any such Contractor Personnel who:

(a) was not born in the United Kingdom;

(b) if he/she was born in the United Kingdom, was born of parents either or both of whom were not born in the United Kingdom.; or

(c) are not UK Nationals but Dual and Third Country Nationals (DTCN) have a Non-Disclosure Agreement (NDA) and Technical Assistant Agreement (TAA) in place for them to have the authority to either view or handle controlled technology or information.

25.3.2 The Authority shall issue clearance passes for those Contractor Personnel who are approved by it in accordance with Clause 25.3.1 for admission to a Government Establishment and Contractor Personnel shall not be admitted unless in possession of such a pass. Passes shall remain the property of the Authority and shall be surrendered on demand or on completion of the work.

25.3.3 Notwithstanding the provisions of Clauses 25.3.1 and 25.3.2 if, in the opinion of the Authority, any representative of the Contractor shall misconduct itself, or it shall not be in the public interest for any person to be employed or engaged by the Contractor in relation to this

Contract, the Contractor shall remove such person without delay on being requested to do so and shall cause the work to be performed by such other person as may be necessary.

25.3.4 The decision of the Authority upon any matter arising under Clauses 25.3.1 to 25.3.3 inclusive shall be final and conclusive.

25.4 Observance of Site Regulations

The following provisions apply:

(a) the Contractor shall ensure that all Contractor Personnel have the necessary probity as conclusively evidenced by the relevant Contractor Personnel undertaking the H.M. Government's Baseline Personnel Security Standard (the Security Standard) and, where applicable, are cleared to the appropriate level of security when employed within the boundaries of a Government Establishment;

(b) where the Contractor requires information on the Security Standard (or security clearance for Contractor Personnel) or is not in possession of the relevant rules, regulations or requires guidance on them, the Contractor shall apply in the first instance to the Authority Representative;

(c) on request, the Contractor shall be able to demonstrate to the reasonable satisfaction of the Authority that the Contractor's processes to assure compliance with the Security Standard have been carried out. Where that assurance is not already in place, the Contractor shall permit the Authority to inspect the processes being applied by the Contractor to comply with the Security Standard;

(d) the Contractor shall comply and shall ensure that all Contractor Personnel comply with the rules, regulations and requirements that are in force whilst at that Government Establishment which shall be provided by the Authority on request provided that if there is any change to such rules, regulations and requirements from those in force at the Commencement Date, this shall be addressed as a Change in Law; and

(e) 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. The provisions in Clause 25.4(d) relating to Change shall apply equally to this Clause 25.4(e).

25.5 Not Used

25.6 Not Used

25.7 Injuries, Disease And Dangerous Occurrences

The Contractor shall promptly report to the relevant Officer in Charge any of the following matters arising out of the performance of this Contract:

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

(b) the receipt by the Contractor of any statutory or regulatory notice from any Health and Safety Authority or Defence Authority asserting any material breach of Health and Safety Law or health and safety requirement.

25.8 Not Used

25.9 Not Used

25.10 Health And Safety Hazard Control

Where any Contractor Personnel are to enter a Government Establishment for the purpose of performing the Services:

(a) the Contractor shall notify the Officer in Charge or the site project liaison officer or the Authority Representative of:

(i) any health and safety hazards associated with the work to be performed by the Contractor or any of Contractor Personnel;

(ii) any foreseeable risks to the health and safety of all persons associated with such hazards; and

(iii) any precautions to be taken by the Contractor as well as any precautions which, in the opinion of the Contractor, ought to be taken by the Authority, in order to control such risks;

(b) the Authority shall notify the Contractor of:

(i) any health and safety hazards which may be encountered by the Contractor or any of Contractor Personnel on the Government Establishment;

(ii) any foreseeable risks to the health and safety of the Contractor or any of Contractor Personnel, associated with such hazards; and

(iii) any precautions to be taken by the Authority as well as any precautions which, in the Authority's opinion, ought to be taken by the Contractor, in order to control such risks;

(c) the Contractor shall notify Contractor Personnel of and, where appropriate, provide adequate instruction in relation to:

(i) the hazards, risks and precautions notified by the Contractor to the Authority under Clause 25.7(a);

(ii) the hazards, risks and precautions notified by the Authority to the Contractor under Clause 25.7(b); and

(iii) the precautions which, in the opinion of the Contractor, ought to be taken by Contractor Personnel in order to control those risks;

(d) The Contractor shall provide the Officer in Charge or the site project liaison officer or the Authority Representative with:

(i) copies of those sections of the Contractor's own safety policies and, where appropriate, the safety policies of Sub-Contractors which are relevant to the risks notified under Clause 25.7(a);

(ii) copies of any related risk assessments; and

(iii) copies of any notifications and instructions issued by the Contractor to Contractor Personnel under Clause 25.7(c); and

(e) the Authority shall provide the Contractor with:

(i) copies of those sections of the Authority's own safety policies which are relevant to the risks notified under Clause 25.7(b);

(ii) copies of any related risk assessments; and

(iii) copies of any notifications and instructions issued by the Authority to its employees similar to those called for from the Contractor under Clause 25.7(c).

25.11 Ensuring safety of Authority Personnel at Contractor sites

With respect to any workplace in a Leased and Licensed Area or Site which (in either case) is under the control of the Contractor as principal employer, the Contractor shall ensure that it manages all risks to the health and safety of any employees of the Authority including Authority Secondees who are visiting or working in such a workplace in accordance with the [Policy Statement][3].

[3] A Policy Statement to address relevant areas of safety management is being prepared by MoD.

25.12 Duty of co-operation and assurance

Where, in delivering the Services, the Contractor is engaged in operational activities which because of their nature give rise to duties or obligations for the Authority with respect to the safety of those activities, the Contractor shall provide all such assistance, information and co-operation to the Authority as the Authority may require to enable the Authority to discharge those duties or obligations.

25.13 Major Incidents

25.13.1 If in the course of provision of the Services there is an incident which causes damage to any part of a Government Establishment which leads to a breach of security or safety (a **Major Incident**) then:

(a) where the Contractor becomes aware of the occurrence of a Major Incident, the Contractor shall follow the prescribed actions in the Site Policies and the Authority Contract Manager; and

(b) where the Authority becomes aware of the occurrence of a Major Incident, which has an impact on the Contractor's ability to perform the Services, the Authority shall provide to the Contractor all information relating to such Major Incident that it considers, acting reasonably (which shall include taking into account any issues of national security), the Contractor requires to deal with that Major Incident.

25.13.2 If the Authority deems the incident to be sufficiently serious to require investigation, the Contractor shall, if so requested by the Authority, conduct such an investigation to establish the recovery and remedial action which the Contractor would undertake to rectify the situation (a **Major Incident Investigation**) and shall submit to the Authority Contract Manager the results of its investigations. If the incident is such that the UK Health and Safety Executive sets up an enquiry to investigate the cause then the Contractor shall be required only to establish recommendations for recovery and remedial action which the Contractor shall submit to the Authority Contract Manager as required.

25.13.3 Where an investigation is to be conducted by the Contractor, the Authority shall have the right to nominate other persons to participate in the investigation in any of the following capacities:

(a) as a member of the investigating team;

(b) in an advisory capacity; and

(c) to question witnesses.

25.13.4 The presence of other persons shall be without prejudice to the Authority's right to accept or reject the findings and recommendations of the investigation.

25.13.5 If the Contractor wishes to call the Authority's personnel to an enquiry, then prior approval to do so shall be sought from the Authority Contract Manager, who shall advise on the procedure to be followed.

25.13.6 If the Contractor wishes to call a member of staff belonging to other suppliers to an enquiry, then approval to do so shall be sought from the Authority Contract Manager, who shall advise on the procedure to be followed.

25.13.7 A full report of the investigation signed at director level of the Contractor (a **Major Incident Report**) shall be forwarded to the Authority Contract Manager and shall include:

(a) notes of oral evidence given;

(b) copies of any written evidence, sketches or diagrams which may be produced to illustrate evidence of witnesses; and

(c) conclusions and recommendations.

25.13.8 If there is any difference of opinion among the investigation team on any material point, the grounds of difference shall be stated fully.

25.13.9 The Major Incident Report shall be without prejudice to the rights of the Authority under this Contract, or otherwise, in respect of any loss or damage arising from any such incident.

25.14 Management of Health and Safety

(a) The Contractor shall, with respect to the provision of the Services and the Contractor's occupation of the Service Delivery Locations and Leased and Licenced Areas, comply in all respects with:

(i) all applicable Health and Safety Law;

(ii) all safety related requirements established by licence, permit or statutory notice granted or issued by Health and Safety Authorities from time to time including but not limited to nuclear site licences granted by the Office for Nuclear Regulation (**ONR**), and any notices issued by the ONR or Health and Safety Executive.

(b) The Contractor shall notify the Authority immediately upon becoming aware of any material breach of 25.14(a)(i) or 25.14(a)(ii).

(c) The Contractor shall at all times throughout the provision of the Services have in place and be certified under a recognised independently audited safety management system such as ISO 45001 or equivalent standard.

25.15 Health and safety and environmental performance reporting

25.15.1 The Contractor shall supply the Authority with reports on its performance, in terms of effective health and safety management and compliance with Environmental Law, in delivering the Services. Such reports shall include, as a minimum, details of the following matters arising out of or in connection with the Services:

(a) all reports and notifications which the Contractor or any Sub-Contractor has sent or been required to send to any Health and Safety Authority under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR);

(b) any other notifications or reports of breaches under Health and Safety Law or Environmental Law which the Contractor or any Sub-Contractor has sent or been required to send to any Competent Authority;

(c) the service on the Contractor or any Sub-Contractor of any statutory or regulatory notice from any Competent Authority or Defence Authority asserting any material breach of Environmental Law or Health and Safety Law or health and safety requirement;

(d) any other formal enforcement action in respect of any breach of Health and Safety Law or Environmental Law against the Contractor or any Sub-Contractor or any officer or manager of the Contractor or Sub-Contractor including criminal prosecution or the imposition of any civil sanction;

(e) copies of any compliance assessment reports relating to compliance with Environmental Law of Health and Safety Law produced by any Competent Authority for example and without limitation recording the level of compliance with Environmental Permits; and

(f) copies of independent audit or compliance reports relating to environmental or health & safety management or compliance, including audits of compliance with the Contractor's environmental management system such as DEFSTAN 00-051 Environmental Management Requirements for Defence Systems dated 14 April 2018 or equivalent environmental management standard or ISO 45001 or equivalent safety standard and with Safety, Health and Environment Manual BRD167 or any replacement or equivalent system as the Authority may specify.

25.15.2 The Contractor shall supply the reports under Clause **{** REF _Ref22577041 \w \h **}** to the addressees, in the form and with the frequency that in each case is specified in Schedule 22 (*Reports*).

26 Ammunition and Explosives

26.1 Explosion

26.1.1 In the event of any explosion or ignition of Authority owned ammunition or explosives the Contractor shall:

(a) immediately inform the Authority of the occurrence;

(b) as soon as practicable, furnish the Authority with full particulars of the incident and of any personal injury or loss of or damage to property;

(c) inform the Authority, immediately, of any claim made or action brought against the Contractor;

(d) advise the Authority whether the Contractor is, or would but for Clause 26.2 (*Compensation*) be, entitled to or have a claim for indemnity or contribution or other payment from any persons in respect of either loss or damage suffered by himself or any claim or proceeding brought against him;

(e) furnish the Authority with such further particulars as it may require;

(f) not, without the prior written consent of the Authority, make any payment, enter into any compromise or do anything which may prejudice it or the Authority in relation to any claim in respect of any personal injury or loss or damage to property.

26.2 Compensation

26.2.1 Subject to the Contractor complying with the requirements of Clause 26.1 (*Explosion*), the Authority will:

(a) make good or replace any loss (subject to Clause 26.2.2) or make good any damage to the property of the Contractor resulting from any such explosion or, at the option of the Authority, pay the cost thereof;

(b) indemnify the Contractor against all claims and proceedings made or brought against the Contractor by a third party in respect of any personal injury (including death) or loss including loss or damage to property resulting from any such explosion provided that the Contractor shall:

(i) allow the Authority to have control of all actions, proceedings and claims and the exclusive right to determine the conduct of such actions and proceedings, including the right to appoint counsel and solicitors;

(ii) forthwith upon sustaining any loss or damage or being notified of any claim or demand by a third party furnish in writing to the Authority particulars thereof and thereafter afford to the Authority such assistance and furnish such particulars and information as the Authority may from time to time require; and

(iii) not without the prior written consent of the Authority pay, compound or settle any action, proceeding or claim within the scope of this indemnity nor permit anything to be done which may prejudice or adversely affect the defence or disposal thereof,

provided that this Clause 26.2.1 shall not apply where any loss or damage:

(c) relates to:

(i) any risks in respect of which the Contractor is insured (including any deductible related to such insurances);

(ii) any risks which, although uninsured, the Contractor could reasonably have been expected to have been able to insure;

(iii) any insured risks where the Contractor and the Contractor's insurer under the Contractor's policy of insurance in respect of property or third party liability are connected persons. Any question whether the Contractor and its insurer are connected persons shall be determined in accordance with

the provisions for determining such question that are set out in section 839 of the Income and Corporation Taxes Act 1988;

(iv) payments of any nature whatsoever to pension funds or schemes operated by or on behalf of the Contractor or any Sub-Contractor, or any fund or scheme relating to an individual officer, servant or agent of the Contractor, including lump sum death benefit, pension payment, compensation payment or redundancy payment;

(v) any claims, proceedings, costs, expense, payments, loss or damage for which the Contractor has made provision, other than for insurance cover, in the Total Contract Price (either as a direct charge, indirect charge or contingency);

(d) is caused by:

(i) malicious acts, acts of sabotage, strikes, riots, civil commotion or labour disturbances;

(ii) wilful misconduct, lack of good faith, or negligence on the part of a Contractor Party;

(iii) the wilful disregard of instructions properly given to employees (including a Contractor Party) of the Contractor by the Authority (who for the purposes of this Clause shall include members of HM Armed Forces and members of any other armed forces with whom the Authority is acting in concert);

(iv) activities undertaken by a Contractor Party, its officers, servants or agents for purposes other than performance of the Contract except where those activities are in compliance with instructions properly given to Sub-Contractors or Contractor Personnel by the Authority (who for the purposes of this Clause shall include members of HM Armed Forces and members of any other armed forces with whom the Authority is acting in concert);

(v) use of any property of a Contractor Party, its officers, servants or agents for purposes other than performance of the Contract except where such use is in compliance with instructions properly given to Contractor Personnel by the Authority (who for the purposes of this Clause shall include members of HM Armed Forces and members of any other armed forces with whom the Authority is acting in concert);

(vi) activities undertaken by a Contractor Party which contravene any code of conduct or similar guidance issued by the Authority, for the purposes of defining the Authority's reasonable expectations of the conduct of a Contractor Party in the theatre of operations.

26.2.2 In Clause 26.2 "loss" shall mean:

(a) any loss which may fairly and reasonably be regarded as arising naturally from such explosion or any loss which may reasonable be expected to have been in the contemplation of the parties hereto at the date hereof as the probable result of any such explosion; and

(b) liability incurred to any third party (as determined by a court of competent jurisdiction) to the extent attributable to any such explosion.

Part 10 – Personnel

27 Qualifications and Experience

27.1 The Contractor shall ensure, as at the Commencement Date, and at all times thereafter that it has amongst its employees a sufficient number of Suitably Qualified and Experienced Personnel (**SQEP**).

27.2 The Contractor must ensure that all its Personnel comply with all HMNB Clyde mandated training.

28 Security

28.1 Interpretation

28.1.1 The Contractor shall:

(a) take all reasonable steps to ensure that all Contractor Security Personnel engaged on any work in connection with this Contract have notice that the Official Secrets Act 1911-1989 apply to them and will continue so to apply after the completion or termination of this Contract; and

(b) if directed by the Authority, ensure that any Contractor Security Personnel shall sign a statement acknowledging that, both during the term of this Contract and after its completion or termination, he is bound by the Official Secrets Acts 1911-1989 (and where applicable, any other Law).

28.2 Security Aspects Letter

The Contractor shall comply with the Security Aspects Letter (SAL) in its performance of this Contract.

28.3 Disclosure of Secret Matters

In addition to its obligations pursuant to Clause 73 (*Confidentiality and Freedom of Information*) the Contractor shall, not without the prior written consent of the Authority to do otherwise, either before or after the Expiry Date, do or permit to be done anything which it knows or ought reasonably to know may result in a Secret Matter being disclosed to or acquired by a person in any of the following categories:

(a) who is not a British citizen;

(b) who does not hold the appropriate authority for access to the Secret Matter;

(c) whom the Authority has notified the Contractor in writing that the Authority requires that Secret Matters shall not be disclosed to or acquired by that person;

(d) who is not a member of Contractor Security Personnel; or

(e) who is a member of Contractor Security Personnel but has no need to know the information for the proper performance of this Contract.

28.4 Access to Secret Matters

28.4.1 In addition to its obligations pursuant to Clause 73 (*Confidentiality and Freedom of Information*) unless it has the prior written consent of the Authority to do otherwise, the Contractor shall, both before and after the Expiry Date take all reasonable steps (including ensuring that all Contractor Security Personnel with access to Secret Matters comply with the requirements of this Clause) to ensure that:

(a) no photograph of, or pertaining to, any Secret Matter shall be taken and no copy of or extract from any Secret Matter shall be made except so far as may be necessary for the proper performance of this Contract; and

(b) any Secret Matter is at all times strictly safeguarded in accordance with the Security Policy Framework and upon request, is delivered to the Authority who shall be entitled to retain it.

28.4.2 The decision of the Authority, acting reasonably, on the question whether the Contractor has taken or is taking all reasonable steps as required by the foregoing provisions of this Clause 28.4 (*Access to Secret Matters*) shall be final and conclusive.

28.5 Persons with Access to Secret Matters

28.5.1 The Contractor shall provide to the Authority:

(a) upon request, such records giving particulars of those Contractor Security Personnel who have had access to a Secret Matter;

(b) upon request, such information as the Authority may require so as to be satisfied that the Contractor and Contractor Security Personnel are complying with this Clause 28 (*Security*), including the measures taken or prepared by the Contractor so as to comply with its obligations and to prevent any breach of them; and

(c) such particulars of any failure by the Contractor or any Contractor Security Personnel to comply with this Clause 28 (*Security*) immediately on such failure becoming apparent.

28.5.2 The Contractor shall ensure that, for the purpose of checking the Contractor's compliance with Clause 28.5 (*Persons with Access to Secret Matters*), a representative of the Authority shall be entitled at any time to enter and inspect any of the premises used by the Contractor connected with this Contract and inspect any document or thing in any such premises, which is being used or made for the purposes of this Contract. Such representative shall be entitled to all such information as he may reasonably require.

28.5.3 Subject to Clause 73 (*Confidentiality and Freedom of Information*) if at any time either before or after the expiry of the Contract Period it comes to the notice of the Contractor that any unauthorised person is seeking or has sought to obtain information concerning any Secret Matter, the Contractor shall forthwith inform the Authority of the matter with full particulars thereof.

28.5.4 If the Contractor proposes to make a Sub-Contract which will involve the disclosure of Secret Matter to the Sub-Contractor, the Contractor shall:

(a) submit for approval of the Authority the name of the proposed Sub-Contractor, a statement of the work to be carried out and any other details known to the Contractor which the Authority shall reasonably require;

(b) incorporate into the Sub-Contract the terms of Annex B to Schedule 14 *(Supply Chain and Sub-Contracting Strategy)* and such secrecy and security obligations as the Authority shall direct;

(c) inform the Authority immediately he becomes aware of any breach by the Sub-Contractor of any secrecy or security obligation and, if requested to do so by the Authority, terminate the Sub-Contract.

28.6 Nothing in this Clause shall be construed as intended to prevent any person from giving any information or doing anything on any occasion when it is, by virtue of any Law or Regulation, the duty of that person to give that information or do that thing.

28.7 Breach of Security

The Authority shall be entitled to terminate this Contract immediately if:

(a) the Contractor or any Contractor Security Personnel has committed a breach of or failed to comply with any of the foregoing provisions of this Clause 28 (*Security*); or

(b) the Contractor or any Contractor Security Personnel has committed a breach of any obligations in relation to secrecy or security imposed upon it by any other contract with the Authority, or with any department or person acting on behalf of Her Majesty, (together a Breach of Security) and the Authority considers the circumstances of the breach jeopardise the secrecy or security of the Secret Matter. In addition, the Authority may claim such damages as may have been sustained as a result of the Contractor's breach of this Clause.

28.8 A decision of the Authority to serve a Termination Notice in respect of Clause 28.7 shall be final and conclusive and it shall not be necessary for any Notice of such termination to specify or refer in any way to the event or considerations upon which the Authority's decision is based. However, to the extent permitted by law and the Authority's security policies, the

Authority shall provide reasonable details of the event or considerations upon which the Authority's decision is based.

28.9 Return or Destruction of Classified Documents

On expiry or termination of this Contract, the Contractor shall, as advised by the Authority, return or destroy all copies of classified documents (including drawings) issued to the Contractor by the Authority pursuant to (or for the purposes of the execution of) this Contract and certify that this has been done, unless written approval has been given for their retention.

28.10 Official-Sensitive Security Requirements

28.10.1 The Contractor shall protect all Information relating to the aspects designated as OFFICIAL-SENSITIVE as identified in the Security Aspects Letter annexed to the Contract, in accordance with the official security conditions contained in this Contract or annexed to the Security Aspects Letter.

28.10.2 The Contractor shall include the requirements and obligations set out in Clause 28.10.1 in any Sub-Contract placed in connection with or for the purposes of this Contract which requires disclosure of OFFICIAL-SENSITIVE Information to the Sub Contractor or under which any Information relating to aspects designated as OFFICIAL-SENSITIVE is created by the Sub-Contractor. The Contractor shall also include in the Sub-Contract a requirement for the Sub-Contractor to flow the requirements of this clause to its sub-contractors and through all levels of the supply chain to the lowest level where any OFFICIAL-SENSITIVE Information is handled.

28.10.3 In this condition “Information” means information recorded in any form disclosed or created in connection with the Contract.

29 Equality

29.1 The Contractor shall not unlawfully discriminate either directly or indirectly on the grounds of age, disability, gender (including re-assignment), sex or sexual orientation, marital status (including civil partnerships), pregnancy and maternity, race, or religion or belief.

29.2 Without prejudice to the generality of the obligation in Clause 29.1, the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 (or any statutory modification or re-enactment thereof) or other relevant or equivalent legislation in the country where this Contract is being performed.

29.3 The Contractor agrees to secure the observance of the provisions of this Clause 29 (*Equality*) by any of its employees, agents or other persons acting under its direction or control who are engaged in the performance of this Contract.

29.4 The Contractor agrees to reflect this Clause 29 (*Equality*) in any Sub-Contract that it enters into to satisfy the requirements of this Contract and to require its Sub-Contractors to reflect this Clause in their Sub-Contracts that they enter into to satisfy the requirements of this Contract.

30 Secondment

30.1 Agreement to Second

The Contractor and the Authority agree that from time to time during the Contract Period the Authority may seek to place Authority Secondees on secondment with the Contractor subject to the consent of the Secondees concerned, the agreement of the parties at the relevant time, and to the terms of this Clause 30 (*Secondment*).

30.2 Identification of Secondees

30.2.1 The Authority, acting reasonably and in consultation with the Contractor, shall identify which employees of the Authority are to be placed on secondment from time to time with the Contractor.

30.2.2 The Contractor shall provide to the Authority a list of employees of the Contractor who volunteer to become Royal Fleet Auxiliary personnel and the Authority shall be entitled at its discretion to accept or reject such volunteers.

30.3 Preservation of Employment Status

Throughout the secondments, Contractor Secondees shall remain employees of the Contractor and subject to the terms of their employment with the Contractor and the Authority Secondees shall remain employees of the Authority and subject to the terms of their employment with the Authority, save as expressly agreed otherwise between the Contractor and the Authority.

30.4 Duration of Secondments

30.4.1 The duration of each secondment shall be agreed between the Authority and the Contractor, before commencement of the relevant secondment, but all secondments will in any event terminate automatically upon termination of this Contract.

30.4.2 If the employment of any of the Contractor Secondees or the Authority Secondees terminates for any reason, the secondment of that Secondee shall automatically terminate at the date of termination of the Secondee's employment.

30.5 Entry of Secondment and Interchange Agreements

30.5.1 In respect of each Authority Secondee, before commencement of the relevant secondment, the Authority, the Contractor and the Authority Secondee shall enter into an interchange agreement with each Authority Secondee on agreed terms.

30.5.2 In respect of each Contractor Secondee, before commencement of the relevant secondment, the Authority, the Contractor and the Contractor Secondee shall enter into an interchange agreement on agreed terms.

30.5.3 The Authority shall be entitled to update, replace or amend any agreed interchange agreements (as referred to in Clauses 30.5.1 and 30.5.2) from time to time and where:

(a) the Contractor has been involved in industry wide consultation in relation to such updating, replacement or amendment, any changes shall be introduced into this Contract as a Mandatory Change; or

(b) the Contractor has not been involved in industry wide consultation in relation to such updating, replacement or amendment, the Authority shall notify the Contractor of any changes and they shall be introduced into this Contract through (and subject to) the Change Procedure.

31 Staff Arrangements

31.1 The provisions of Part 1 and Part 2 of Schedule 10 (*Personnel*) shall apply.

31.2 Non-Solicitation

Unless otherwise agreed by the Authority in writing, the Contractor shall not, on its own behalf or on behalf of or in conjunction with any other person, solicit or entice away or endeavour to solicit or entice away from the Authority any Authority employee (including RN Personnel) during the Contract Period and for a period of twelve (12) months after the Contract Period.

32 Pensions

The provisions of Part 4 of Schedule 10 (*Personnel*) shall apply.

33 Emergency Response Volunteers

The Contractor shall support all Contractor Employees who volunteer to form part of the Naval Base Nuclear Emergency Response Organisation (NERO) Team, including allowing all Contractor Employees paid time to attend training activities and incidents.

34 Industrial Action

In the event that the Contractor reasonably believes or is aware (and the Contractor shall take reasonable steps to ensure that it is aware) that any actual or threatened industrial action (whether or not in contemplation or furtherance of a trade dispute and whether or not authorised or endorsed by a trade union without the support of a ballot) including strike, go-slow, work to rule, lock-out or labour shortage, but excluding National Strikes not involving Contractor Personnel (**Relevant Industrial Action**), is likely to give rise to a right for the

Authority to issue an Required Action Notice, the Contractor shall, without prejudice to any other right or remedy the Authority has under this Contract, use all reasonable endeavours to:

(a) prevent such Relevant Industrial Action from occurring where possible; and

(b) mitigate the impact of any such Relevant Industrial Action on the performance of the Services.

Part 11 – Leased and Licensed Areas and Environmental Provisions

35 Leased and Licensed Areas

35.1 Schedule 11 (*List of Leased and Licensed Areas*) shall apply in relation to the use and occupation of the Leased and Licensed Areas.

35.2 The Contractor shall provide to the Authority and its representatives access to the Leased and Licensed Areas, for the Authority to undertake tasks for the purposes of its activities contemplated at Paragraph 4 of Part 2 of Schedule 2 (*Requirements*) and in regard to activities undertaken under Schedule 30 (*Change Procedure*), at no direct cost to the Authority. For the purposes of this clause, the Authority shall provide the Contractor with reasonable notification of the facilities it requires access to, and the period for which such access will be required, and the Contractor shall act reasonably in complying with the request.

36 Environmental Provisions

36.1 The Contractor shall comply with all Environmental Laws which may apply from time to time to the provision of the Services and/or the occupation of the Leased and Licenced Areas by the Contractor and it shall notify the Authority immediately upon becoming aware of any breach or potential breach of Environmental Laws.

36.2 The Contractor shall obtain maintain and comply fully with all Environmental Permits.

36.3 The Contractor shall, and shall procure that its Sub-Contractors shall, at all times throughout the provision of the Services, have in place and be certified under a recognised independently audited environmental management system such as DEF STAN 00-051 Environmental Management Requirements for Defence Systems dated 14 April 2018 or equivalent standard, applied to all aspects of the Services.

36.4 The Contractor shall obtain and maintain until the expiry or termination of this Contract an environmental insurance policy on terms approved by the Authority (such approval not to be unreasonably withheld) covering operational risks associated with the Services on terms generally available in the market for operational risk environmental insurance.

36.5 The Contractor shall not cause or knowingly permit the presence of any Hazardous Substance in on or under the Service Delivery Locations or the Leased and Licensed Areas in circumstances which constitute a breach of Environmental Law or give rise or may give rise to a legal requirement for Remediation.

36.6 The Contractor shall not exacerbate, mobilise, disturb, release, or cause to migrate any Hazardous Substances at, on, in, under or from (as the context so requires) the Service Delivery Locations or the Leased and Licensed Areas.

36.7 The Contractor shall provide to the Authority all such information and documentation in relation to Environmental Matters at the Service Delivery Locations / Leased and Licensed Areas as the Authority may reasonably require from time to time, including in relation to any Environmental Permit, any Hazardous Substance stored or used or any Environmental Matter relevant to the Services.

36.8 The Contractor shall not disclose information to any Regulatory Body in relation to any Environmental Matter at or in connection with the Service Delivery Locations and Leased and Licensed Areas without giving the Authority reasonable notification that it is going to make such a disclosure and obtaining the Authority's written approval for such a disclosure (such approval not to be unreasonably withheld) save for disclosures which are expressly required by Law. The Contractor shall give Notice to the Authority as soon as possible of any disclosures made in accordance with this Clause 36.8.

36.9 The Contractor shall notify the Authority immediately of any breach or alleged breach of its obligations or duties under this Clause 36 (*Environmental Provisions*), including any spillage or accident involving the release of Hazardous Substances, and any investigation into or enforcement action taken in respect of any Environmental Matter by a Regulatory Body.

36.10 The Contractor shall indemnify the Authority against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full

indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Authority arising out of or in connection with any breach by the Contractor of its obligations and duties contained within this Clause 36 (*Environmental Provisions*).

36.11 Save in respect of any breach by the Contractor of Clause 36.6 and without prejudice to the Authority's right to claim against the Contractor or any member of the Contractor's Group in respect of Historic Contamination where it has previously provided services at the Service Delivery Locations pursuant to a separate contract with the Authority, the Contractor shall not under this Clause 36 (*Environmental Provisions*) assume any responsibility or liability for the Remediation of Historic Contamination.

36.12 Any dispute in relation to the liability of the Contractor arising under this Clause 36 (*Environmental Provisions*) will be referred to the Dispute Resolution Procedure.

Part 12 – GFA, Issued Property and Redundant Materiel

37 GFA

37.1 **GFA Provision**

37.1.1 For the purposes of this Clause 37 any reference to GFA includes any services to be provided to the Contractor by the Authority pursuant to this Contract (whether directly or through an FMSP Third Party Contract). Any reference to Issued Property does not include a reference to such services.

37.1.2 Throughout the Contract Period and subject to and in accordance with its terms, the Authority shall provide or shall procure the provision by third parties of (in either case, free of charge) GFA as referred to in Schedule 15 (*GFA*) (including all GFA listed on the Asset Register at Annex A to Schedule 15 (as applicable) as at the Service Delivery Date.

37.1.3 For the avoidance of doubt, any equipment, assets, property or other items required by the Contractor to perform its obligations hereunder, unless expressly provided by the Authority under the terms of this Contract, will be provided by the Contractor at the Contractor's cost.

37.2 **Verification of GFA**

37.2.1 No later than twenty (20) Business Days after the Effective Date, the Contractor will provide to the Authority a list (the Initial GFA List) of all items it has identified from the Asset Register as essential to the performance of the Contractor's obligations under this Contract on and from the Service Delivery Date;

37.2.2 No later than twenty (20) Business Days after the Contractor has supplied the Initial GFA List, the Authority shall confirm in writing to the Contractor its agreement to the list, which shall become the **Final GFA List** and shall be maintained on an ongoing basis in accordance with Clause 39 on the Asset Register.

37.3 **Inspection of GFA**

37.3.1 As part of the arrangements set out at Schedule 13 (*Transition Arrangements*), the Contractor shall be provided with access to the GFA items identified in the Final GFA List in order to confirm the location and condition of the listed items.

37.3.2 No later than twenty (20) Business Days after the Service Delivery Date, the Contractor shall provide to the Authority a list which, for those items identified on the Final GFA List, the Contractor has identified as:

(a) cannot be located; or

(b) (based on the Contractor's reasonable opinion) not fit for purpose or the use of which would breach relevant Law and/or Regulations (in which case the Contractor will also provide a short description of the issue and also whether such issue could be remedied, including, where possible, the likely difference in cost between repair and replacement and whether any items are Redundant Materiel).

37.3.3 Where an item on the Final GFA List in accordance with Clause 37.3.2(a) is missing, the Authority will at its discretion, use its reasonable endeavours to:

(a) procure such item (or replacement item (as appropriate)); or

(b) request that the Contractor procure such item (at the Authority's cost);

or where an item, in accordance with Clause 37.3.2(b), is damaged:

(c) have the item repaired; or

(d) instruct the Contractor to repair such item (in which case the Contractor shall be provided with such access to the item as reasonably required) at the Authority's cost; and

37.3.4 where any instruction is issued to the Contractor in accordance with Clause 37.3.3 it will be managed in accordance with the procedure at Schedule 30 (*Change Procedure*).

37.3.5 For the avoidance of doubt, the Authority shall have no obligations whatsoever in respect of any items in respect of which the Authority has not provided confirmation under Clause 37.2.2.

37.4 **Obligations in respect of GFA**

37.4.1 From the Service Delivery Date and throughout the Contract Period:

(a) the Contractor undertakes to the Authority to utilise all GFA for its intended purpose only, to exercise all due and reasonable care in the use of GFA and to comply at all time with any guidelines in respect of such GFA and which have been provided to the Contractor in accordance with Clause 37.1.1.

(b) subject to Clause 37.1.3, in the event that the Authority is unable to provide any GFA as described in Clause 37.1.1 by the time, and in the quantities, agreed with the Contractor (and unless the Authority is able to provide a suitable alternative to allow the Contractor to comply with its obligations under this Contract), the Contractor shall be entitled to serve a Notice on the Authority Representative (as soon as practicable but otherwise not later than two (2) Business Days after the Authority's inability to so provide) identifying where the performance of its obligations under this Contract will be adversely affected by such failure of provision (an **Affected Service**) and the anticipated costs of acquiring services, equipment or other assets (on a like for like basis) in lieu of the remaining GFA, always demonstrating best value for money. Where failure by the Authority to provide the GFA will result in an Affected Service, the Authority shall, at its option:

(i) amend its Requirements in respect of the obligations effected so as to enable the Contractor to comply with its obligations hereunder insofar as is possible in the absence of the GFA; or

(ii) authorise pursuant to Schedule 30 (*Change Procedure*) the acquisition by the Contractor of services, equipment or other assets in lieu of the GFA;

(c) any services, resources, facilities, information, equipment or other supplies acquired in lieu of the GFA under this Clause 37.4.1 (other than any on a temporary or leased basis) shall thereafter for the purposes of this Contract be deemed to be GFA.

(d) where any such services, resources, facilities, information, equipment or other supplies acquired in lieu of the GFA under Clause 37.4.1 have been secured by the Contractor on a temporary or leased basis, notwithstanding this Part 12 of the Agreement, these shall not be treated as GFA and the Contractor shall be solely responsible for their appropriateness and for their care, maintenance, upkeep and return.

(e) pending the exercise of the Authority's option under Clause 37.4.1 (b) (or, if later, until the alternative services, equipment or assets whose acquisition has been authorised by the Authority is ready for use in the delivery of the Services (which may include installation, configuration or calibration)) the Contractor shall be:

(i) relieved from any Performance Deductions or Retentions under Schedule 5 (*Performance Management and Measurement*) liability for any failure or delay in the performance of the Affected Service; and/or

(ii) entitled to claim any direct costs reasonably and properly incurred by the Contractor and authorised by the Authority (in writing) as a result of performing the Affected Services,

to the extent such failure, delay or additional cost is directly attributable to the absence of such GFA and subject to the Contractor having used reasonable endeavours to mitigate such impact on the performance of the Affected Services.

(f) the provisions of Clauses 37.4.1 (b) and 37.4.1 (e) shall not apply where the Authority's failure to provide GFA is as a result of a Contractor Group Member or a Sub-Contractor of such Contractor Group Member failing to provide the relevant GFA to the Authority pursuant to a separate contract with the Authority.

(g) save as set out in this Clause 37.4.1, the Authority shall not be liable to the Contractor for any Loss arising as a result, whether directly or indirectly, of the Authority not providing any services, information, equipment, assets or supplies which are not specified in Schedule 15 (*GFA*) or otherwise agreed to be provided by the Authority.

(h) To the extent that the Parties identify any new assets required to support the performance of the Services, which if they were provided by the Authority would constitute GFA, the Parties shall discuss and agree, in good faith, the most suitable method for procuring such items and the Party best placed to carry out such procurement.

37.5 **Maintenance and Repair**

37.5.1 The Authority shall supply to the Contractor copies of all Manufacturers' instructions in its possession in relation to GFA which have not already been provided to the Contractor on or before the Service Delivery Date. The Authority further undertakes to forward all up-dates and additional instructions that it receives in respect of GFA as reasonably practicable.

37.5.2 The Contractor undertakes and agrees to keep the GFA in good and serviceable condition. The Contractor shall ensure all regular care, use and day to day maintenance and repair of GFA is performed in accordance with Good Industry Practice and the Contractor shall (unless otherwise agreed) comply with any recommendations or instructions of the Manufacturer or service provider (or any equivalent as relevant) or the Authority and all applicable Laws and Regulations.

37.6 Defects

37.6.1 In relation to any GFA which is not Issued Property the Contractor shall notify the Authority of any defects, deficiencies or discrepancies in such GFA as soon as reasonably practical after becoming aware of such defect, deficiency or discrepancy but in any event not later than two (2) Business Days. For the purposes of this Clause, defects, deficiencies and discrepancies shall include where such GFA is not safe, or of the quality required to perform its function in the context of the Services, where there exist material errors or omissions (in the case of information and documentation), or where viruses or malicious code are present (in the case of software).

37.6.2 If the Contractor fails to comply with its obligations under Clauses 37.4 or 37.5 above or any defect, deficiency or discrepancy of GFA (whether properly notified to the Authority under Clause 37.6.1 or not) is determined by the Authority to have been caused by the Contractor, the Authority shall be entitled either itself or through a third party to arrange for the replacement, repair, maintenance, substitution or re-performance of GFA (as appropriate and at the Authority's discretion) and the Contractor shall reimburse to the Authority on demand by the Authority all reasonable costs and expenses incurred by the Authority in connection with such replacement, repair or maintenance.

38 Issued Property and GFA

38.1 All Issued Property shall remain the property of the Authority and shall be used in the performance of the Services and for no other purpose except with the prior approval of the Authority.

38.2 Neither the Contractor, nor any Sub-Contractors nor any other person, shall have a lien on Issued Property for any sum due to them, and the Contractor shall take all such steps as may be necessary to ensure that the title of the Authority, and the exclusion of any such lien, are brought to the notice of all Sub-Contractors and other persons dealing with any Issued Property.

38.3 In relation to any Issued Property issued to the Contractor prior to the Service Delivery Date the Contractor shall notify the Authority of any defects, deficiencies or discrepancies in such Issued Property within ten (10) Business Days of becoming aware of the same. Subject to Clause 38.10, the Contractor shall not be liable in respect of defects, deficiencies or

discrepancies notified to the Authority in accordance with this Clause, which the Contractor can show could not reasonably have been mitigated by it.

38.4 For Issued Property and GFA issued to the Contractor on or after the Service Delivery Date, within ten (10) Business Days of receipt, or such later date as the Parties shall agree, of the Issued Property, the Contractor shall:

(a) check the Issued Property to verify that it corresponds with the relevant consignment note;

(b) conduct a reasonable visual inspection;

(c) conduct any additional inspection and testing as may be necessary and practicable to check that the Issued Property is not defective or deficient for the purpose for which it has been provided; and

(d) notify the Authority of any defects, deficiencies or discrepancies discovered.

38.5 Where Issued Property is packaged it shall not be unpacked earlier than is necessary. The period identified at Clause 38.4 shall count from the date on which packages are opened in respect of any packaged Issued Property.

38.6 Issued Property that is provided to the Contractor or other plant and equipment which is acquired for use by the Contractor or its Sub-Contractors in connection with provision of the Services but at the cost of the Authority shall be owned by the Authority and, where appropriate, licensed for use by the Contractor under the provisions set out in this Part 12 (GFA, Issued Property and Redundant Material).

38.7 If requested, the Authority, within a reasonable time, and where practicable before delivery of the Issued Property, shall notify the Contractor of the value of the Issued Property.

38.8 Subject to Clause 38.9, the Contractor shall be responsible for the safe custody and due return of Issued Property and shall be responsible for all loss or damage thereto, until re-delivered in accordance with the Authority's instructions upon termination or expiry of this Contract.

38.9 Subject to Clause 38.1, the Contractor shall not be liable in respect of:

(a) defects, deficiencies or discrepancies notified to the Authority in accordance with Clause 38.4 (d) or latent defects which the Contractor can show could not reasonably have been discovered by means of the activities described at Clause 38.4;

(b) fair wear and tear in respect of Issued Property resulting from its normal and proper use in the provision of the Services (except insofar as the deterioration is contributed to by any misuse, lack of care or want of maintenance by the Contractor or its Sub-Contractors or any Contractor Personnel); and

(c) Issued Property rendered unserviceable as a direct result of ordinary and proper performance of the Contractor's obligations under this Contract.

38.10 The Contractor shall not be relieved from liability under Clauses 38.3 or 38.9 where any such defects, deficiencies or discrepancies are present as a result of a Contractor Group Member or a Sub-contractor of such Contractor Group Member providing such Issued Property to the Authority pursuant to a separate contract with the Authority and with such defects, deficiencies or discrepancies present**.**

38.11 **Treatment of Issued Property and GFA**

38.11.1 The Contractor shall, in respect of the items identified in Schedule 15 (*GFA*) be responsible for:

(a) safe, secure and suitable storage, protection, installation, testing, commissioning and maintenance and shall use its reasonable endeavours to ensure that any guarantee which may be given to the Authority in respect of such items shall not be invalidated;

(b) subject to Clause 38.11.1 (c) below, repair, replacement, maintenance, testing and calibration whilst such GFA is held by the Contractor. The Contractor is to carry out

such repair, maintenance, testing and calibration in accordance with Law, Good Industry Practice, equipment handbooks and associated documentation issued by or on behalf of the Authority. If no such handbooks or documentation exist, the Contractor shall use its reasonable endeavours to carry out such repair, maintenance, testing and calibration as is appropriate and reasonable in a workmanlike and proper manner;

(c) the replacement of an item of GFA which is deemed by the Parties acting reasonably and in good faith to be beyond economic repair and which has a replacement value of up to and including five thousand (£5,000) pounds, subject to an instruction being given pursuant to Schedule 30 (*Change Procedure*).

39 Accounting for Property of the Authority

39.1 Contractor Obligations

39.1.1 The Contractor shall:

(a) with effect from the Service Delivery Date, maintain one or more registers which, when taken together, contain a list of all Property of the Authority, as defined in Clause 39.2.1 (Definition and Application), as required to reasonably satisfy the Authority's asset accounting centre (the Asset Registers);

(b) comply in all regards with DEFSTAN 05-099 which shall include maintenance of a Public Stores Account in accordance with the DEFSTAN;

(c) provide the Authority with reports of the Authority Asset Registers, two (2) weeks prior to the end of each contract quarter of a twelve (12) month accounting period, in accordance with Schedule 22 (*Reports*) A digital copy of the Asset Registers shall be provided which shall demonstrate any change from the preceding three (3) months. In addition, upon the request of the Authority submit additional copies of the Asset Registers to the Authority in paper or digital form. The submission by the Contractor and receipt by the Authority of any such copies shall not prejudice any rights or obligations of the Authority or the Contractor under this Contract;

(d) ensure that the Asset Registers are available for inspection by the Authority at any reasonable time;

(e) on being given twenty (20) Business Days' Notice (or any other period as has been stated in this Contract) permit, and co-operate with, the Authority to conduct audits of the Asset Registers in a manner to be determined by the Authority; where the Authority has reasonable grounds to doubt the integrity of the Asset Registers to the extent that the Authority is not satisfied of the proper use of Property of the Authority, an audit may be conducted without Notice; and

(f) if the Authority agrees that a Sub-Contractor at whatever level of sub-contracting shall have responsibility in the Sub-Contractor's public store account for Property of the Authority issued in aid of this Contract, the Contractor shall include in any Sub-Contract with those Sub-Contractors only the provisions corresponding to those set out in this Clause 39 that apply to Property of the Authority issued in aid of the Sub-Contract, in particular this Clause 39.1 and Clauses 39.2 (*Definition and Application*), 39.3 (*Post-completion effect*) and 39.4 (*Amendments to the requirement for Accounting for Property of the Authority*).

39.2 **Definition and Application**

39.2.1 For the purposes of this Clause 39 (*Accounting for Property of the Authority*) **'Property of the Authority**' means GFA and fixed assets, Issued Property and property of the Authority issued to the Contractor under any other authorising document, in each case as such property is:

(a) detailed in Paragraph 1.2 of Schedule 15 (*GFA*); and

(b) listed in the Asset Register.

39.2.2 This Clause 39 shall apply to all Property of the Authority issued to the Contractor under this Contract, whether or not in aid of this Contract and regardless of whether this is used by the

Contractor. Without prejudice to the foregoing, Property of the Authority issued prior to the date of this Contract or pursuant to other contracts or agreements with the Authority may be subject to separate contractual arrangements.

39.3 **Post-completion effect**

The obligations of the Contractor arising under this Clause 39 in respect of Property of the Authority issued in aid of this Contract shall survive completion of this Contract and shall not be completed until all such obligations are fulfilled.

39.4 **Amendments to the requirement for Accounting for Property of the Authority**

The Authority reserves the right to request amendment to the requirement for Accounting for the Property of the Authority where the amendments arise from the Department's proper and reasonable accounting requirements. For the purposes of this Clause, the Asset Registers shall be regarded as a part of the Output Specification and if the Authority exercises this right:

(a) the Authority shall raise an Authority Notice of Change in respect of its revised requirements and the Parties shall process that Authority Notice of Change through (and in accordance with) Schedule 30 (*Change Procedure*)*;* and

(b) the Contractor shall implement the agreed Change at the commencement of the Department's next accounting year provided that a Notice of six (6) months or such other period as may expressly be agreed between the Authority and the Contractor is given to the Contractor. These amendments shall not have retrospective effect.

40 Redundant Materiel

40.1 All items of all kinds including equipment, stores, supplies and spares which are, in the opinion of the Contractor, redundant and:

(a) result from work carried out under this Contract; and/or

(b) are procured for the purposes of this Contract whether or not made available to the Contractor, the costs of which have been paid by the Authority (whether directly or indirectly); and/or

(c) are in the ownership of the Authority,

(each being **Redundant Materiel**) shall only be disposed of by the Contractor with the prior approval of the Authority.

40.2 The Contractor shall prepare:

(a) a list of those items of Redundant Materiel which are considered to be serviceable or repairable which shall record the condition of each item, and, in the case of repairable items, the estimated price of repair; and

(b) a list of those items of Redundant Materiel which are considered to be unserviceable and which cannot be economically repaired or are otherwise considered to be scrap.

40.3 Such lists shall be prepared when considered necessary by the Contractor, but in any event the Contractor shall prepare lists on the first anniversary of the Service Delivery Date and on every anniversary of the Service Delivery Date thereafter and six (6) months prior to the date on which the Contract Period will expire by effluxion of time.

40.4 The lists referred to in Clause 40.2 above shall be countersigned by the Authority Representative and shall be sent to the Authority.

40.5 Following the receipt of the lists, the Authority shall issue disposal instructions to the Contractor, requiring that the items of Redundant Materiel are either:

(a) transferred to other subsisting contracts; or

(b) retained by the Contractor for use in the performance of future contracts placed with the Contractor; or

(c) used by the Contractor under a separate contract with the Authority; or

(d) disposed of via the Defence Equipment Sales Authority; or

(e) sold by the Contractor, acting on behalf of the Authority, for the best price reasonably obtainable provided that Redundant Materiel sold in accordance with this Clause 40.5 (e) shall, if so specified by the Authority, be dismantled and disposed of in such a manner as to preclude the possibility of resale in its existing form.

40.6 The proceeds of the sale of items of Redundant Materiel sold pursuant to Clause 40.5 (e) above shall, subject to any agreed Contractor costs associated with such sale of items, be credited to the Authority in accordance with arrangements made between the Contractor and the Authority. A list of the items sold by the Contractor in accordance with Clause 40.5 shall be sent to the Authority together with a statement of the proceeds of sale.

Part 13 – Liabilities, Indemnities, Insurance and Conduct of Claims

41 Liabilities, Indemnities, Insurance and Conduct of Claims

The provisions of Schedule 12 (*Liabilities, Indemnities, Insurance and Conduct of Claims*) shall apply.

Part 14 – Not used

42 Not used

43 Not used

44 Not used

45 Not used

Part 15 – Intellectual Property Rights, IT, Shared Data Environment and Business Continuity Planning

46 Intellectual Property Rights

The provisions of Schedule 8 (*Intellectual Property Rights*) shall apply.

47 Not Used

48 Cyber

48.1 Authority Obligations

The Authority shall:

(a) at its sole discretion, determine the Cyber Risk Level appropriate to this Contract and, where the Contractor has not already been notified of the Cyber Risk Level prior to the date of this Contract, shall provide notification of the relevant Cyber Risk Level and the appropriate Cyber Security Instructions to the Contractor as soon as is reasonably practicable; and

(b) notify the Contractor as soon as reasonably practicable where the Authority reassesses the Cyber Risk Level relating to this Contract.

48.2 Contractor Obligations

Subject to Clause 48.3, the Contractor shall, and shall procure that its Sub-Contractors shall:

(a) comply with DEFSTAN 05-138;

(b) without prejudice to the Contractor's obligations under Schedule 14 (*Supply Chain and Sub-Contracting*), complete the CSM Risk Assessment Process in accordance with the Authority's instructions, ensuring that any change in the Cyber Risk Level is notified to any affected Sub-Contractor, and complete a further CSM Risk Assessment Process or CSM Supplier Assurance Questionnaire where a change is proposed to the Contractor's supply chain which has or may have an impact on the Cyber Risk Level of this Contract or on receipt of any reasonable request by the Authority;

(c) carry out the CSM Supplier Assurance Questionnaire no less than once in each year of this Contract commencing on the first anniversary of completion of the CSM Supplier Assurance Questionnaire;

(d) having regard to the state of technological development, implement and maintain all appropriate technical and organisational security measures to discharge its obligations under this Clause 48 in accordance with Good Industry Practice provided always that where there is a conflict between the Contractor's obligations under sub-clause (c) above and this sub-clause (d) the Contractor shall notify the Authority in accordance with the notification provisions in DEFSTAN 05-138 as soon as it becomes aware of the conflict and the Authority shall determine which standard or measure shall take precedence;

(e) comply with all obligations imposed under the Cyber Implementation Plan in accordance with the timescales set out therein;

(f) comply with all Cyber Security Instructions notified to it by the Authority as soon as reasonably practicable;

(g) notify the MOD Defence Industry Warning, Advice and Reporting Point, within the Joint Security Coordination Centre (or any successor body notified by way of ISN) in accordance with ISN 2014/02 as amended or updated from time to time and the Contractor's NSA/DSA, and in the case of a Sub-Contractor also notify the Contractor, immediately in writing as soon as they know or believe that a Cyber Security Incident has or may have taken place providing full details of the circumstances of the incident and any mitigation measures already taken or intended to be taken;

(h) in coordination with its NSA/DSA, investigate any Cyber Security Incidents fully and promptly and co-operate with the Authority and its agents and representatives and

its NSA/DSA to take all steps to mitigate the impact of the Cyber Security Incident and minimise the likelihood of any further similar Cyber Security Incidents. For the avoidance of doubt, this shall include complying with any reasonable technical or organisational security measures deemed appropriate by the Contractor's NSA/DSA in the circumstances and taking into account the Cyber Risk Level;

(i) consent to the Authority recording and using information obtained in relation to the Contract for the purposes of the Cyber Security Model whether on the Supplier Cyber Protection Service or elsewhere. For the avoidance of doubt such information shall include the cyber security accreditation of the Contractor and / or Sub-Contractor as appropriate; and

(j) include provisions in all Sub-Contracts imposing provisions equivalent to this Clause 48 (the Equivalen**t Provisions**) and, where a Sub-Contractor breaches terms implementing this Clause in a Sub-Contract, the Contractor shall, and shall procure that its Sub-Contractors shall, in exercising their rights or remedies under the relevant Sub-Contract:

(i) immediately notify the Authority of any such breach and consult with the Authority regarding any remedial or other measures which are proposed as a consequence of such breach, taking the Authority's views into consideration; and

(ii) have regard to the Equivalent Provisions.

48.3 Cyber Implementation Plan

48.3.1 In the event of a conflict in or between the provisions of the Cyber Implementation Plan and the obligations set out at Clause 48.2 above then, without prejudice to the generality of Clause 48.2, the provisions of the Cyber Implementation Plan shall prevail and Clause 48.2 shall be deemed to be amended to the minimum extent necessary to eliminate such conflict.

48.3.2 Where:

(a) the Contractor has notified the Authority that it or one or more if its Sub-Contractors cannot comply with any of sub Clauses 48.2(a) to 48.2(j) above, or

(b) the Authority has notified the Contractor that the Contractors' response to a CSM Supplier Assurance Questionnaire has revealed a failure of the Contractor or one or more of its Sub-Contractors to comply with sub-Clauses 48.2(a) to 48.2(j) above,

(c) the Contractor shall prepare and deliver to the Authority for review and comment as soon as practicable (and in any event within five (5) Business Days of such notification) an updated Cyber Implementation Plan describing its proposed methodologies for rectifying said Sub-Contractor non-compliance (an "**Updated Cyber Plan**").

48.3.3 After the delivery of the Updated Cyber Plan, the Authority shall either approve the revised Updated Cyber Plan or provide the Contractor with written comments. The Contractor shall give due consideration to the Authority's comments and shall provide a revised Updated Cyber Plan to the Authority within five (5) Business Days of receiving the Authority's comments. The Authority shall either approve the revised Updated Cyber Plan or provide further written comments in which case the process set out in this Clause shall be repeated until the Authority approves the Updated Cyber Plan.

48.3.4 Where the Authority has approved an Updated Cyber Plan, this shall supersede all previous Cyber Implementation Plans and the Contractor shall, and shall procure that its Sub-Contractors shall, comply with such Updated Cyber Plan until implementation is agreed to have been achieved whereupon sub-Clauses 48.2(a) to 48.2(j) above shall apply in full. In the event that no Updated Cyber Plan has been approved by the Authority within thirty (30) Business Days of the Contractor's initial notification, the provisions of Clause 24 (*Dispute Resolution*) shall apply.

48.4 Management of Sub-Contractors

48.4.1 Where the Contractor becomes aware that a Sub-Contractor is not complying with its obligations, the Contractor shall immediately notify the Authority and provide full details of

the Sub–Contractor's non-compliance as soon as reasonably practicable and shall consult with the Authority as to the appropriate course of action which may include the agreement of a remedial plan or termination of the Sub-Contract having regard to Clause 48.2(i) and without prejudice to the Authority's rights under Clause 56 (*Step-in Rights*).

48.4.2 Having regard to the Authority's views, the Contractor shall take all reasonable measures to address any non-compliance of a Sub-contractor within the reasonable timescales required by the Authority. Where the Contractor fails to do so, this shall amount to a breach of this Clause 48 and the provisions of Clause 48.7 as appropriate shall apply.

48.5 Records

48.5.1 Without prejudice to the Contractor's obligations under Part 7 (*Reviews, Performance Management, Records and Reporting*), and Clause 28 (*Security*) the Contractor shall keep and maintain, and shall ensure that any Sub–Contractor shall keep and maintain, until six (6) years after termination or expiry of this Contract, or as long a period as may be agreed between the Parties, full and accurate records including:

(a) details of all Authority Identifiable Information relating to the Contractor Deliverables provided under this Contract; and

(b) copies of all documents required to demonstrate compliance with DEFSTAN 05-138 and this Clause 48, including any information used to inform the CSM Risk Assessment Process and to carry out the CSM Supplier Assurance Questionnaire, together with any certificates issued to the Contractor and/or Sub-Contractor.

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

48.6 Audit

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

(a) to review and verify the integrity, confidentiality and security of any Authority Identifiable Information;

(b) to review the Contractor's and/or any Sub-Contractor's compliance with its obligations under this Clause 48; and

(c) to review any records created during the provision of the Contractor Deliverables, including any documents, reports and minutes which refer or relate to the Contractor Deliverables for the purposes of sub-clauses 48.5.1(a) and 48.5.1(b) above.

48.6.2 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor and/or Sub-Contractor's performance of the Services or delay the provision of the Contractor Deliverables and supplier information received by the Authority in connection with the audit shall be treated as confidential information.

48.6.3 The Contractor shall, and shall ensure that any Sub-Contractor shall on demand provide the Authority and any relevant regulatory body, including the Contractor's NSA/DSA, (and/or their agents or representatives), together **the Auditors**, with all reasonable co-operation and assistance in relation to each audit, including:

(a) all information requested by the Authority within the permitted scope of the audit;

(b) reasonable access to any Sites controlled by any Contractor Group Member and any Sub-Contractor and to any equipment used (whether exclusively or non-

exclusively) in the performance of the Contract and, where such Sites and/or equipment are outside the control of the Contractor, shall secure sufficient rights of access for the Auditors as shall be necessary to allow audits to take place; and

(c) access to any relevant staff.

48.6.4 The Authority shall endeavour to (but is not obliged to) provide at least fifteen (15) Business Days' Notice of its intention to conduct an audit. The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 48, unless the audit identifies a material breach of the terms of this Clause 48 by the Contractor and/or Sub–Contractor in which case the Contractor shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.

48.7 Breach of Obligations

48.7.1 Where the Cyber Risk Level of this Contract is assessed to be a moderate or high, and the Contractor breaches any of the terms of this Clause 48, the Authority shall be entitled:

(a) to terminate the Contract (whether in whole or in part) and to claim damages as though such breach is a material breach; and

(b) where the Contract has not been terminated, to recover from the Contractor any loss sustained in consequence of any breach of this Clause 48.

48.7.2 Where the Cyber Risk Level of this Contract is assessed to be very low or low, and the Contractor breaches the terms of this Clause 48, the Authority shall be entitled:

(a) to recover from the Contractor the amount of any loss sustained in consequence of any breach of this Clause 48, subject to any provision which is agreed elsewhere in this Contract; and

(b) where the Contractor does not comply with any reasonable instructions issued by the Authority or the Contractor's NSA/DSA within the time period specified to remedy such breach or prevent further breaches, the Authority shall be entitled to terminate this Contract (whether in whole or in part) and to claim damages as though such breach is a material breach.

48.7.3 Where the Contractor commits an act of fraud, negligence or wilful misconduct in respect of its obligations under this Clause 48 the Authority shall be entitled to terminate this Contract (whether in whole or in part) and to claim damages in accordance with Clause 57.1.8 (*Material Breach*) as though such breach is a material breach.

48.8 General

48.8.1 On termination or expiry of this Contract the provisions of this Clause excepting sub–Clauses 48.2(b)and 48.2(c) (Contractor Obligations) above shall continue in force so long as the Contractor and/or and Sub–contractor holds any Authority Identifiable Information relating to this Contract.

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

48.8.3 The Contractor agrees that the Authority has absolute discretion to determine changes to DEFSTAN 05-138 and/or the Cyber Risk Level. In the event that there is such a change to DEFSTAN 05-138 or the Cyber Risk Level, then either Party may seek an adjustment to the Total Contract Price for any associated increase or decrease in costs and the Contractor may request an extension of time for compliance with such revised or amended DEFSTAN 05-138 or Cyber Risk Level provided always that the Contractor shall seek to mitigate the impact on time and cost to the extent which it is reasonably practicable to do so and further provided that such costs shall not be allowed unless they are considered to be appropriate, attributable to the Contract and reasonable in all the circumstances.

48.8.4 Subject to sub-Clause 48.7.3 above, where the Contractor seeks such adjustment or extension, the Authority will proceed in accordance with Schedule 30 (*Change Procedure*) to determine the request for adjustment or extension. The Contractor must deliver a Contractor

Change Proposal to the Authority within eight (8) weeks of the occurrence of the change in DEFSTAN 05–138 or Cyber Risk Level or such longer period as may be agreed by the Parties, identifying the impact of that change and accompanied by full details of the request for adjustment. For the avoidance of doubt, the Authority shall not be required to withdraw any Authority Notice of Change which may have been issued insofar as it relates to DEFSTAN 05–138 or the Cyber Risk Level whether or not the Contractor Change Proposal is rejected. In the event that the Contractor does not agree with the Authority's determination, then the provisions of Clause 24 (*Dispute Resolution*) shall apply.

48.8.5 The Contractor shall not recover any costs and/or other losses under or in connection with this Clause where such costs and/or other losses are recoverable or have been recovered by the Contractor elsewhere in this Contract or otherwise. For the avoidance of doubt this shall include the cost of implementing any upgrades or changes to any information system or electronic communications network whether in response to a Cyber Security Incident or otherwise, where the Contractor is able to or has recovered such sums in any other provision of this Contract or has recovered such costs and/or losses in other contracts between the Contractor and the Authority or with other bodies.

49 Use of a Shared Data Environment Service

49.1 Scope

The Contractor will utilise a SDE System in accordance with this Clause 49 for the Contract Period, in order to comply and perform the requirements of this Contract.

49.2 Participation in the Electronic Information Sharing Agreement (EISA)

The Contractor shall, when so requested by the Authority, enter into an Electronic Information Sharing Agreement with one or more Users, including the Authority, who may from time to time participate in the SDE. The Electronic Information Sharing Agreement, to be known as the EISA, shall be in the form of DEFFORM 687C (Edition 06/01).

49.3 Operation of the SDE System

49.3.1 The Contractor shall, in relation to its Access and use of the SDE System, at all times:

(a) liaise and cooperate with requests of the [Service Administrator];

(b) comply with, and only Access or otherwise use the SDE System in accordance with, the User Protocol document [as notified to the Contractor by the Authority from time to time];

(c) comply with, and only Access or otherwise use the SDE System in accordance with, the Authority's instructions;

(d) only access or otherwise use the SDE System in accordance with the security, confidentiality and data protection requirements applicable to the Contract and the EISA;

(e) only Access the SDE System using the secure User authentication method notified to the Contractor by the Authority;

(f) set appropriate Access permissions for Information uploaded to the SDE System in accordance with its classification; and

(g) unless otherwise approved in advance by the Authority, or for the purposes of operating the SDE System in accordance with this Clause 49.3 (*Operation of the SDE System*), not permit Access to, or any other use of, the SDE System or any Information by any third party.

49.3.2 If the Contractor appoints a Sub-Contractor, where permitted by Schedule 14 (*Supply Chain and Sub-Contracting* Strategy), [the Sub-Contractor must become a signatory to the EISA prior to such appointment.

49.3.3 The Contractor shall ensure that the Contractor Representative and its Sub-Contractors comply with the requirements set out in this Clause 49.3 when accessing or otherwise using the SDE System. The Contractor shall be responsible for any breaches by the Contractor Representative and/or of its Sub-Contractors of the requirements set out in this Clause 49.3.

50 Management of the SDE System

50.1 The Authority shall, in accordance with due regard to his obligations under the EISA:

(a) provide the Contractor with controlled Access;

(b) ensure, as far as is reasonably practical, that all Information, including associated marks and legends, is Accessible only by Users authorised to have Access and is not altered, lost or destroyed;

(c) monitor the Access and usage of the SDE to detect any instances of misuse, malicious attack, unauthorised Access and any other threat to its Integrity;

(d) implement and maintain a virus control policy and make details thereof available to the Contractor, in accordance with the EISA;

(e) operate an EISA Data configuration management control system in accordance with the EISA;

(f) implement and maintain an EISA Data back-up policy; and

(g) ensure that, if any part of the SDE System is changed, the Contractor's ability to Access Information and the levels of Fidelity and Integrity are not adversely affected.

50.2 Storage and Archiving

50.2.1 For the duration of the Contract the Authority shall arrange that:

(a) The Contractor's EISA Data, when stored in the SDE System, is maintained from the date of being loaded into the SDE for the Contract Period [***DN: insert another period if specified in the SDE SOR***], after which time (following reasonable Notice to the Contractor) it shall be Expunged unless:

(i) a specific request for its retention in the SDE System is made by the Contractor;

(ii) it is withdrawn by the Contractor in accordance with the EISA; or

(iii) it is Archived.

(b) The Contractor's EISA Data on the SDE System can be Archived when it is no longer required by the Contractor; and

(c) when requested by the Contractor, the Contractor's Archived EISA Data is reinstated on the SDE System.

50.2.2 At the end of the Contract, the Authority shall arrange that:

(a) all the Contractor's Information in the SDE is Archived and retained in a useable format for a period of not less than two (2) years [***DN: insert a longer period if specified in the SDE SOR***]; and

(b) during the period to which Clause 50.2.2(a) applies, and within ten (10) Business Days of being requested, the Contractor's retained EISA Data is made available to the Contractor on a medium to be agreed between the Authority and the Contractor. A fair and reasonable price shall be agreed for satisfying each request.

50.2.3 At the expiry or termination of his obligations under the Contract the Contractor shall, on the direction of the Authority, either Expunge or surrender to the Authority all EISA Data stored in the SDE System and any Archive, always provided that the Log shall not be Expunged or destroyed.

50.3 The Log

50.3.1 The Authority shall establish a Log and ensure that all instances of Access to the SDE System (except where the User Protocol provides otherwise) are automatically logged therein, recording as a minimum:

(a) details of any Information Accessed;

(b) identity of the User; and

(c) date and time of the Access.

50.3.2 The Authority shall also record the details of any unauthorised or denied Access attempts, including the identity of the user or, insofar as it can be ascertained, any other third party making the attempt, the information system into which the attempt was made and the date and time of the attempt.

50.3.3 The Authority shall maintain the Log during the term of the Contract and thereafter for a period of no less than 2 (two) years and shall make available to the Contractor relevant certified extracts relating to the Contractor's Information, in accordance with the EISA. The Contractor shall fulfil any request for visibility of an extract of the Log under this Clause 50.3.3 within seventy-two (72) hours.

50.4 Availability of System

50.4.1 The Authority shall use reasonable endeavours make the SDE System available [DN: insert parameters defined in the SDE SOR].

50.4.2 At least forty-eight (48) hours before the commencement of any scheduled maintenance requiring system down time or degradation, all Users shall be notified by the Authority of the time of commencement of such down time or degradation and its expected duration. Periods of scheduled maintenance shall not exceed [DN: insert timescales specified in the SDE SOR].

50.4.3 The Authority shall give as much warning as is reasonably practicable to the Contractor of periods where the SDE System is required to be interrupted for unscheduled maintenance. The periods of inaccessibility shall not exceed [DN: insert timescales specified in the SDE SOR].

50.4.4 Following any interruption, the Authority shall use reasonable endeavours to ensure that the SDE System is restored in a timely manner.

50.4.5 The Authority does not warrant that the Contractor's use of the SDE System will be uninterrupted or error-free. The Authority shall not be responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Contractor acknowledges that use of the SDE System may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

51 Business Continuity and Disaster Recovery Planning

51.1 The Contractor shall maintain an ISO 22301 certification throughout the Contract Period.

51.2 The Contractor shall develop and maintain a business continuity and Disaster recovery plan in accordance with Good Industry Practice (the **BCDR Plan**). The BCDR Plan shall be provided to the Authority on request.

51.3 The Contractor shall ensure that it is able to implement the provisions of the BCDR Plan at any time in accordance with its terms. If an event occurs which requires the BCDR Plan to be implemented under the terms of the BCDR Plan, the Contractor shall immediately implement the BCDR Plan.

51.4 The Contractor shall test the BCDR Plan on a regular basis (and, in any event, not less than once in every twelve (12) month period). The Authority shall be entitled to participate in such tests as it may reasonably require.

51.5 Following each test, the Contractor shall send to the Authority a written report summarising the results of the test and shall promptly implement any actions or remedial measures which the Authority considers to be necessary as a result of those tests.

51.6 The Contractor shall proactively contribute to and engage in the planning, execution and delivery of any Naval Base business continuity plan, as required by the Authority. As part of this obligation, the Contractor shall nominate key Contractor Personnel to be called upon in the event of an incident that is the subject of such Naval Base business continuity plan.

Part 16 - Supervening Events

52 Force Majeure Events

52.1 Definitions

52.1.1 For the purpose of this Contract, but subject to Clauses 52.1.3 to 52.1.5, a Force Majeure Event means one of the events or circumstances listed in Clause 52.1.2.

52.1.2 The list of events or circumstances referred to in Clause 52.1.1 are:

(a) nuclear, chemical or biological contamination caused other than by the Contractor or the Authority or any persons over whom the Contractor or the Authority exercises control;

(b) war, civil war, armed conflict or terrorism in each case arising within or affecting the United Kingdom to the extent that this is not an event under Clause 55.2; and

(c) pressure waves caused by devices travelling at supersonic speeds.

52.1.3 Where a Force Majeure Event directly causes or results in the Contractor or the Authority (the Affected Party) failing to perform, or being delayed in performing any of its obligations owed to the Other Party (the Other Party) under this Contract, the remaining provisions of this Clause 52 shall apply.

52.1.4 The inability (however caused) of a Party to pay shall not be a Force Majeure Event.

52.1.5 Brexit and any event arising as a result of Brexit (including any of the events specified in Clause 52.1.2) shall not constitute a Force Majeure Event.

52.2 Giving of Notice

The Affected Party shall give written Notice to the Authority or the Contractor (as appropriate, the **Other Party**) as soon as possible and in any event within two (2) Business Days of its Contract Manager becoming aware of a Force Majeure Event. Such Notice shall contain an estimate of the period of time required to overcome the Force Majeure Event and its effects, and details of the obligations under this Contract in respect of which the Affected Party is claiming relief.

52.3 Contractor as Affected Party

52.3.1 Where the Contractor is the Affected Party:

(a) the Contractor must use and continue to use all reasonable endeavours to avert or prevent the occurrence of the relevant Force Majeure Event and/or to minimise and mitigate the effects of such Force Majeure Event on the performance of the Services as soon as reasonably practicable after the onset of the event, acting in accordance with Good Industry Practice;

(b) the Contractor must, within five (5) Business Days (or by the end of such longer period as the Contractor and the Authority shall agree) of receipt by the Authority of the Notice referred to in Clause 52.2 (Giving of Notice), confirm and provide supporting evidence to the Authority's satisfaction that:

(i) neither it nor any Sub-Contractor could reasonably have foreseen the occurrence or consequences of the relevant Force Majeure Event and could not have avoided such occurrence or consequences by taking steps which they might reasonably be expected to have taken, without incurring material additional expenditure;

(ii) the Force Majeure Event has given rise to a need for the relief specified by the Contractor; and

(iii) it has complied with Clause 52.3.1(a).

52.3.2 For so long as and to the extent that the Force Majeure Event directly causes or results in the Contractor failing to comply with any of its obligations under this Contract and provided it has complied with Clauses 52.3.1(a) and 52.3.1(b), the Contractor shall be relieved from any action for failure to comply with such obligations.

52.4 Authority as Affected Party

52.4.1 Where the Authority is the Affected Party:

(a) the Authority must, within ten (10) Business Days (or by the end of such longer period as the Contractor and the Authority shall agree) of receipt by the Contractor of the Notice referred to in Clause 52.2 (*Giving of Notice*), confirm and provide supporting evidence to the Contractor that the Force Majeure Event has given rise to a need for relief from the obligations under this Contract specified by the Authority; and

(b) the Authority shall for the period of the Force Majeure Event be entitled to such relief as the Parties agree (or as is determined via the Fast Track Procedure) in relation to performance of any adversely affected obligation of the Authority under this Contract (which may include, to the extent appropriate, an extension of time to perform the obligation).

52.5 Other Provisions

52.5.1 Subject to Clause 60 (*Termination for Prolonged Force Majeure Events*), this Contract may not be terminated by the Other Party under any provision where the grounds for such termination are the result of a Force Majeure Event.

52.5.2 The Affected Party shall notify the Other Party within forty eight (48) hours of the cessation of the Force Majeure Event and shall resume performance of any affected obligations as soon as possible after giving such Notice.

52.5.3 If the parties disagree that a Force Majeure Event has occurred and / or the extent of relief claimed by the Affected Party, the matter shall be resolved in accordance with the provisions of the Fast Track Procedure of the Dispute Resolution Procedure.

52.5.4 Nothing in this Clause 52 or in this Contract as a whole shall constitute grounds for relief or an extension of time to the Contractor or a Contractor Group Member under any other contract which the Contractor or Contractor Group Member may have with the Authority.

52.5.5 Where a Force Majeure Event results in any delay to the Planned Service Delivery date, the Expiry Date shall be extended by a period equivalent to the length of any such delay.

52.6 Costs

52.6.1 If a Force Majeure Event directly causes or results in the Contractor failing to perform any Services pursuant to its obligations under this Contract, then the Authority shall not be obliged to pay for any such Services to the extent that they have not been performed.

52.6.2 Nothing in Clause 52 shall affect any entitlement to make deductions or any deductions made in accordance with Schedule 5 (*Performance Management and Measurement*) during the period in which the Force Majeure Event is subsisting.

53 Relief Events and Compensation Events

53.1 Relief Events

53.1.1 For the purposes of this Contract, a Relief Event means one of the events or circumstances listed in Clause 53.1.2, provided that Brexit and any event arising as a result of Brexit (including any of the events specified in Clause 53.1.2) shall not constitute a Relief Event.

53.1.2 The events or circumstances referred to in Clause 53.1.1 are:

(a) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation (to the extent it does not constitute a Force Majeure Event), earthquakes, riot and civil commotion;

(b) failure by any statutory undertaker, utility company, local authority or other like body to carry out works or provide services;

(c) any failure or shortage of power, fuel or transport;

(d) any blockade or embargo which does not constitute a Force Majeure Event, and

(e) any strike occurring within the United Kingdom:

(i) which has been called by the national or other principal executive committee of an independent trade union (within the meaning of Section 5 of the Trade Union and Labour Relations (Consolidation) Act 1992) which is a recognised trade union within the meaning of the Trade Union and Labour Relations Act (Consolidation) Act 1992;

(ii) which has been endorsed by a properly conducted ballot of the members affected; and

(iii) in which all or selected members of such a union, whether or not employed by the Contractor or any of its Sub-Contractors, have been invited by its national or other principal executive committee to withdraw their labour as part of a national campaign of industrial action (a National Strike):

53.1.3 If, as a direct result of a Relief Event:

(a) there is a delay to the Planned Service Delivery Date; or

(b) the Authority's or the Contractor's ability to perform any of its obligations under this Contract is adversely affected,

then the Authority is relieved from its relevant obligations and the Contractor is entitled to apply for relief from any rights of the Authority arising under Clause 57 (*Contractor Default)* and its obligations under this Contract.

53.1.4 Subject to Clause 53.1.6, to obtain relief, the Contractor must:

(a) use and continue to use all reasonable endeavours to avert or prevent the occurrence of the relevant Relief Event and to minimise and mitigate the effects of such Relief Event on the performance of the Services as soon as reasonably practicable after the onset of the Relief Event, acting in accordance with Good Industry Practice;

(b) as soon as practicable, and in any event within five (5) Business Days after it became aware that the Relief Event has caused or is likely to cause delay and/or adversely affect the ability of the Contractor to perform its other obligations, give to the Authority a Notice of its claim for relief from its obligations under the Contract, including full details of the nature of the Relief Event, the date of occurrence and its likely duration;

(c) within five (5) Business Days of receipt by the Authority of the Notice referred to in Clause 53.1.4(b) above, give full details of the relief claimed; and

(d) demonstrate to the reasonable satisfaction of the Authority that:

(i) the Contractor and its Sub-Contractors could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken, without incurring material expenditure;

(ii) the Relief Event directly caused the delay to the Planned Service Delivery Date or the need for relief from performance of obligations under this Contract;

(iii) it has complied and is continuing to comply with Clause 53.1.4(a).

53.1.5 Following service of a Notice by the Contractor pursuant to Clause 53.1.4(b) above, the Contractor shall promptly supply to the Authority any further information relating to the delay which is received by the Contractor or is reasonably requested by the Authority.

53.1.6 In the event that the Contractor has complied with its obligations under Clause 53.1.4, then the Planned Service Delivery Date shall be postponed by such time as shall be reasonable for such a Relief Event, taking into account the likely effect of the delay, the Expiry Date shall be extended by the period equivalent to the length of any such delay and the Authority shall not be entitled to exercise its rights to terminate the Contract under Clause 57 (Contractor Default) and, subject to Clause 53.1.7, shall give such other relief as has been requested by the Contractor.

53.1.7 Nothing in Clause 53.1 shall affect any entitlement to make deductions or any deductions made as a result of Schedule 5 (*Performance Management and Measurement*) during the period in which the Relief Event is subsisting provided that any such deductions shall be disregarded for the purpose of the Authority's right to terminate this Contract for a Contractor Default.

53.1.8 In the event that information required by Clause 53.1.4 is provided after the dates referred to in that Clause, then the Contractor shall not be entitled to any relief during the period for which the information is delayed.

53.1.9 The Contractor shall notify the Authority if at any time it receives or becomes aware of any further information relating to the Relief Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.

53.1.10 If the Parties disagree that a Relief Event has occurred and/or the extent of relief claimed by the Contractor, the matter shall be resolved in accordance with the provisions of the Fast Track Procedure of the Dispute Resolution Procedure within Schedule 7 (*Dispute Resolution Procedure*).

53.2 Compensation Events

53.2.1 For the purposes of this Contract, a Compensation Event means any material failure by the Authority, its employees or agents to meet the Authority Responsibilities, provided that a Force Majeure Event, Brexit and any failure to meet an Authority Responsibility as a result of Brexit shall not constitute a Compensation Event.

53.2.2 If, as a direct result of the occurrence of a Compensation Event, the Contractor is unable to provide the Services with effect from the Planned Service Delivery Date or comply with its obligations under this Contract, then the Contractor is entitled to:

(a) apply for relief from and/or an extension of time for performance of its obligations under this Contract; and

(b) claim compensation in respect of appropriate, attributable and reasonable costs which have resulted from such Compensation Event,

in each case subject to and in accordance with this Clause 53.2.

53.2.3 Subject to Clause 53.2.6, to obtain relief, an extension of time and/or claim compensation the Contractor must:

(a) use and continue to use all reasonable endeavours to avert or prevent the occurrence of the relevant Compensation Event and to minimise and mitigate the effects of such Compensation Event on the performance of the Services as soon as reasonably practicable after the onset of the Compensation Event, acting in accordance with Good Industry Practice;

(b) as soon as practicable, and in any event within five (5) Business Days after it became aware that the Compensation Event has caused or is likely to cause delay or a breach of an obligation under this Contract, give to the Authority a Notice of its claim for relief from its obligations under the Contract, an extension of time, and/or payment of compensation;

(c) within five (5) Business Days of receipt by the Authority of the Notice referred to in Clause 53.2.3(a) above, provide the Authority full details of the Compensation Event and the relief, extension of time and/or reasonable, additional costs claimed; and

(d) demonstrate to the reasonable satisfaction of the Authority that:

(i) the Compensation Event directly caused the delay to the Planned Service Delivery Date, the reasonable, additional costs and/or breach of the Contractor's obligations under this Contract; and

(ii) it has complied and is continuing to comply with Clause 53.2.3(a).

53.2.4 Following service of a Notice by the Contractor pursuant to Clause 53.2.3, the Contactor shall promptly supply to the Authority any further information relating to the delay which is:

(a) received by the Contractor; or

(b) is reasonably requested by the Authority.

53.2.5 If the Contractor has complied with its obligations under Clause 53.2.3, then:

(a) in the case of a delay to the Planned Service Delivery Date, such date shall be postponed by such time as shall be reasonable for such a Compensation Event, taking into account the likely effect of the delay;

(b) where the Planned Service Delivery Date is postponed, the Expiry Date shall be extended by the period equivalent to the length of any such postponement;

(c) in the case of additional cost the Authority will, in accordance with Clause 53.2.6, compensate the Contractor in respect of additional appropriate, attributable and reasonable costs reasonably and properly incurred by the Contractor as a direct result of the Compensation Event (subject to the Contractor mitigating the impact of the relevant event in accordance with this Clause 53.2) including any additional appropriate, attributable and reasonable costs resulting from an increase in the reasonably and properly incurred costs of the Contractor's Sub-Contractors; and

(d) the Authority shall give the Contractor such relief from its obligations under the Contract and / or extension of time, as is reasonable for such a Compensation Event.

53.2.6 In the event that information is provided after the dates referred to in Clause 53.2.5, then the Contractor shall not be entitled to any extension of time, compensation, or relief from its obligations under the Contract in respect of the period for which the information is delayed.

53.2.7 The Contractor shall notify the Authority if at any time it receives or becomes aware of any further information relating to the Compensation Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.

53.2.8 If the parties disagree that a Compensation Event has occurred, and/or the extent of relief claimed by the Contractor, the matter shall be resolved in accordance with the provisions of the Fast Track Procedure of the Dispute Resolution Procedure.

53.3 No relief for Affiliates

The Contractor shall not be entitled to relief or compensation under this Clause 53 where the Relief Event or Compensation Event occurs due to a failure by an Affiliate of a Contractor Group Member to comply with its obligations under any contract or arrangement between that Contractor Group Member and the Authority or any Authority Contractor.

Part 17 – Service Continuity

54 Transition to War

54.1 The Contractor shall continue to provide the Services in peacetime and during periods of crisis, tension, emergencies, and surge, in transition to war and during hostilities.

54.2 In the event of crisis, tensions, emergencies, surge or hostilities affecting the Services the Authority shall be entitled (but not obliged) to exercise its rights under Clause 55 (*Measures in a Crisis*).

55 Measures in a Crisis

55.1 Notice of Events

If, at any time, the Authority believes, in its sole opinion, that there exist circumstances to which Clause 55.2 (*Trigger Events*) below applies, it may issue a Notice to the Contractor of such belief.

55.2 **Trigger Events**

The circumstances referred to in Clause 55.1 (*Notice of Events*) above are, where in view of:

(a) a material threat to the national security and defence, or a material adverse effect on the national interests, of the United Kingdom, or the occurrence of a state of war, crisis, state of tension or other emergency (whether or not involving hostilities); or

(b) a request to the Authority by a local authority, public body, or statutory corporation for assistance in relation to the occurrence or possible occurrence of a major accident, crisis or natural disaster; or

(c) a request by NATO, the EU or the United Nations for support or assistance in relation to international obligations; or

(d) the existence of an emergency or the occurrence of an unforeseen event affecting a Service Delivery Location or its operations or the performance by the Parties or the provision of the Services by the Contractor, whether directly or indirectly, and which causes or has the potential to cause an immediate and imminent threat to the long term integrity of any part of the Service Delivery Locations or to land adjacent to, or likely to be affected by events on, any part of the Service Delivery Locations or the viability of the relevant Service Delivery Location, the performance of this Contract or the provision of Services by the Contractor,

it is necessary, appropriate, or desirable for the Authority to take all or any of the measures described in Clauses 55.3 (*Effect of Implementation of Measures in a Crisis*) to 55.6 (*Notice of Cessation*) (inclusive) below. Any event described in this Clause 55.2 arising as a result of Brexit shall constitute a valid trigger event.

55.3 **Effect of Implementation of Measures in a Crisis**

If the Authority has issued a Notice contemplated in Clause 55.1 (Notice of Events), the Authority may require the Contractor, within such period as may be specified by the Authority in its sole discretion, to provide such information as the Authority may in its sole discretion require, including information relating to all or any of the following matters:

(a) the services under this Contract being carried out by the Contractor (or due to commence being carried out by the Contractor within the period that the Authority estimates that the circumstances set out in its Notice under Clause 55.1 (Notice of Events) will continue) for:

(i) the Authority; and

(ii) any third parties;

(b) the Contractor's current deployment of its employees; and

(c) the committed and uncommitted skills, resources and personnel that the Contractor has available to assist the Authority during the period that the Authority estimates that the circumstances set out in its notice under Clause 55.1 (*Notice of Events*) will continue.

55.4 **Good faith discussion**

Upon providing the Authority with the information requested pursuant to Clause 55.3 (*Effect of Implementation of Measures in a Crisis)* above, or upon expiry of the period specified by the Authority for the supply of such information, the Contractor shall, upon being so requested by the Authority, discuss in good faith with the Authority any matters which the Authority, in its sole opinion, may consider relevant or appropriate to any proposals the Authority may have for the reallocation of priorities for, or for the reorganisation of, services under this Contract carried out, or to be carried out, by the Contractor. These will be in order to deal with the circumstances which gave rise to the issuing of a Notice pursuant to Clause 55.1 (*Notice of Events*) above, including the following matters:

(a) the revision (including the early completion or temporary suspension) of the provision of any services carried out or obligation of the Contractor under this Contract for the Authority;

(b) the early completion or suspension of any services or any obligation of the Contractor under this Contract by the Contractor for third parties; and

(c) the immediate implementation of new services under or any obligation of the Contractor under this Contract,

and the Parties shall endeavour, as far as reasonably possible, to reach agreement as a matter of urgency on such matters.

55.5 **Authority overriding right**

55.5.1 Notwithstanding any provision to the contrary in this Contract and notwithstanding that any of the measures described in Clauses 55.3 (*Effect of Implementation of Measures in a Crisis)* and 55.4 (*Good faith discussion*) above may not have been taken, required to be taken, or have been completed, the Authority may (where necessary due to the circumstances described in Clause 55.2 (*Trigger Events*)), at any time and in its sole discretion:

(a) require the Contractor to use all reasonable endeavours to comply fully with any written instructions issued by the Authority during the period in which such circumstances affect the Authority; and/or

(b) step in to the provision of the Services in accordance with the Authority's rights under Clause 56 (*Step-in Rights*), it being acknowledged that this would be on a no fault basis, but without prejudice to any other Authority remedies in the event of an act, omission or fault of the Contractor.

55.5.2 Instructions issued by the Authority in accordance with Clause 55.6 may include instructions issued in relation to all or any of the following matters:

(a) to accelerate to early completion or to temporarily suspend any services or any obligation of the Contractor under this Contract carried out by the Contractor for third parties;

(b) to remove temporarily the property of third parties from the facilities operated or owned by the Contractor in connection with this Contract or any obligation of the Contractor under this Contract and to use all reasonable endeavours to procure that any such action is carried out on terms with such third parties which result in the least possible loss or damage;

(c) to accelerate to early completion or to temporarily suspend any of the services under any contract for third parties carried out or to be carried out by the Contractor; and

(d) to deploy its employees, its stocks of materials, plant, equipment and other supplies and/or to use, or make available for use by the Authority or as directed by the Authority, the premises, plant and machinery.

55.6 **Notice of Cessation**

The provisions of Clauses 55.3 (*Effect of Implementation of Measures in a Crisis)* to 55.5 (*Authority overriding right*) above shall cease to apply when the Authority issues a written notice to that effect to the Contractor, which the Authority shall use its reasonable

endeavours to do once the circumstances in Clause 55.2 (*Trigger Events*) cease to require that the Contractor endeavour to comply with any the Authority instructions issued under Clause 55.5 (*Authority overriding right*).

55.7 **Authority Authorisation**

Any action or measures which the Authority may, or is required to, take pursuant to the provision of this Clause may validly be authorised by an Authority Representative (who is at the Authority one star level (or equivalent) or above).

55.8 **Indemnity for Measures in a Crisis**

55.8.1 Subject to Clause 55.8.3 if the Parties agree actions pursuant to Clause 55.4 (*Good faith discussion*) or the Authority issues any instructions to the Contractor pursuant to Clause 55.5 (*Authority overriding right)* then:

(a) for so long as such instructions prevent the Contractor from complying with any of its obligations under this Contract, the Contractor shall be relieved from any action for failure to comply with such obligations; and

(b) the Authority shall (subject to the terms of Schedule 12 (Liabilities, Indemnities, Insurance and Conduct of Claims) indemnify the Contractor and each Contractor Group Member against any and all Losses and Irrecoverable Losses reasonably incurred by such parties arising out of acting pursuant to the agreement under Clause 55.4 (Good faith discussion) or arising out of the instructions of the Authority pursuant to Clause 55.5 (the Authority overriding right). However:

(i) there shall be no double recovery where the Contractor or any other Contractor Group Member receives any payment under an indemnity for Losses or Irrecoverable Losses under any existing Contractor Contract; and

(ii) this indemnity shall not apply to the extent that Losses and Irrecoverable Losses incurred by the Contractor or any other Contractor Group Member arise as a result of the breach of this Contract by such party; and

(iii) the Contractor shall manage all claims under the indemnity in this Clause 55 on behalf of each of the Contractor and any other relevant Contractor Group Member.

55.8.2 The Contractor shall and shall procure that all other relevant Contractor Group Companies shall be required to use all reasonable endeavours to mitigate any liabilities of the Authority arising in respect of the indemnity under this Clause 55.8.

55.8.3 The indemnity in Clause 55.8.1 (*Indemnity for Measures in a Crisis*) shall not apply to the extent the action agreed is, or the instructions issued are to continue to comply with the terms of this Contract (except this Clause 55), but without prejudice to the relevant Contractor Group Member's rights under this Contract.

56 Step-in Rights

56.1 Required Action

56.1.1 Without prejudice to any other right or remedy of the Authority, on the occurrence of a Step-in Trigger Event, if the Authority considers that steps are capable of being taken to mitigate or preclude such state of affairs (**Required Actions**) and that there is sufficient time for the Contractor to be given the opportunity of carrying out such Required Actions, the Authority may, give a Notice (a **Required Action Notice**) to the Contractor specifying which of the Step-in Trigger Events is applicable, any relevant impacted services (the **Impacted Services**), the Required Actions and the timetable for performance of the Required Actions. Any Step-in Trigger Event arising as a result of Brexit shall constitute a valid Step-in Trigger Event.

56.1.2 "Step-in Trigger Event" means:

(a) any event falling within the definition of Contractor Default;

(b) any breach by the Contractor of an obligation under this Contract in respect of the Services;

(c) any event that the Authority considers acting reasonably, will create (or has already created) an immediate and serious threat to health, safety or the environment;

(d) any event that the Authority considers acting reasonably will result (or has already resulted) in a material interruption to or material disruption of the provision of the Services;

(e) any event that the Authority considers acting reasonably will cause (or has already caused) a material breach by the Authority of its duties or obligations owed or undertaken to any third party;

(f) any event that the Authority considers acting reasonably will cause (or has already caused) a serious nuisance or material threat to the national security and defence of, the occurrence of a state of war, crisis, state of tension or other emergency (whether or not involving hostilities) affecting, or to prevent a material adverse effect on the national interests of the United Kingdom;

(g) any event that the Authority considers acting reasonably, constitutes an emergency despite the Contractor not being in breach of its obligations under this Contract and where the Authority has not issued a Notice in writing pursuant to Clause 55 (*Measures in a Crisis*);

(h) upon the Authority being advised by a regulatory body that the exercise by the Authority of its rights under this Clause 56 (*Step-in Rights*) is necessary; or

(i) any event that will (or has already) affected the Authority's ability to discharge a statutory duty.

56.1.3 Not used

56.1.4 The Contractor shall either:

(a) provide the Authority with confirmation in writing of the appropriate actions to be taken (Required Action Plan) and shall comply with any Required Action Notice issued under Clause 56.1.1 without delay, or

(b) as soon as possible after receipt of the Required Action Notice (and in any event within twenty four (24) hours of such receipt) notify the individual at the Authority who issued the Required Action Notice (with a copy to the Authority Contract Manager, if different), as to which of the Required Actions it is unable or does not agree to carry out.

56.2 Step-in

56.2.1 If:

(a)

(i) the Contractor fails to take any of the Required Actions within such time as the Authority shall have specified in that Required Action Notice; or

(ii) the Contractor has served Notice pursuant to Clause 56.1.3 that the Contractor is unable or does not agree to carry out all or any of the Required Actions; or

(iii) the Authority considered in terms of Clause 56.1.1 that there was insufficient time for the Contractor to be given the opportunity of carrying out the Required Actions;

(iv) the implementation of the Required Actions pursuant to the Required Action Notice is ineffective in mitigating or precluding the circumstances which gave rise to the requirement for its issue; or

(v) the Contractor either fails to provide the Authority with a Required Action Plan or the Authority considers acting reasonably, that the Required Action Plan provided pursuant to Clause 56.1.3(a) is not capable of implementing

the Required Actions within such time as set out in the Required Action Notice; and

(b) the circumstances which gave rise to the requirement for Required Actions subsists (or the circumstances will (in the opinion of the Authority acting reasonably) occur),then the Authority may so notify the Contractor by a Notice in writing (**a Step-in Notice**) and thereafter may take the Required Actions and such other actions (including those as specified in Clauses 56.2.2 and 56.2.3) it considers appropriate itself, provided that on or as soon as practicable after giving such Step in Notice (having regard to the urgency of the matter requiring Required Actions) the Authority shall write to the Contractor:

(i) giving details of the Required Actions and such other actions (including those as specified in Clauses 56.2.2 and 56.2.3) that the Authority is going to take;

(ii) confirming the date on which it proposes to commence the Required Actions (if the Required Action has not started); and

(iii) confirming the time period which it believes shall be necessary to complete the Required Actions.

56.2.2 Not used

56.2.3 For the purpose of Clause 56.2.1, the Authority may do any one or more of the following:

(a) enter upon the Leased and Licensed Areas at which the event giving rise to the relevant Step-in Notice occurred and, for such period as is necessary, take over any or all of the Impacted Services (where applicable); and/or

(b) where a Step-in Notice has been served pursuant to limb (a) or (b) of Step-in Trigger Event in Clause 56.1.2, by not less than three (3) Business Days' written Notice to the Contractor, expel the Contractor from the Leased and Licensed Areas at which the relevant event giving rise to the relevant Step-in Notice occurred without thereby avoiding this Contract or releasing the Contractor from any of its accrued obligations or liabilities under this Contract; and/or

(c) in each case, to gain access to any Occupied Area for all reasonable and necessary purposes including inspection, maintenance, repair or removal of any of its movable property;

and in doing either of (a), (b) or (c) (or any of them), the Authority shall suspend the obligation of the Contractor to provide the Impacted Services until the Authority issues a Step-out Notice in accordance with Clause 56.7 (*Step-out*).

56.3 Not used

56.4 Contractor Co-operation

The Contractor shall co-operate fully with, and provide all reasonable assistance in respect of, whatever action the Authority deems it appropriate to take under this Clause 56.

56.5 Costs

56.5.1 In the event that the Authority exercises its rights under Clause 56.2.1 (*Step-in Rights*) in respect of either limb (a) or (b) of the definition of Step-in Trigger Event or in the circumstances where Step-in Action has been taken due to Relevant Industrial Action, then:

(a) where the Contractor provides the Authority with reasonable assistance, the Authority shall, for so long as it continues to exercise such rights, pay to the Contractor:

(i) Not used

(ii) all appropriate, attributable and reasonable costs directly and properly incurred by the Contractor in assisting the Authority under this Clause 56.5.1; and

(b) the Contractor shall reimburse the Authority all costs directly incurred by the Authority in taking such action, and the Authority shall be entitled to deduct any such amount (once invoiced) from any payment to the Contractor under this Contract; and

(c) the Authority shall not be obliged to pay for:

(i) any Service to the extent that they have not been performed; and

(ii) any proportion of fixed costs (if any) identified on a fair and reasonable basis, which were not incurred as a direct result of the relevant event.

56.5.2 In the event that the Authority exercises its rights under Clause 56.2.1 (*Step-in Rights)* in circumstances where Clause 56.5.1 does not apply, then the provisions of Clause 55.8 (*Indemnity for Measures in a Crisis*) shall apply (with the necessary changes applied) other than the Authority shall not indemnify the Contractor and each Contractor Group Member against any Irrecoverable Losses incurred by such parties arising out of the Authority's exercise of its rights under Clause 56.2.1 (*Step-in Rights*).

56.5.3 Pursuant to Clause 1.2.28 (*Costs Recovery),* when assessing which costs are appropriate, attributable and reasonable, the Authority shall take into account the extent to which such costs have been, or should reasonably have been, avoided and/or mitigated due to the Authority exercising its rights under Clause 56.2 (*Step-in Rights*).

56.5.4 Nothing in this Clause shall require the Authority to pay the Contractor any costs or Losses not actually incurred by the Contractor due to the Services not being provided by the Contractor during a period of Step-in.

56.6 Authority responsibility

The Authority shall have no liability to the Contractor for any damage which has occurred prior to the exercise by the Authority of its Step-in rights under this Clause 56 or which results from a breach by the Contractor of any of its obligations under this Contract but shall, subject to Schedule 12 (*Liabilities, Indemnities, Insurance and Conduct of Claims*), be liable for any damage or liability caused by or attributable to the acts or omissions of the Authority or its employees, agents or contractors arising out of or in connection with the performance of any Required Actions during the period of Step-in.

56.7 Step-out

56.7.1 Prior to ceasing to exercise its step-in rights under this Clause 56 the Authority shall deliver a Notice to the Contractor (a **Step-out Notice**), specifying:

(a) the Required Action it has actually taken; and

(b) the date on which the Authority plans to end the Required Action (the Step-out Date) subject to the Authority being satisfied with the Contractor's ability to resume the provision of all or part of the Impacted Services and the Contractor's plan developed in accordance with Clause 56.7.2.

56.7.2 The Contractor shall, following receipt of a Step-out Notice and not less than twenty (20) Business Days prior to the Step-out Date, develop for the Authority's approval a draft plan (a Step-out Plan) relating to the resumption by the Contractor of the applicable Impacted Services, including any action the Contractor proposes to take to ensure that the applicable Impacted Services satisfy the requirements of this Contract.

56.7.3 If the Authority does not approve the draft Step-out Plan, the Authority shall inform the Contractor of its reasons for not approving it. The Contractor shall then revise the draft Step-out Plan taking those reasons into account and shall re-submit the revised plan to the Authority for the Authority's approval. The Authority shall not withhold or delay its approval of the draft Step-out Plan unnecessarily.

56.7.4 For the avoidance of doubt, nothing in this Clause 56.7 shall prevent the Authority from issuing more than one Step-out Notice in relation to a single exercise of its rights under Clause 56.2 (*Step-in Rights*) so as to reinstate the provision of Impacted Services by the Contractor partially or gradually.

56.8 Authority Delegation

References (however worded) in this Clause 56 to any Required Actions being taken by the Authority under this Clause 56 are references to such Required Actions being taken either by the Authority itself or by persons engaged by the Authority for that purpose.

56.9 Authority Assistance for Impacted Services

56.9.1 Without prejudice to any other right or remedy of the Authority, in the event that the Authority reasonably believes or is aware that an actual or threatened event has or is likely to lead to a Step-in Trigger Event and the right of the Authority to issue a Required Action Notice, the Authority may, as an alternative to issuing a Step-in Notice under Clause 56.1.2 (*Required Action*) or implementing measures in a crisis under Clause 55 (*Measures in a Crisis*), deliver a Notice to the Contractor (an **Authority Assistance Notice**) specifying:

(a) the name(s) of the Authority Secondee to be seconded to the Contractor who shall have, in the view of the Authority, appropriate experience and qualifications to perform and/or assist with the Impacted Services;

(b) the Impacted Services which the Authority Secondee shall perform and/or assist the Contractor with (Authority Assistance);

(c) the date on which it proposes to commence the Authority Assistance; and

(d) where reasonable to do so, the time period which it believes Authority Assistance shall be necessary.

56.9.2 Throughout the period of any Authority Assistance:

(a) Authority Secondees shall remain employees of the Authority and subject to the terms of their employment with the Authority, save as expressly agreed otherwise between the Contractor and the Authority;

(b) the cost of such Authority Secondee shall be met by the Contractor; and

(c) the provision of Authority Secondees shall not serve to amend or diminish the Contractor's responsibility to provide the Services and the Contractor shall continue to be responsible and liable to the Authority at all times for the performance of its obligations under this Contract and for the acts and omissions of any Authority Secondee.

56.9.3 In the event either:

(a) where relevant, the time period specified in Clause 56.9.1(d) has elapsed; or

(b) the actual elapsed time period in respect of the Authority Assistance, exceeds one hundred and twenty (120) Business Days,

the Authority, Contractor and the Authority Secondee shall enter into an Authority Secondee agreement on agreed terms.

56.9.4 Prior to ceasing to exercise its Authority Assistance under this Clause 56.9 the Authority shall deliver a Notice to the Contractor (an Authority Assistance Step-out Notice), specifying:

(a) the Authority Assistance it has actually provided; and

(b) the date on which the Authority plans to end the Authority Assistance (the Authority Assistance Step-out Date) subject to the Authority being satisfied with the Contractor's ability to resume the provision of all or part of the Impacted Services in respect of which the Authority Assistance has been provided and the Contractor's plan developed in accordance with Clause 56.9.5.

56.9.5 The Contractor shall, following receipt of a Authority Assistance Step-out Notice and not less than twenty (20) Business Days prior to the Authority Assistance Step-out Date, develop for the Authority's approval a draft plan (a Authority Assistance Step-out Plan) relating to the resumption by the Contractor of the applicable Impacted Services which the Authority Secondee has performed and/or assisted the Contractor with, including any action the Contractor proposes to take to ensure that the applicable Impacted Services satisfy the requirements of this Contract.

56.9.6 If the Authority does not approve the draft Authority Assistance Step-out Plan, the Authority shall inform the Contractor of its reasons for not approving it. The Contractor shall then revise the draft Authority Assistance Step-out Plan taking those reasons into account and shall re-submit the revised plan to the Authority for the Authority's approval. The Authority shall not withhold or delay its approval of the draft Authority Assistance Step-out Plan unnecessarily.

56.9.7 For the avoidance of doubt, nothing in this Clause 56.9 shall prevent the Authority from issuing more than one Authority Assistance Step-out Notice in relation to a single exercise of its rights under Clause 56.9.1 so as to reinstate the provision of the applicable Impacted Services by the Contractor partially or gradually.

56.9.8 At any time during a period of Authority Assistance, the Contractor shall be entitled to submit for the Authority's approval a draft plan (a Contractor Step-out Plan) relating to the resumption by the Contractor of the applicable Impacted Services which the Authority Secondee is performing and/or assisting the Contractor with, including any action the Contractor proposes to take to ensure that the applicable Impacted Services satisfy the requirements of this Contract.

56.9.9 If the Authority does not approve the draft Contractor Step-out Plan, the Authority shall inform the Contractor of its reasons for not approving it. The Contractor shall then revise the draft Contractor Step-out Plan taking those reasons into account and shall re-submit the revised plan to the Authority for the Authority's approval. The Authority shall not withhold or delay its approval of the draft Contractor Step-out Plan unnecessarily.

56.9.10 Upon the Authority's approval of the Contractor Step-out Plan the Parties shall agree the date on which the Authority Assistance shall end.

56.9.11 Notwithstanding the terms of this Clause 56.9, the Authority may, at any time during the provision of Authority Assistance, elect to issue a Required Action Notice under Clause 56.1 (*Required Action*) and the Authority Assistance Step-out Date shall be the date of the Required Action Notice.

Part 18 – Termination

57 Contractor Default

57.1 Definition of Contractor Default

Each and any of the following shall be Contractor Defaults, and each of the events listed shall constitute a material breach of this Contract on the part of the Contractor:

Insolvency

57.1.1 If any of the following occurs:

(a) a court makes an order that any Contractor Group Member or the Parent be wound up; or

(b) a trustee, trustee in bankruptcy, liquidator, provisional liquidator, supervisor, receiver, administrator, administrative receiver or encumbrancer or person with similar powers takes possession of or is appointed over (other than for the purposes of a bona fide internal solvent reorganisation or amalgamation previously consented to by the Authority), or any distress, execution or other process is levied or enforced (and is not discharged within five (5) Business Days) upon the whole or any part of the assets of a Contractor Group Member or the Parent; or

(c) a meeting of creditors or any class of shareholders of a Contractor Group Member or the Parent passes a resolution for the winding-up, bankruptcy or dissolution of such Contractor Group Member or the Parent (other than for the purposes of a solvent reconstruction or amalgamation previously consented to by the Authority); or

(d)

(i) a Contractor Group Member or the Parent or any of their respective directors resolve that an administration order should be made in respect of it or that an administrator should be appointed to it; or

(ii) any application is made or notice served or filed, for the making of an administration order in respect of a Contractor Group Member or the Parent or the appointment of an administrator to a Contractor Group Member or the Parent and where (and only where) such an application is made solely by one or more creditors of such Contractor Group Member or the Parent, that application is not withdrawn or dismissed within twenty (20) Business Days; or

(iii) any other material steps are taken by a Contractor Group Member or the Parent (or the directors of such party) for the making of an administration order in respect of it or the appointment of an administrator over it; or

(e) a petition is presented or other steps are taken for the purpose of the winding up of a Contractor Group Member or the Parent (other than for the purposes of a bona fide internal reorganisation or amalgamation consented to by the Authority) and such petition is not, or such other steps are not, discharged or withdrawn within twenty (20) Business Days; or

(f) either a Contractor Group Member or the Parent makes an arrangement or composition with or for the benefit of its creditors (including any voluntary arrangement as defined in the Insolvency Act 1986 or scheme of arrangement under the Companies Act 2006); or

(g) a Contractor Group Member or the Parent ceases to carry on business (unless it relates to an intra group reorganisation of a Contractor Group Member or the Parent on a solvent basis), or admits in writing its inability to pay or is or becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 (without in respect of Section 123(i)(e) of the Insolvency Act 1986 the need to prove any fact or matter to the satisfaction of the court) or suspends or threatens to suspend payment with respect to all or any class of its debts or becomes insolvent or bankrupt; or

(h) a Contractor Group Member or the Parent suffers any event analogous to any of the foregoing in any jurisdiction in which it is incorporated or resident or a Contractor Group Member or the Parent takes steps in any jurisdiction for protection from its creditors or for any moratorium or stay of any creditor action.

Corrupts Gifts and Payments

57.1.2 Where the Authority is entitled to terminate this Contract pursuant to Clause 62 (*Corrupt gifts and payments*).

Change in Control

57.1.3 Where the Authority is entitled to terminate this Contract pursuant to Clause 77 (*Change in Control*).

Parent Breach

57.1.4 If any of the following occurs:

(a) a breach or breaches by the Parent of any of its obligations under the Parent Company Guarantee that is not rectified within twenty (20) Business Days of the date the Authority demanded payment under the Parent Company Guarantee, provided such demand is made on or after the due date of payment or the rating of the Parent falls below the Required Rating;

(b) the Parent Company Guarantee becomes void or unenforceable and is not otherwise replaced.

Performance Bond Breach

57.1.5 If any of the following occurs:

(a) the Performance Bond is not procured, breached, terminated or is not renewed in accordance with Clause 66.2 (*Financial Security*);

(b) the Bond Provider suffers an event equivalent to those set out in Clause 57.1.1 or the rating of the Bond Provider falls below the Required Rating,

and within fifteen (15) Business Days of the relevant default the Contractor has not procured the replacement of the Performance Bond in accordance with Clause 66.2.2.

Breach of Security

57.1.6 Where the Authority is entitled to terminate this Contract pursuant to Clause 28 (*Security*) or Clause 48 (*Cyber*).

Nuclear Authorisation

57.1.7 Other than where the Contractor Group Member does not need the relevant Nuclear Authorisation, a Nuclear Authorisation is revoked, suspended or withdrawn as a result of the act, omission or default of a Contractor Group Member or Contractor Party.

Material Breach

57.1.8 Where the Contractor commits one of the following:

(a) a failure to pay any sum greater than £****** (***** pounds) which is due and payable to the Authority under this Contract (being a sum which is not in Dispute) and such failure continues for twenty (20) Business Days after service of a formal written demand by the Authority stating that the sum is unpaid; or

(b) any other material breach of its obligations under this Contract, which materially adversely affects the provision of the Services,

(each, a **Material Breach**).

Assignment Breach

57.1.9 Where the Contractor commits a material breach of any of its obligations under Clause 78 *(Assignment and Transfer)*;

Breach of Warranty or Undertaking

57.1.10 Where the Contractor has breached any representation, warranty or undertaking under Clause 4 (*Warranties and Undertakings*).

Failure of Performance

57.1.11 Where the Authority is entitled to terminate this Contract pursuant to Paragraph 4.1 to Part 3 of Schedule 5 (*Performance Management and Measurement*).

Persistent Breach

57.1.12 Where the Contractor commits a persistent breach of any of its obligations under this Contract.

Admission Agreement

57.1.13 The Contractor does not enter into the Admission Agreement within ninety (90) Business Days from the Commencement Date where notice to terminate the Admission Agreement has been served under clause 13.1 of the Admission Agreement.

Contractor Procurement Breach

57.1.14 The Authority has become aware that the Contractor should have been excluded under Regulation 23 of the Defence and Security Public Contracts Regulations 2011 from the procurement procedure leading to the award of this Contract.

Financial Distress

57.1.15 Any of the events in Paragraph 6 (*Termination Rights*) of Schedule 24 (*Financial Distress*) occurs.

Sub-Contracting

57.1.16 The Contractor is in breach of its obligations under Part 3 (*Sub-Contracting Obligations*) of Schedule 14 (*Supply Chain and Sub-Contracting Strategy)*

57.2 Notice of Contractor Default

57.2.1 The Contractor shall notify the Authority of the occurrence and details of any Contractor Default and of any event which to the best of its knowledge and belief would, with the passage of time or otherwise, constitute or give rise to a Contractor Default, in either case promptly upon the Contractor becoming aware of the occurrence concerned.

57.2.2 Promptly after the Authority becomes aware of the occurrence of a Contractor Default about which the Contractor has not notified the Authority under Clause 57.2.1, and where the same is subsisting unremedied, the Authority shall notify the Contractor in writing of such occurrence.

57.3 Consequences of Contractor Default: Authority Termination Rights

57.3.1 The nature of the Authority's rights to terminate this Contract (whether in whole or in part) depends upon the nature of the Contractor Default which has arisen. The Authority's rights fall into the following categories:

(a) the right to terminate this Contract without the need to go through any remediation process beyond that which may be included in the steps, if any, leading up to the occurrence of the Contractor Default; and

(b) the right to terminate this Contract, but subject to the requirement to follow the remediation process in respect of the Contractor Default, as set out in Clause 57.6 (*Remediation Process*).

57.4 Authority right to terminate Contract without further remediation

57.4.1 In the case of Contractor Default pursuant to Clause:

(a) 57.1.1 (*Insolvency*);

(b) 57.1.2 (*Corrupt Gifts and Payments*);

(c) 57.1.3 (*Change in Control*);

(d) 57.1.4 (*Parent Breach*);

(e) 57.1.5 (*Performance Bond Breach*);

(f) 57.1.6 (*Breach of Security*);

(g) 57.1.7 (*Nuclear Authorisation*);

(h) 57.1.9 (*Assignment Breach*);

(i) 59.1.10 (*Breach of Warranty or Undertaking*);

(j) 57.1.13 (*Admission Agreement*);

(k) 57.1.14 (*Contractor Procurement Breach*);

(l) 57.1.15 (*Financial Distress*),

the Authority will be entitled to terminate this Contract or any of the Services affected by the relevant Contractor Default (the **Terminable Services**) without being required to observe the remediation process set out in Clause 57.6 (*Remediation Process*). Such termination shall be effected by the Authority serving a Notice under Clause 57.6.7 (a **Termination Notice**) on the Contractor within sixty (60) Business Days of the Authority Representative becoming aware of the Contractor Default.

57.5 Authority right to terminate Contract subject to remediation

57.5.1 In the case of a Contractor Default pursuant to Clause:

(a) 57.1.8 (*Material Breach*);

(b) 57.1.11 (*Failure of Performance*);

(c) 57.1.12 (*Persistent Breach*); or

(d) 57.1.16 (*Sub-Contracting*).

the Authority will be entitled to terminate this Contract or any of the Terminable Services (as applicable), but such right shall be subject to the remediation process set out in Clause 57.6 (*Remediation Process*).

57.6 Remediation Process

Requirement to implement a rectification programme

57.6.1 Where in this Clause 57 there is a requirement to observe the remediation process set out in this Clause 57.6, the Contractor, upon receipt or service of a Notice of Contractor Default under Clause 57.2 (*Notice of Contractor Default)*, shall within the time specified in that Notice (or, if no time is specified, as soon as reasonably practicable), either:

(a) prepare and thereafter implement a rectification programme acceptable to the Authority (acting reasonably and proportionately) to rectify such Contractor Default; or

(b) rectify such Contractor Default.

57.6.2 Any rectification programme to be prepared by the Contractor shall represent a reasonable programme for the remedying of the breach or breaches or other circumstances constituting the Contractor Default, and specify in reasonable detail the manner in which such breach, breaches or circumstances is or are proposed to be remedied and the latest date by which it is proposed that the breach, breaches or circumstances shall be remedied.

57.6.3 Where the Contractor puts forward a rectification programme in accordance with Clause 57.6.1, the Authority shall have thirty (30) Business Days within which to notify the Contractor in writing (citing this Clause) that it does not accept the rectification programme as meeting the requirements of Clause 57.6.2, stating the reasons why in reasonable detail, failing which the Authority shall be deemed to have accepted the rectification programme. Where the Authority notifies the Contractor that it does not accept the rectification programme as meeting the requirements of Clause 57.6.2, the Authority and the Contractor shall endeavour within the following ten (10) Business Days to agree any necessary amendments to the rectification programme put forward. In the event that the Authority and the Contractor cannot agree on the necessary amendments to the rectification programme put forward, such disagreement shall be determined by the Fast Track Procedure.

Remedy of Contractor Default

57.6.4 Subject to Clause 57.6.5, if, in the case of Clause 57.6.1, the Contractor either rectifies the Contractor Default within the time specified in the Notice of Contractor Default, or implements the rectification programme (if applicable) which has been accepted by the Authority in accordance with its terms, this Contract will continue in full and the Authority's right to terminate in respect of the matter giving rise to the Contractor Default in question will lapse.

57.6.5 Where a rectification programme does not remedy a Contractor Default after it has been agreed by the parties and accepted by the Authority, the Authority's right to terminate shall not lapse and the Parties shall agree an amendment to the rectification programme within ten (10) Business Days or such other period as the Parties shall agree. In the event that the Authority and the Contractor cannot agree on the amendments to the rectification programme, such disagreement shall be determined by the Fast Track Procedure. If, following amendment:

(a) the amended rectification programme rectifies the default, then this Contract will continue in full and the Authority's right to terminate in respect of the matter giving rise to the Contractor Default in question will lapse; or

(b) the amended rectification programme does not rectify the default, then Clause 57.6.6 shall apply.

Termination rights if rectification programme fails

57.6.6 If, in the case of Clause 57.6:

(a) no rectification programme acceptable to the Authority is put forward and implemented pursuant to Clauses 57.6.1 to 57.6.4 (*Rectification Programme*); and/or

(b) the Contractor fails to rectify the Contractor Default within any time period specified in the rectification programme (or any amended rectification programme in accordance with Clause 57.6.5), or, if no rectification programme has been agreed, within the time period to rectify which is specified in the Notice issued in accordance with Clause 57.6.1,

the Authority may terminate (whether in whole or in part) this Contract or the Terminable Services (in accordance with the rights flowing from the relevant Contractor Default, as set out in Clauses 57.5 (*Authority right to terminate Contract subject to remediation*) on the date specified by the Authority. Any termination shall be effected by the Authority serving a notice under Clause 57.6.7 (a **Termination Notice**) on the Contractor within sixty (60) Business Days of the date on which the right of termination arose in accordance with this Clause 57.6.6 the Authority Representative becoming aware of the Contractor Default (and provided that at the time of such service the event of Contractor Default is still subsisting).

57.6.7 Any Termination Notice shall specify:

(a) the type and nature of Contractor Default that has occurred, giving reasonable details; and

(b) that this Contract will, subject to Clause 63 (*Exit Strategy*) terminate on the date specified in the Termination Notice and such Termination Notice shall have that effect unless the Contractor has referred the matter to Dispute Resolution Procedure (in the case of any dispute as to the entitlement of the Authority to serve the Notice).

57.6.8 The exercise of the Authority's rights of termination under this Clause 57 following the occurrence of a Contractor Default shall represent the Authority's sole and exclusive right to terminate this Contract (or the Terminable Services, as applicable) for any act, omission or breach of contract by the Contractor.

57.6.9 In the event that the Authority terminates this Contract or the Terminable Services for Contractor Default, no compensation for termination or other compensation shall be payable to the Contractor.

57.6.10 If this Contract is terminated for a Contractor Default, the Contractor shall pay to the Authority:

(a) the reasonable and substantiated costs and expenses incurred and/or to be incurred by the Authority in carrying out a tender process, including requesting tenders from any parties interested in entering into a new contract to provide services that are equivalent to any part (or the whole) of the Services, evaluating the responses from those interested parties and entering into a new contract (or contracts) with any new service provider(s);

(b) the reasonable and proper costs incurred by the Authority in performing any rectification work and/or ensuring that the Services are performed; and

(c) any other costs, expenses, losses or damage incurred and/or to be incurred by the Authority as a result of termination of this Contract.

57.6.11 If this Contract is terminated for Contractor Default then such termination shall be without prejudice to and shall not affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Authority or the Contractor (including in respect of any amounts due to the Contractor up to the Termination Date).

57.6.12 Without prejudice to the provisions of Schedule 12 (*Liabilities, Indemnities, Insurance and Conduct of Claims*), the rights of the Authority under this Clause 57 are in addition and without prejudice to any other right the Authority may have to Claim the amount of any loss or damage suffered by the Authority on account of the acts or omissions of the Contractor, whether pursuant to any guarantee given in accordance with the requirements of this Contract or otherwise.

58 Voluntary Termination by the Authority

58.1 The Authority shall, in addition to its power under any other provisions of this Contract, have power to terminate this Contract (whether in whole or in part) at any time by giving to the Contractor Notice to that effect, to expire at the end of a period of six (6) months or (where the Authority certifies that the national interest or the essential security interest of the United Kingdom so requires) such shorter period as the Authority may specify in such Notice, and, upon the expiration of the period of Notice, this Contract shall be terminated without prejudice to the rights of the Parties accrued to the date of termination but subject to the operation of the following provisions of this Clause 58.

58.2 Without prejudice to the foregoing the Authority shall have the power to terminate the Contract in the following circumstances:

(a) where it is determined that this Contract should not have been entered into in view of a serious infringement of obligations under European Law declared by the Court of Justice of the European Union under Article 258 of the Treaty on the Functioning of the EU;

(b) there is a Declaration of Ineffectiveness; and

(c) if this Contract has been substantially amended to the extent that the Defence and Security Public Contracts Regulations 2011 require a new procurement procedure.

The provisions of Clause 60.4 (a) to 60.7 (excluding Clause 60.5) (*Termination for Prolonged Force Majeure Events*) shall apply, with the necessary changes applied to any termination effected by the Contractor under Clause 58.2.

58.3 A Declaration of Ineffectiveness shall not prejudice or affect any right, liability or remedy which has accrued or which shall accrue to either party prior to or after such Declaration of Ineffectiveness.

58.4 In the event of such Notice being given under Clause 58.1 the terms of:

(a) Clause 63 (*Exit Strategy*) shall apply; and

(b) Clause 61 (*Consequences of termination*) shall apply in relation to Goods and Services.

58.5 Where the Authority terminates this Contract in accordance with Clause 58.1 then the Authority shall (subject to Clause 58.6 and without double counting):

(a) **Breakage fees/costs** – indemnify the Contractor against any commitments, liabilities or expenditure which were reasonably and properly incurred by the Contractor on the basis that this Contract would have been continuing, but only to the extent to which the said commitments, liabilities or expenditure would otherwise represent an unavoidable loss by the Contractor by reason of the determination of this Contract and only to the extent that:

(i) in relation to:

(A) existing contracts, such commitments, liabilities or expenditure 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; or

(B) contracts entered into after the Contractor has first been put on notice that the Authority is considering exercising its right to voluntarily terminate this Contract under Clause 58.1, the Contractor has notified the Authority of any material commitments, liabilities or expenditure and requested the Authority's consent in advance of entering into or incurring (as applicable) them and either the Authority has given its consent (such consent not to be unreasonably withheld and to be given or denied within twenty five (25) Business Days of such request) or has failed to respond within such twenty five (25) Business Day period; and

(ii) the Contractor has used its reasonable endeavours to minimise and mitigate such commitments, liabilities and expenditure.

The Contractor shall provide any information reasonably available and reasonably requested by the Authority in order to verify the Contractor's commitments, liabilities or expenditure in relation to this Clause. Any amounts to be paid under this Clause shall be paid within thirty (30) Business Days of such information being provided;

(b) **Loss of Profits** – pay the Contractor an amount, if any, equal to the profit which the Contractor can demonstrate, to the Authority's reasonable satisfaction, it would have made following termination, provided that:

(i) such amount shall be limited to the lesser of the profit it would have made in respect of:

(A) where the date of termination falls in the Initial Contract Period, the balance of the Initial Contract Period;

(B) where the date of termination falls on a date after the Initial Contract Period due to the Contract having been extended, the balance of the Contract Period*;* or

(C) a period of twelve (12) months;

(ii) such amount shall be adjusted on a net present value basis to reflect early payment; and

(iii) the profit payable shall be reduced by an amount equal to the average reduction in profit paid over the Contract Period as calculated in accordance with Schedule 5 (*Performance Management and Measurement*).

58.6 For the purposes of Clause 58.5 above, the Parties shall adjust the values on a "**net present value basis"** by agreeing a fair and reasonable reduction that reflects payment at the point

of termination of money which would otherwise have been payable during the period from the date of voluntary termination until the date the Expiry Date.

58.7 The following provisions shall apply to reduce the amount of any payment to be made by the Authority and/or mitigate the extent that the Authority is required to give relief pursuant to Clause 58.5:

(a) if the Authority and the Contractor (or any Contractor Group Member) enter into a contract in relation to some or all of the services which are the same or substantially the same as some or all of the Services that are subject to voluntary termination:

(i) prior to the voluntary termination having taken effect, any payments to be made by the Authority and any relief to be granted to the Authority shall be reduced proportionately; and

(ii) after the voluntary termination has taken effect but before the Expiry Date then the Parties shall negotiate a fair and reasonable reimbursement and reduction in relief that was granted by the Authority,

(b) such that:

(i) the Contractor shall not be paid under this Clause 58 where and to the extent it may receive the same or substantially the same payment for the same or substantially the same services under the replacement contract;

(ii) the Contractor shall not be relieved under this Contract where it should appropriately and reasonably be bound under the replacement contract; and

(iii) the Contractor shall not be required to refund any amount nor reduce any relief to which it is entitled to the extent that such amount will not be recovered through the entry into a subsequent contract, or the requirement for relief will not be abated by the placing of that subsequent contract.

(c) there shall be no double recovery or double payment in relation to the same or similar rights and obligations in relation to:

(i) the voluntary termination of this Contract and any new or replacement contract entered into between the Authority and the Contractor (or any Contractor Group Member); and/or

(ii) any other payments made or relief given to the Contractor pursuant to this Contract.

58.8 The Contractor shall in any Sub-Contract, the value of which is:

(a) £100,000 (one hundred thousand pounds) or over; and

(b) is made or placed by it on or after the Commencement Date with any one Sub-Contractor in connection with or for the purpose of this Contract,

include terms equivalent to the terms of Clauses 58.1 to 58.6 to terminate such Sub-Contract or order save only that:

(i) the name of the Contractor shall be substituted for the Authority throughout except for Clauses 58.5 and 58.6;

(ii) the period of the notice of determination shall be thirty (30) Business Days from the date of service of a termination notice;

(iii) the Contractor shall not exercise the power taken in those Sub-Contracts until the Authority has exercised its power under Clause 58.1; and

(iv) each of those Sub-Contracts shall restrict the Contractor's right to exercise that power in the manner described in Clause 58.8 (c) by including in the power *"Provided that this power is not exercised unless the main contract has been terminated by the Authority pursuant to the provisions of the contract",*

provided that, so long as the Contractor is complying with its obligations in relation to Sub-Contracts in this Contract (including Schedule 14 (*Supply Chain and Sub-Contracting Strategy*)), nothing in this Clause 58.8 shall prevent the Contractor agreeing any other voluntary termination rights with its Sub-Contractors provided that the Authority may reject any claim by the Contractor for payment made by the Contractor to any Sub-Contractor exercising such rights if any such voluntary termination rights and making of such payment is executed without the Authority's prior written consent.

58.9 The provisions of Clauses 63.13 (Removal of Property) and Clause 63.11 (Right to purchase equipment) shall apply in the event this Contract is terminated pursuant to this Clause 58.

58.10 Claims for payment under this Clause 58 shall be made in accordance with the procedure set out in Part 5 (*Miscellaneous Provisions*) of Schedule 4 (*Pricing and Payment*).

59 Termination by the Contractor

59.1 Notwithstanding any other provision of this Contract, the Contractor shall have the power to terminate this Contract if the Authority fails to pay any sum greater than £****** due and payable to the Contractor under this Contract being a sum which is not in Dispute and such failure continues for thirty (30) calendar days after service of a formal written demand by the Contractor, where that amount fell due and payable two (2) (or more) months prior to the date of service of the written demand (an "**Authority Default**").

59.2 The provisions of Clause 58 (Voluntary Termination by the Authority) shall apply, with the necessary changes applied, to any termination effected by the Contractor under Clause 59.1.

59.3 Without prejudice to any common law rights, the exercise of the Contractor's rights of termination under this Clause 59 following the occurrence of an Authority Default shall represent the Contractor's sole and exclusive right to terminate this Contract for any act, omission or breach of contract by the Authority.

60 Termination for Prolonged Force Majeure Events

60.1 If a Force Majeure Event (as set out in Clause 52 (*Force Majeure* Events) continues for a period of six (6) months or more from the date upon which the Affected Party serves Notice on the Other Party of its occurrence in accordance with Clause 52.2 (*Giving of Notice*) the Authority may by twenty (20) Business Days' Notice to the Contractor:

(a) terminate any Services affected by the Force Majeure Event; or

(b) if substantially all of the Parties' obligations have been affected by the Force Majeure Event, terminate this Contract as a whole,

and this Contract (or the part of this Contract related to the affected Services) shall be terminated providing that the circumstances comprising the Force Majeure Event still subsist at the date when the period of notice has expired.

60.2 In determining whether to terminate (whether in whole or in part) the obligations of the Contractor and the Authority in respect of the Services affected by the Force Majeure Event or, indeed, whether to terminate this Contract as a whole, the Authority shall act reasonably in all the circumstances, having regard to the interests of both the Authority and the Contractor.

60.3 On termination in accordance with Clause 60.1 the Service Category Price will be adjusted in respect of any Service Category the Services of which are affected by such termination as a Mandatory Change.

60.4 In the event of this Contract being terminated by the Authority pursuant to this Clause 60 then:

(a) the terms of Clause 61 (*Consequences of Termination*) shall apply in relation to Goods and Services; and

(b) the costs of termination incurred by the Parties shall lie where the fall.

60.5 The Contractor shall in any Sub-Contract, the value of which is £100,000 (one hundred thousand) or over placed by it on or after the Commencement Date with any one Sub-

Contractor in connection with or for the purpose of this Contract, include terms equivalent to the terms of Clauses 60.1 to 60.4 (a) to terminate such Sub-Contract or order save only that:

(a) the name of the Contractor shall be substituted for the Authority throughout;

(b) the period of the Notice of termination shall be ten (10) Business Days from the date of service of a Termination Notice;

(c) subject to Clause 60.5 (e), the Contractor shall not exercise the equivalent terms in those Sub-Contracts until the Authority has exercised its power to terminate this Contract for a prolonged Force Majeure Event under Clause 60.1;

(d) subject to Clause 60.5 (e), each of those Sub-Contracts shall restrict the Contractor's right to exercise that power in the manner described in this Clause 60.5 (d) by including in the power *"Provided that this power is not exercised unless the main contract has been terminated by the Authority pursuant to the provisions of the contract"; and*

(e) Clauses 60.5 (c) and (d) shall not apply in circumstances where the Force Majeure Event affects a Sub-Contractor (rather than the Contractor directly) and the Contractor is able to source the services or materials provided by the relevant Sub-Contractor from a third party. In such event, the Contractor shall be free to exercise its rights of termination for a continuing Force Majeure Event and procure the relevant services or materials from a third party (subject to the Authority's written consent in accordance with Clause 64 (*Supply Chain and Sub-Contracting Strategy*).

60.6 The provisions of Clauses 63.13 *(Removal of Property)* and 63.11 (Right to purchase assets and equipment) shall apply in the event this Contract is terminated pursuant to this Clause 60.

60.7 Claims for payment under this Clause 60.7 shall be made in accordance with the procedure set out in Part 5 (*Miscellaneous* Provisions) of Schedule 4 (*Pricing and Payment*).

61 Consequences of Termination or Expiry

61.1 Continued Performance

Subject to any exercise by the Authority of its rights to perform, or to procure a third party to perform, the obligations of the Contractor, the Parties shall continue to perform their obligations under this Contract, notwithstanding the giving of any Termination Notice until the Termination Date.

61.2 Termination and Exit Management

The Parties shall comply with the provisions of Clause 63 (*Exit Strategy*) and any current Exit Plan in relation to the orderly transfer of Services to the Authority or an Incoming Contractor.

61.3 Preservation of Rights

The expiry or termination of this Contract shall be without prejudice to:

(a) the provisions of any other contract entered into between the Parties which terminates automatically on the termination or expiry of this Contract;

(b) (for the avoidance of doubt) any provisions of the Leases or Licences which are expressed to apply to the consequences of termination of the Leases or Licences (to the extent that the relevant termination includes a termination of the Leases or Licences);

(c) any accrued rights and obligations of the Parties under this Contract as at the Termination Date of such termination or expiry both for antecedent breaches and otherwise provided that the sole remedy for the Contractor for compensation on termination shall be as set out in Clause 59 (*Termination by the Contractor*); and

(d) the continuing rights and obligations of the Parties under this Clause 61 and Clause 63 (*Exit Strategy*) or under any other provision of this Contract (including, for the avoidance of doubt, the Licences or Leases) which are expressed to survive termination or expiry or which do not form part of the Services which are the subject

of the termination or which is required to give effect to such termination or expiry or the consequences of such termination or expiry.

62 Corrupt gifts and payments

62.1 The Contractor shall not do any of the following (hereafter referred to as Prohibited Acts):

(a) offer, give or agree to give to any Crown servant any gift or financial or other advantage of any kind as an inducement or reward:

(i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this or any other contract with the Crown; or

(ii) for showing or not showing favour or disfavour to any person in relation to this or any other contract with the Crown;

(b) enter into this or any other contract with the Crown in connection with which commission has been paid or has been agreed to be paid by the Contractor, the Parent or any Contractor Group Member on their behalf, or to their 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;

(c) commit any offence:

(i) under the Bribery Act 2010;

(ii) under Laws creating offences in respect of fraudulent acts;

(iii) at common law in respect of fraudulent acts; or

(iv) in relation to this Contract or any other contract with the Crown; or

(d) defraud or attempt to defraud or conspire to defraud the Crown,

(the circumstances identified in Clauses 62.1 (a) to (d) above being **Prohibited Acts**).

62.2 If the Contractor, the Parent, any other Contractor Group Member or any Sub-Contractor (or anyone employed by or acting on behalf of any of them) or any of its or their agents or shareholders commits any Prohibited Act, then the Authority shall be entitled to act in accordance with Clauses (a) to (d) below:

(a) if a Prohibited Act is committed by the Contractor, the Parent, any other Contractor Group Member or by an employee not acting independently of the Contractor, then this shall be treated as a Contractor Default and the Authority shall be entitled to terminate this Contract in its entirety in accordance with (and subject to) Clause 57.4 (*Authority right to terminate Contract without further remediation*);

(b) if the Prohibited Act is committed by an employee of the Contractor acting independently of the Contractor, then this shall be treated as a Contractor and the Authority shall be entitled to terminate this Contract in its entirety in accordance with Clause 57.4 (*Authority right to terminate Contract without further remediation*), unless within forty (40) Business Days of receipt of a Termination Notice under Clause 57.4 (*Authority right to terminate Contract without further remediation*) the Contractor terminates (or procures that the Parent or any other Contractor Group Member (as applicable) terminates) the employee's employment;

(c) if the Prohibited Act is committed by a Sub-Contractor or by an employee of that Sub-Contractor not acting independently of that Sub-Contractor, then this shall be treated as a Contractor Default and the Authority shall be entitled to terminate this Contract in its entirety in accordance with Clause 57.4 (*Authority right to terminate Contract without further remediation*), unless within forty (40) Business Days of receipt of a Termination Notice under 57.4 (*Authority right to terminate Contract without further remediation*) the Contractor terminates the relevant Sub-Contract and procures the performance of the relevant part of the Services by another person; and

(d) if the Prohibited Act is committed by an employee of a Sub-Contractor acting independently of that Sub-Contractor, then this shall be treated as a Contractor Default and the Authority shall be entitled to terminate this Contract in its entirety in accordance with 57.4 (*Authority right to terminate Contract without further remediation*), unless within forty (40) Business Days of receipt of a Termination Notice under 57.4 (*Authority right to terminate Contract without further remediation*) the Sub-Contractor terminates the employee's employment.

62.3 Any Termination Notice served under Clause 57 (*Contractor Default*) in relation to a breach of this Clause 62 shall specify:

(a) the nature of the Prohibited Act;

(b) the identity of the party whom the Authority believes has committed the Prohibited Act; and

(c) the date on which this Contract shall terminate, in accordance with the applicable provision of this Clause.

62.4 For the avoidance of doubt, upon a termination of this Contract in accordance with Clause 57 (*Contractor Default*) for breach of this Clause 62, no compensation shall be payable to the Contractor (but without prejudice to any amounts due to the Contractor at the Termination Date).

62.5 In exercising its rights or remedies under this Clause 62 and Clause 57 (*Contractor Default*), the Authority shall:

(a) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the Prohibited Act; and

(b) give all due consideration, where appropriate, to action other than termination of this Contract, including:

(i) requiring the Contractor to procure the termination of a Sub-Contract where the Prohibited Act is that of a Sub-Contractor or anyone acting on its or their behalf; and

(ii) requiring the Contractor to procure the dismissal of an employee (whether its own or that of a Sub-Contractor or anyone acting on its behalf) where the Prohibited Act is that of such employee.

62.6 Recovery action taken against any person in Her Majesty's service shall be without prejudice to any recovery action taken against the Contractor pursuant to this Clause.

Part 19 – Exit Provisions

63 Exit Strategy

63.1 Acknowledgements

63.1.1 The Parties acknowledge that upon the termination or expiry of this Contract the Authority may, in its discretion:

(a) decide to perform the Services (in whole or in part) itself; or

(b) to transfer the right and obligation to provide the Services, in whole or in part, from the Contractor to one or more third parties who will provide all or part of the relevant Services, or services similar to the relevant Services.

63.1.2 In order to exercise its rights under Clause 63.1.1 any Incoming Contractor or the Authority (as appropriate) will be required to obtain a detailed understanding of the operation management and provision of the relevant Services before it is required to take over the performance of the relevant Services, or services similar to the relevant Services. Accordingly:

(a) the Parties shall co-operate fully in good faith with regard to the procedure for the transfer of the right and obligation to provide the relevant Services from the Contractor to any Incoming Contractor or to the Authority (as appropriate);

(b) the Contractor shall comply with the provisions of this Clause 63 and any current Exit Plan, in relation to the orderly transition of the relevant Services to the Authority or an Incoming Contractor;

(c) the Contractor shall use all reasonable endeavours to promptly comply with all reasonable requests from the Authority and/or an Incoming Contractor for information concerning the Services to be transferred; and

(d) the Contractor shall ensure the orderly transition of Services and transfer of assets to an Incoming Contractor or the Authority to the extent within its reasonable control

63.2 Asset Registers

63.2.1 During the Contract Period, the Contractor shall create and maintain:

(a) a register of all Assets (separately listing Contractor Assets and (as required pursuant to Clause 45) (*Accounting for Property of the Authority*) detailing their:

(i) make, model and asset number;

(ii) ownership;

(iii) Net Book Value;

(iv) condition and physical location; and

(v) use (including technical specifications); and

(b) a register of all Sub-Contracts and other relevant agreements (including relevant Software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services, detailing their key terms; and

(c) a configuration database detailing the technical infrastructure and operating procedures through which the Contractor provides the relevant Services, which shall contain sufficient detail to permit the Authority and/or Incoming Contractor to understand how the Contractor provides the Services and to enable the smooth transition of the Services with the minimum of disruption.

63.2.2 The Contractor shall:

(a) produce and maintain the Registers in the format directed by the Authority; and

(b) at all times keep the Registers up to date, in particular in the event that Assets, Sub-Contracts or other relevant agreements are added to, varied, or removed from the

Services and procure that all Exclusive Assets listed in the Registers are clearly marked to identify that they are used exclusively for the provision of the Services.

63.3 Access to Data

63.3.1 On reasonable Notice at any point during the Contract Period, the Contractor shall provide to the Authority and/or (subject to the Authority procuring appropriate confidentiality undertakings) any Incoming Contractor, the following information and materials (whether relating directly or indirectly to the Services) in order to facilitate a re-tender of the Services and/or the preparation by the Authority of an invitation to tender and/or any potential tenderers or Incoming Contractor to undertake due diligence:

(a) details of the Service (in such detail as to enable a potential Incoming Contractor to have a full understanding the nature and extent of the Service and of how the Service is provided);

(b) a copy of the Registers, updated by the Contractor up to the date of delivery of such Registers;

(c) to the extent not contained in the Registers, details of all Assets (including technical specifications, manuals, maintenance schedules and agreement, and materials) and details of all GFA (including condition and physical location);

(d) details of all technical infrastructure and equipment, software and hardware used to provide the Services (including ownership and licensing details)

(e) details of any key terms of any Sub-Contracts and third-party contracts and licences, particularly as regards service scope, charges, termination, assignment and novation;

(f) details of all licences, consents, authorisations and approvals required to provide the Services;

(g) details of all sites and property from which the Service is provided, including details and copies of all leases and licences relevant to such sites and property;

(h) an inventory of Authority Data in the Contractor's possession or control;

(i) details of all Intellectual Property used in connection with the Services;

(j) details of work volume and staffing requirements over the previous twelve (12) months;

(k) with respect to work in progress, details of current status and work required to complete;

(l) a list of ongoing and/or threatened disputes or other liabilities (whether contingent or otherwise);

(m) to the extent permitted by applicable Law, all information relating to transferring Contractor Employees required to be provided by the Contractor under this Contract; and

(n) any other data, records (including title documents, invoices, service and maintenance records, technical manuals and specifications and user guides), reports, accounts, and such other financial, operational, management or other information as the Authority or any tenderer or Incoming Contractor shall reasonably require,

(together, the **Exit Information**); and

the Contractor confirms and agrees that the Exit Information may contain Contractor Confidential Information, and that it may be disclosed for the purposes stated above notwithstanding the terms of Clause 73 (*Confidentiality and Freedom of Information*).

63.3.2 The Contractor shall:

(a) notify the Authority within five (5) Business Days of any material change to the Exit Information which may adversely impact upon the potential transfer and/or

continuance of any Services and shall consult with the Authority regarding such proposed material changes; and

(b) provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Business Days of a request in writing from the Authority.

63.3.3 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Contractor shall be such as would be reasonably necessary to:

(a) facilitate a re-tender of the Services and/or the preparation by the Authority of any invitation to tender and/or to facilitate any tenderer (including its advisors) undertaking due diligence;

(b) enable any tenderer to obtain a reasonably informed view of the Service (including how it is performed and the Assets required for the Service) and to prepare an informed offer for those Services and not be disadvantaged in any subsequent procurement process compared to the Contractor (if the Contractor is invited to participate).

63.3.4 The Contractor authorises the Authority, at any point during the Contract Period (subject to the Authority procuring appropriate confidentiality undertakings), to release any information held by the Authority or provided by the Contractor to the Authority relating to the Services, to be transferred to third parties whom the Authority has invited to tender to provide the relevant Services but who have not yet entered into an agreement with the Authority to provide the relevant Services.

63.3.5 The Authority shall use its reasonable endeavours to obtain from any Incoming Contractor an appropriate confidentiality undertaking whereby the Incoming Contractor will agree only to use such information for the purposes of progressing its bid for the provision of the relevant Services by the Incoming Contractor.

63.3.6 The Exit Information shall be made available and provided to the Authority in such format as the Authority shall reasonably require.

63.4 Exit Plan

63.4.1 Within six (6) months of the Service Delivery Date, the Contractor shall prepare and deliver to the Authority an Exit Plan which:

(a) sets out the Contractor's proposed methodology for achieving an orderly transition of the Services from the Contractor to the Authority and/or an Incoming Contractor on the expiry or termination of this Contract; and

(b) is otherwise reasonably satisfactory to the Authority.

63.4.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Business Days of its submission to the Authority, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

63.4.3 The Exit Plan, shall include, as a minimum, the following:

(a) how the Exit Information is obtained and provided to the Authority;

(b) the Assets which will be required to continue the provision of the Services;

(c) the management structure to be employed during the Transfer Period;

(d) a detailed description of both the transfer and cessation processes, including a timetable;

(e) how the Services will transfer to the Incoming Contractor and/or the Authority, including details of the processes, documentation, data transfer (including data format), systems migration, security and the segregation of the Authority's technology components from any technology components operated by the Contractor or its Sub-Contractors (where applicable, and details of all hardware and Software required to provide the Service);

(f) provisions for the transfer to the Authority and/or any Incoming Contractor of all knowledge reasonably required for the provision of the Services which may, as appropriate, include information, records and documents;

(g) a timetable and critical issues for transferring the Services;

(h) procedures to deal with requests made by the Authority and/or an Incoming Contractor for information relevant to the Services;

(i) having regard to Clause 63.4.2 the scope of the Core Transfer Services that may be required for the benefit of the Authority and/or an Incoming Contractor;

(j) how the Transfer Services would be provided (if required) during the Transfer Period; and

(k) how each of the issues set out in this Clause 63 will be addressed to facilitate the transition of the Services from the Contractor to the Incoming Contractor and/or the Authority with the aim of ensuring that there is no disruption to or degradation of the Services during the Transfer Period.

63.4.4 Unless otherwise agreed, the Exit Plan shall not include the Enhanced Transfer Services. If the Authority elects to procure any Enhanced Transfer Services these will be added to the Exit Plan following a request from the Authority.

63.4.5 The Parties acknowledge that the migration of the Services from the Contractor to the Authority and/or any Incoming Contractor may be phased, such that certain of the Services are handed over before others.

63.4.6 The Contractor shall review and (if appropriate) update the Exit Plan on a basis consistent with the principles set out in this Clause 63 in the first (1st) month of each Contract Year (commencing with the second Contract Year) to reflect any changes in the Services that have occurred since the Exit Plan was last agreed. Following such update, the Contractor shall submit the revised Exit Plan to the Authority for review. Within twenty (20) Business Days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan. If the Parties are unable to agree the contents of the revised Exit Plan within that twenty (20) Business Day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

63.4.7 Within twenty (20) Business Days after service of a Termination Notice by either Party or no later than twelve (12) months prior to the Termination Date, the Contractor will submit for the Authority's approval the Exit Plan in a final form that could be implemented immediately. The final form of the Exit Plan shall be prepared on a basis consistent with the principles set out in this Clause 63 and shall reflect any changes in the Services that have occurred since the Exit Plan was last agreed.

63.4.8 The Parties will meet and use their respective reasonable endeavours to agree the contents of the final form of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Business Days following its submission to the Authority then such Dispute shall be resolved in accordance with Schedule 7 (*Dispute Resolution Procedure*). Until the agreement of the final form of the Exit Plan, the Contractor shall provide the Core Transfer Services in accordance with the principles set out in this Clause 63 and the last approved version of the Exit Plan (insofar as relevant).

63.5 Transfer Notice and Transfer Services

63.5.1 The Authority shall be entitled to require the provision of Transfer Services at any stage prior to expiry of the Contract Period or, in the context of termination of this Contract (or part thereof), as soon as reasonably practicable following the service of a Termination Notice or a Notice pursuant to Clause 57.6.6 (*Termination rights if rectification programme fails*), by serving a Transfer Notice on the Contractor. The Authority may serve one or more Transfer Notices.

Transfer Services

63.5.2 Unless the Authority notifies the Contractor otherwise, the Core Transfer Services to be provided by the Contractor are such services as may reasonably be expected to be provided

by an outgoing contractor to the Authority and/or any Incoming Contractor to ensure an orderly and efficient transfer of services, including (without limitation):

(a) the provision of an information pack listing the Services;

(b) the provision of the services agreed and specified in the Exit Plan;

(c) the provision of information to enable the Authority to create a data room suitable to give replacement service providers a full and detailed knowledge of the Services;

(d) details of all operational and business processes (including supporting documentation) in place, such that they may be suitable for use by the Authority and/or any Incoming Contractor;

(e) upon reasonable request, the provision of up-to-date copies of operations manuals;

(f) notifying Sub-Contractors of procedures to be followed during the Transfer Period;

(g) providing details of all operational and business processes (including supporting documentation) in place;

(h) delivering to the Authority the existing systems support profiles, monitoring or systems logs, and documentation and status reports relating to the twelve (12) month period prior to the commencement of the Transfer Services;

(i) providing details of work volumes and staffing requirements over the previous twelve (12) months;

(j) with respect to work in progress as at the Termination Date and end of the Transfer Period, providing details of current status and work required to complete;

(k) providing assistance and expertise as necessary to examine all governance and reports in place for the provisions for the Services;

(l) providing all assistance and expertise as necessary to examine relevant roles and responsibilities in place of the provision of the Services;

(m) identifying and transferring all existing training material;

(n) providing appropriate training, including holding an agreed number of workshops and training sessions for the Authority and/or any Incoming Contractor;

(o) making senior and key employees available and answering all reasonable questions from the Authority and/or any Incoming Contractor in relation to the Services;

(p) allowing a reasonable number of Authority and/or any Incoming Contractor staff to shadow Contractor personnel engaged in the performance of the Services for reasonable periods, including allowing staff to observe day-to-day activities and to gain practical exposure to the performance of the Services;

(q) providing information about capacity and performance requirements and planned requirements for growth;

(r) agreeing a handover plan for all security (logical and physical) matters and a security management control procedures manual;

(s) delivering copies of Service related databases to the Authority and/or any Incoming Contractor;

(t) providing assistance and expertise as necessary to support the Authority and/or any Incoming Contractor to develop a migration plan for the business operations and data and;

(u) providing such other information services and assistance as may reasonably be requested by the Authority.

63.5.3 The Core Transfer Services shall also include providing access (on reasonable prior Notice) to the Authority and/or any Incoming Contractor, for a period not exceeding six (6) months after the Contract Period, to information and documentation retained by the Contractor and which relates to the Services.

63.5.4 The Enhanced Transfer Services to be provided by the Contractor may include such of the following as the Authority may specify in the Transfer Notice or may request at any time:

(a) making available to the Authority and/or any Incoming Contractor any training related activity beyond that set out in Clause 63.5.2;

(b) assisting any Incoming Contractor in the execution of any parallel operation or implementation activity until the Termination Date; and

(c) such other services as the Authority may reasonably require to ensure the smooth transition of the Services and not contemplated by the Core Transfer Services or Exit Plan

63.5.5 The Authority shall pay the Contractor for the provision of the Enhanced Transfer Services. The charge for providing the Enhanced Transfer Services shall be agreed between the parties based on the methodology that would apply if such services were being treated as a Change, together with the provision of fixed charges where practicable, or estimates updated on a regular basis. No additional payment shall be made for the Core Transfer Services.

Transfer Notice

63.5.6 A transfer Notice shall contain the following details (to the extent practicable):

(a) the expected duration of the Transfer Period (which shall continue no longer than twelve (12) months after the date on which the Contractor ceases to provide the Services), unless extended pursuant to Clause 65.5.6;

(b) to the extent not included in the Exit Information, or already requested, any information the Authority requires the Contractor to provide in relation to the Services;

(c) details of the Core Transfer Services and any Enhanced Transfer Services required;

(d) confirmation of implementation of the Exit Plan (in whole or in part);

(e) details of any Incoming Contractor (if relevant and if any Incoming Contractor has been identified at that stage); and

(f) such other matters as the Authority, in the circumstances, considers appropriate.

63.5.7 The Authority shall have an option to extend the Transfer Period beyond the period specified in the Transfer Notice provided that such extension shall not extend for more than six (6) months beyond the date specified in the Transfer Notice. The Authority shall notify the Contractor to such effect no later than twenty (20) Business Days prior to the date on which the provision of Transfer Services is otherwise due to expire.

63.5.8 The Authority shall have the right to terminate its requirement for Transfer Services, at any time, by serving not less than twenty (20) Business Days' Notice upon the Contractor to such effect.

63.5.9 Within ten (10) Business Days of the issue of the Transfer Notice, the Parties shall meet to discuss:

(a) the process for implementing the Exit Plan;

(b) the details of the Services and Assets to be transferred;

(c) the details of any shared assets which are to be segregated before or at the expiry of the Contract Period or expiry of the Transfer Period;

(d) and the timing of any segregation of such assets;

(e) the details of any required Transfer Services;

(f) the terms of any required Transition Services Agreement;

(g) the terms on which senior management of the Contractor will be engaged on the exit arrangements;

(h) the information the Authority requires the Contractor to provide in relation to the Services; and

(i) which services or work (if any) will be carried out by the Contractor after the Transfer Period.

63.5.10 The Parties shall use their best endeavours to agree these provisions within one (1) month of the issue of the Transfer Notice.

63.5.11 Where the Parties fail to reach agreement within the time period set out in Clause 63.5.10, then the Authority shall be entitled to direct the Contractor in relation to the matters specified in Clause 63.5.9 to the extent reasonably required to ensure an orderly and efficient handover to the Authority or to any Incoming Contractor (as relevant) and provided that the Contractor may refer the matter to the Dispute Resolution Procedure (with the Parties complying with such direction until otherwise determined under the Dispute Resolution Procedure).

63.6 Transfer Period

63.6.1 Throughout the Transfer Period or such shorter period as the Authority may require, the Contractor shall:

(a) continue to provide the Services and, if required, perform the Transfer Services in accordance with the requirements set out in the Transfer Notice with a view to ensuring an orderly and efficient handover of Services to the Authority or to the Incoming Contractor (as relevant);

(b) continue to provide the Services with no detriment to the Performance Standards;

(c) perform the Transfer Services, and/or ensure that the Transfer Services are performed, at all times:

(i) in accordance with any specific performance standards or obligations applicable to them contained in this Contract;

(ii) (in the absence of any specific performance standards or obligations applicable to it contained in this Contract) in accordance with Law, Regulations, Required Consents and Good Industry Practice; and

(iii) in a manner that is not likely to be injurious to health or to cause damage to property;

use all reasonable endeavours to reallocate resources to provide the Transfer Services without additional cost to the Authority; and

(d) assist the Authority by providing all (or any) Incoming Contractor with access to the Service Delivery Location and any Leased and Licensed Areas.

63.7 Personnel

63.7.1 Within ten (10) Business Days of the issue of the Transfer Notice, the Authority and the Contractor shall meet to identify key employees of the Contractor who are involved in the performance of the Services with a view to agreeing that such key employees shall remain on the Leased and Licensed Areas at which the Services to be transferred are performed and shall continue to be engaged in the provision of the relevant Services during the Transfer Period.

63.7.2 If requested to do so by the Authority, the Contractor shall provide familiarisation training for any employees of any Incoming Contractor in order assist the employees of the Incoming Contractor to obtain a sound knowledge and understanding of the Services to be transferred and an understanding of the Service Delivery Location and any Leased and Licensed Areas at which the Services are performed.

63.8 Access to facilities

63.8.1 If, during the Contract Period, the Contractor has performed any part of the Services to be transferred at facilities other than the Service Delivery Locations, and the Authority considers that it is necessary that such of the relevant Services should continue to be performed at facilities other than the Leased and Service Delivery Locations, then:

(a) the Contractor shall, following the Termination Date, make such facilities available to the Authority or the Incoming Contractor free of charge for the use thereof for

such temporary period as the Authority deems necessary in order to secure the provision of the Services by the Authority or the Incoming Contractor, provided that such period shall not exceed six (6) months unless otherwise agreed; or

(b) if such period shall exceed six (6) months the Contractor shall continue to provide such facilities on such terms as may be agreed between the Authority and the Contractor. In default of such agreement, those terms shall be determined in accordance with the Dispute Resolution Procedure. Such discussions shall be conducted in good faith with a view to ensuring that the Authority or the Incoming Contractor is able to reallocate resources in an efficient manner in order to provide that element of the relevant Services which were being provided at such facilities at the Termination Date.

63.9 Termination Obligations

63.9.1 The Contractor shall comply with all of its obligations contained in the Exit Plan and Transfer Notice.

63.9.2 Upon the Termination Date of this Contract or such other date specified by the Authority, the Contractor shall:

(a) cease to use the Authority Data and at the Authority's discretion either erase from any computers, storage devices and storage media retained by the Contractor and all Authority Data or transfer all Authority Data in its possession or control to the Authority;

(b) vacate the Leased and Licensed Areas, leaving same in a safe, clean and orderly condition;

(c) return all Property of the Authority (in compliance with the terms of this Contract), and all other property, information and records belonging to the Authority (including any security passwords and access codes);

(d) comply with all provisions of this Contract relating to termination and/or expiry; and

(e) if required by the Authority, enter into an Asset Transfer Agreement and/or Transition Services Agreement with the Incoming Contractor or the Authority (or its nominee).

63.10 Following the issue of a Termination Notice or during the Transfer Period, the Contractor shall not, without the Authority's prior written consent (save in the ordinary course of business):

(a) terminate, enter into or vary any Sub-Contractor;

(b) make any material modifications to, or dispose of, any Contractor Assets or acquire any additional Contractor Assets; or

(c) terminate, enter into or vary any licence for software in connection with the Services.

63.11 Right to purchase assets and equipment

63.11.1 In the event of termination or expiry of this Contract (but without prejudice to the provisions of the Licence or Lease and the provisions of Schedule 8 (*Intellectual Property Rights*) the Authority shall have the option (exercisable by Notice to be given not later than one (1) month after termination or one (1) month prior to expiry) to purchase (or procure the purchase by an Incoming Contractor of):

(a) the Exclusive Assets; and

(b) any other assets, vehicles, property, goods, materials, stores, apparatus or equipment of any description belonging to the Contractor or Sub-Contractor and used for the purposes of performing any Services which are the subject of such termination or expiry (except such goods, materials, stores, apparatus or equipment of any description in course of preparation as the Contractor shall, with the concurrence of the Authority, elect to retain),

for the purposes of ensuring a smooth and orderly transition of the Services.

63.11.2 The price to be paid by the Authority (or other purchaser) for the assets under Clause 67.10.1 shall (save where the price is included in any other termination payment or other payments made to the Contractor) be the lesser of:

(a) the market value of the items in question at the Termination Date; and

(b) the Net Book Value of the items in question at the Termination Date,

which market value and/or Net Book Value shall, in default of agreement between the Authority and the Contractor, be determined by an independent person to be appointed (in default of nomination by agreement) by the President for the time being of the Royal Institution of Chartered Surveyors.

63.11.3 The independent person under Clause 63.11.2 shall act as an expert and not as an arbiter and, accordingly, its decisions (both as to market and residual value and to questions of procedure) shall be final and binding on the Contractor and the Authority and not subject to any form of review or appeal and its costs shall be paid by such party as he may decide or by both the Authority and the Contractor in such proportion as he may direct. Each Party shall be responsible for the costs of presenting its own case.

63.11.4 For the avoidance of doubt the Dispute Resolution Procedure shall not apply in relation to any dispute as to market or residual value falling to be determined pursuant to this Clause 63.11.

63.11.5 The Parties shall enter into the Asset Transfer Agreements in relation to any assets to be purchased under Clause 63.11.1.

63.12 Right to continued use of assets

63.12.1 In the event of termination or expiry of this Contract or the Transfer Period, the Authority shall have the option (exercisable by Notice to be given not later than one (1) month after termination or one (1) month prior to expiry) to continue (or procure that any Incoming Contractor may continue) with the use of Assets which are not Exclusive Assets but are required to continue with the provision of the Services.

63.12.2 As soon as reasonably practicable after the Contractor has been notified in accordance with Clause 63.11.1, the Contractor shall procure a non-exclusive, perpetual, royalty-free licence for the Authority and/or Incoming Contractor and/or Sub-Contractors to use, for such reasonable period as may be required by the Authority and/or Incoming Contractor, such assets specified under such clause, failing which the Contractor shall as soon as reasonably practicable and (at its cost) procure suitable alternative assets to be used by the Authority and/or Incoming Contractor.

63.13 Removal of Property

Subject to Clauses 63.11 and 63.12, in the event of termination (in whole or in part) or expiry of this Contract or expiry of the Transfer Period, the Authority may at any time require the Contractor to remove from the Leased and Licensed Areas or any other part of the Service Delivery Location affected by such termination or expiry, any property of the Contractor or of third parties which is located at the Leased and Licensed Areas or the Service Delivery Location in connection with:

(a) the performance of the Services;

(b) the performance of any other obligations by the Contractor under any other contract entered into with the Authority, unless the requirement for such services continues following termination,

and if the Contractor fails to comply within a reasonable period the Authority may take any action, acting with reasonable care, which in the Authority's sole opinion is necessary to remove any such property. The Authority shall not be liable for any losses or liabilities incurred by the Contractor or any third party as a result, directly or indirectly, of any removal of property or of any action taken by the Authority pursuant to this Clause 63.13, and the Contractor shall indemnify the Authority on the terms set out in Schedule 12 *(Liabilities, Indemnities, Insurance and Conduct of Claims)* against any claim or action for damages by any third party in respect of any Losses of the Authority (which may include direct or indirect

losses of third parties) which that third party has suffered or incurred and which results from, or arises out of any such action.

63.14 Transfer of Sub-Contracts

63.14.1 The Contractor shall, if required by the Authority, and with effect from the Termination Date, assign the benefit of or novate in favour of the Authority or any Incoming Contractor any Sub-Contract:

(a) under which, as at the date of service of the Termination Notice, a material part of the Services to be transferred are being performed by a Sub-Contractor; and/or

(b) which is necessary (in the reasonable opinion of the Authority) to enable the Authority or any Incoming Contractor to perform the Services or services substantially similar to the Services.

63.14.2 The Contractor shall ensure that its Sub-Contracts contain a provision giving effect to this Clause 63.14.2.

63.14.3 The Contractor shall use all reasonable endeavours to procure that any such Sub-Contractor co-operates with the Authority and any Incoming Contractor with a view to continuing to provide the relevant sub-contracted Services notwithstanding termination or expiry.

63.14.4 The Parties shall execute such documents and provide such other assistance as the Authority reasonably requires to give effect to this Clause 63.14.4. The Contractor shall hold such Sub-Contracts on trust for the Authority or any Incoming Contractor until such time as the relevant Sub-Contract has been transferred.

63.14.5 The Contractor shall indemnify the Authority and any Incoming Contractor against all losses, liabilities and costs arising out of any claims made by a counterparty to a transferring Sub-Contract both:

(a) in relation to matters arising prior to the date of assignment or novation; and

(b) in relation to any matters arising after the date of assignment or novation and which arise as a result of any act, neglect of default or the Contractor.

63.15 Return or Destruction of Classified Documents

The provisions of Clause 28.9 (*Return or Destruction of Classified Documents*) shall apply to the extent relevant.

Part 20 – Sub-Contracting of the Services

64 Supply Chain and Sub-Contracting Strategy

64.1 The provisions of Schedule 14 (*Supply Chain and Sub*-Contracting *Strategy*) shall apply.

Part 21 – Financial Security

65 Financial Distress

The Contractor shall comply with the provisions of Schedule 24 (*Financial Distress*).

66 Financial Security

66.1 Parent Company Guarantee

66.1.1 The Contractor shall on or prior to the Commencement Date, procure the provision of an executed Parent Company Guarantee in the form set out in Schedule 25 *(Parent Company Guarantee)* issued by the Parent as security to the Authority for the performance by the Contractor of all of its obligations under this Contract.

66.1.2 The Contractor shall maintain the continuing validity and effectiveness of the Parent Company Guarantee from the date that such security is provided to the Authority in executed form, for the duration of the Contract Period and, following the end of the Contract Period, for the period that obligations or liabilities of the Contractor in connection with this Contract remain outstanding or unperformed.

66.1.3 If a Financial Distress Event occurs in relation to the Parent, the Contractor shall, as requested by the Authority, procure that either:

(a) a replacement Parent Company Guarantee on the same terms is procured from an alternative parent of the Contractor meeting the requirements of Schedule 24 *(Financial Distress)*; or

(b) a Performance Bond is procured on the terms set out in Clause 66.2 *(Performance Bond)*.

66.1.4 Any reference in this Contract to circumstances in which the Authority may take any action under the Parent Company Guarantee shall be without prejudice to the generality of Clause 66.1.1 and Clause 66.1.2.

66.2 Performance Bond

66.2.1 The Contractor shall on or prior to the date specified by the Authority where so required in accordance with Clause 66.1.3 procure the provision of an executed Performance Bond with a value as reasonably required by the Authority, issued by a Bond Provider with the Required Rating from the date so requested by the Authority until one (1) year after the end of the Contract Period (as may be extended in accordance with this Contract (the ***Performance Bond Longstop Date***) for the payment of all sums that the Contractor may be liable from time to time to pay to the Authority under this Contract, including any liability arising under Clause 63 (*Consequences of Termination or Expiry*).

66.2.2 Replacement or renewal of Performance Bond

The Contractor shall replace, renew or extend the Performance Bond with a replacement Performance Bond that meets the requirements of Clause 66.2.1:

(a) within fifteen (15) Business Days of the Bond Provider's rating falling below the Required Rating; and

(b) if the Performance Bond is due to expire prior to the Performance Bond Longstop Date (the Interim Performance Bond Expiry Date), on or before the date falling fifteen (15) Business Days prior to any Interim Performance Bond Expiry Date.

66.2.3 Demands under the Performance Bond

The Performance Bond shall be on terms that it is payable without further enquiry by the Bond Provider to the Authority for the full amount (or permitted balance thereof if a demand or demands have already been made) in London in accordance with the Authority's written demand(s) on the Bond Provider, certifying as to any one or more of the following:

(a) whether or not this Contract is, or is to be, terminated as a result thereof:

(i) the Contractor has failed to pay any sum to the Authority which is due and payable under the terms of this Contract; or

(ii) a Contractor Default has occurred and is continuing and the Authority expects to incur additional costs in connection with early termination of this Contract, including costs referred to in Clause 61 (*Consequences of Termination or Expiry*);

(b) that this Contract has either terminated or expired and, in either case, there are liabilities or obligations outstanding from the Contractor to the Authority;

(c) that the Contractor has failed to perform or comply with its obligations under the Asset Transfer Agreement or Transition Services Agreement; or

(d) the Contractor has not provided a replacement, renewed or extended Performance Bond when required pursuant to Clause 66.2.2.

66.2.4 If the Authority makes a demand under Clause 66.2.2, then:

(a) any such amount demanded shall be paid by the Bond Provider into an interest-bearing account with a clearing bank in London and held on trust for the Authority and the Contractor for application in or towards amounts in respect of which the Authority would have been entitled to make any demand under the Performance Bond;

(b) any interest accruing in such account and any balance remaining at the Performance Bond Longstop Date shall, subject to the Authority's right of set-off, belong to the Contractor; and

(c) where the demand is pursuant to Clause 66.2.3 (d) if the Contractor subsequently delivers a replacement, renewed or extended Performance Bond that meets the requirements of Clause 66.2.1, the balance standing to the credit of the account referred to in Clause 66.2.4 (b) (including any interest) shall belong to the Contractor, and the Authority shall promptly take such steps as are reasonably requested by the Contractor to ensure the release of such balance to the Contractor.

66.2.5 Any reference in this Contract to circumstances in which the Authority may issue a demand notice or take any other action under the Performance Bond shall be without prejudice to the generality of Clause 66.2.1.

67 Any New Parent of the Contractor to accede to the Parent Company Guarantee

67.1 Subject to Clauses 67.2 and 67.3, if a Change in Control occurs, as contemplated under Clause 77 (Change in Control) in relation to a Contractor, the Parent shall (except if a right of termination has arisen under Clause 77 (Change in Control)) be released from liability under the Parent Company Guarantee in respect of any liability of that Contractor under this Contract on and from the effective date of the New Owner's accession to the Parent Company Guarantee in accordance with Clause 67.2(a), provided always that the Parent shall not be relieved or released from any accrued liabilities as at such date. The terms of the release and accession shall be as set out in the deed of accession delivered under Clause 67.2(a).

67.2 The release of the Parent from its obligations under the Parent Company Guarantee under Clause 67.1 shall be conditional on:

(a) the Contractor procuring that the New Owner enters into a deed of accession with the Authority in a form acceptable to the Authority and the Parent under which the New Owner agrees to be bound by the provisions of the Parent Company Guarantee in relation to the relevant obligations (including any warranties and other obligations therein) as if reference to the Parent in the Parent Company Guarantee was to that New Owner;

(b) the Authority being satisfied that the New Owner is of a standing satisfactory to the Authority, which may include a requirement that the proposed New Owner is acceptable to the Authority in relation to any national security considerations and has:

(i) the legal capacity, power and authority to become a party to and perform the relevant obligations under the Parent Company Guarantee, including the Guaranteed Obligations;

(ii) the appropriate managerial competence and financial resources sufficient to carry out the relevant obligations under the Parent Company Guarantee;

(iii) satisfied such other criteria necessary to ensure the New Owner is capable of fully performing the relevant obligations under the Parent Company Guarantee as may be reasonably specified by the Authority; and

(iv) met (and continues to meet) the tests set out in Schedule 24 *(Financial Distress)*.

(c) the Authority being satisfied that the accession of the New Owner will not prejudice the Authority in terms of its ability to make a claim under the Parent Company Guarantee in respect of any breach of the Guaranteed Obligations (as defined in the Parent Company Guarantee) on and from the commencement of the Parent Company Guarantee.

67.3 This Clause 67 shall not apply in respect of a Change in Control of any Contractor as part of any internal reorganisation of the Contractor Group, provided that the relevant Contractor

remains a wholly owned subsidiary (whether direct or indirect) of the Parent following any such reorganisation.

Part 22 – Change

68 Change Procedure

68.1 The Change Procedure set out in Schedule 30 *(Change Procedure)* shall apply to changes in this Contract.

68.2 Clause 70 (Change in Law) shall apply in relation to a Change in Law in addition to Schedule 30 *(Change Procedure)*.

68.3 To the extent Schedule 3 (Lot Specific Conditions) includes any provisions relating to any proposed Change to the relevant part of the Services or Specification Change, such provisions shall apply in relation to the proposed Change or Specification Change in addition to Schedule 30 *(Change Procedure).*

68.4 The Change Procedure shall not apply to any change to a Referenced Document where a different process is set out in that Referenced Document for agreeing and documenting any change thereto.

69 Not Used

70 Change in Law

70.1 Without prejudice to the provisions of Clause 12 (*Observance of Law and Regulations*) the Parties shall each use reasonable endeavours to monitor any planned or implemented Changes in Law throughout the Contract Period and shall notify the other Party in writing of any planned or implemented Change in Law which may affect the provision of the Services. The Contractor shall not be able to adjust any Pricing Parameter as a result of a Change in Law other than for a Qualifying Change in Law.

70.2 If either the Contractor or the Authority becomes aware that as a result of a Change in Law it is necessary that a Change or Specification Change be made, it shall give Notice to the other (regardless of whether the Change in Law has been identified in the annual report in accordance with Clause 70.3 and 70.4) by raising an Authority Change Proposal or Contractor Change Proposal. The procedure set out in Clause 68 (*Change Procedure*) shall apply.

70.3 In particular:

(a) the Contractor shall use reasonable endeavours to keep the Authority informed of any planned Change in Law which, as a defence contractor in the United Kingdom it would reasonably be expected to foresee and which would, if implemented, only affect companies involved in the provision of warehousing and distribution services in the United Kingdom; and

(b) the Authority shall use reasonable endeavours to keep the Contractor informed of any planned Change in Law to be issued by the Authority relevant to the provision of the Services which, if implemented, would impact upon the basis of performance of the Authority's obligations under this Contract as a U.K. Government department engaged in the procurement of services to the defence sector in the United Kingdom.

70.4 Whilst the Change Procedure detailed at Schedule 30 (*Change Procedure*) shall apply to a Change in Law; the Contractor shall not be entitled to adjust any Pricing Parameter as a result of a Change in Law other than for a Qualifying Change in Law. The Contractor shall, in any event, use all reasonable endeavours to minimise the negative impact and maximise the positive impact of the Change in Law and mitigate any detrimental consequences of such Change in Law.

70.5 The Authority may specify (in response to a Contractor Change Proposal) an alternative means by which the relevant Change in Law can be complied with, either by providing an Authority Change Proposal replacing any relevant Contractor Change Proposal or specifying how the matter is to be addressed, including by any change in or as a result of any interpretation of the relevant Law or Regulation.

70.6 The Contractor shall, through the annual report submitted under Clause 17 (*Annual Report and Reviews*) include details of any potential Qualifying Change in Law if it believes that

such potential Qualifying Change in Law would have an effect on the cost of providing the Services, together with an initial assessment of the financial impact of complying with the Qualifying Change in Law.

70.7 In respect of any potential Qualifying Change in Law detailed by the Contractor in the annual report in accordance with Clause 70.4, the Parties shall agree either:

(a) to reflect any agreed risk allocation in respect of the potential Qualifying Change in Law in an adjustment to any Pricing Parameter to be processed in accordance with Clause 70.1, in which case no further adjustment shall be made to any Pricing Parameter in respect of any Change which may subsequently be required as a result of such Qualifying Change in Law; or

(b) not to adjust any Pricing Parameter until such time as a Change or Specification Change is processed in accordance with Clause 68 (Change Procedure) as a result of such Qualifying Change in Law, at which point any adjustment required to any Pricing Parameter to reflect any increase or decrease in costs arising from the implementation of the Qualifying Change in Law shall be made.

70.8 For the purposes of this Clause 70 (*Change in Law*), a change to the way in which the Contractor complies with the terms of any nuclear or related authorisation may, at the discretion of the Authority, be treated as a Qualifying Change in Law, provided that:

(a) the Contractor demonstrates to the Authority's satisfaction that such change is or was (as applicable) necessary:

(i) for the Contractor to comply with a change to the requirements of any nuclear regulatory authority (or any representative of a nuclear regulatory authority) in order to be able to continue to provide the Services; or

(ii) as part of the programme of self-assessment and continuous improvement which the Contractor is obliged to undertake in the context of its compliance with the terms of its nuclear authorisations;

(b) the Contractor shall notify the Authority of any change required by the nuclear regulatory authority (or its representative) and discuss with the Authority as appropriate.

The inclusion of any additional costs in a Change Notice shall be subject to the Authority's rights set out in Clause 1.2.28 (*Costs Recovery*) in the same way as all other costs purported to be recovered by the Contractor under this Contract.

70.9 Where the Parties have previously agreed an approach in meeting a Change in Law, and that approach is subsequently found not to have met the relevant regulatory body's requirements, the original approach to the Change in Law can be revisited as a Change in Law.

71 Brexit

71.1 Without prejudice to Clause 70 (*Change in Law*), the Contractor shall not be entitled to treat Brexit or any effect of Brexit as a Change. Further, the Contractor shall bear all risk and cost associated with Brexit or the effects of Brexit save only to the extent explicitly provided for in this Contract.

71.2 Notwithstanding Clause 71.1, if the Contractor believes that all or any part of this Contract has become impossible to perform as a direct result of Brexit the Contractor shall notify the Authority as soon as reasonably practicable. Such notice shall contain:

(a) a full justification of the Contractor's notice, including the extent to which the Contract has become impossible to perform and why this is a direct consequence of Brexit; and

(b) full supporting evidence; and

(c) details of any possible mitigations or alternative actions that would enable the Contract to be performed.

71.3 The Authority shall, acting reasonably and taking into account all relevant circumstances, determine whether and the extent to which it accepts the Contractor's notice and, if and to the extent that it does, consider any necessary amendments to this Contract to enable the Contractor to perform the relevant part of this Contract.

71.4 The Parties shall negotiate in good faith such changes as are considered necessary by the Authority with a view to ensuring that this Contract shall remain in full force and effect, subject only to such minimum changes as may be necessary to enable it to do so. Any changes so agreed shall be documented pursuant to Clause 72 (Amendments to Contract).

71.5 Without prejudice to the operation of Schedule 4 *(Pricing and Payment)*, Clause 71.1 shall apply to any impact on the Contractor's costs as a result of:

(a) foreign exchange rate fluctuations;

(b) any increase in import duties;

(c) increased employment costs; and

(d) any other increase in the Contractor's costs, including supply chain costs.

71.6 The following provisions of this Contract shall apply in relation to Brexit:

(a) Clause 1.2.15(c) (*Interpretation*);

(b) Clause 52.1.5 (*Force Majeure Events*);

(c) Clause 53.1.1 (*Relief Events*);

(d) Clause 53.2.1 (*Compensation Events*);

(e) Clause 55.2 (*Measures in a Crisis*);

(f) Clause 56.1.1 (*Step-in Rights*);

(g) Clause 70.10 (*Change in Law*); and

(h) this Clause 71.

72 Amendments to Contract

72.1 The Contract shall only be amended by the written agreement of the duly authorised representatives of the Parties.

72.2 The written agreement shall be the Change Notice detailed at Paragraph 6.4 of Schedule 30 (*Change Procedure*).

72.3 The amendment shall come into force only when the Contractor has returned the DEFFORM 10B as an unqualified offer and the Change Notice is counter signed by each of the Parties.

72.4 No Contract amendment shall come into effect unless it satisfies Clauses 72.1 and 72.2.

72.5 Where an amendment to the Requirements results in a Total Contract Price change or a change to any Pricing Parameter (each a Pricing Change), that Pricing Change shall be agreed prior to any formal amendments to the Contract].

72.6 Where necessary the Contractor shall either confirm the existing Parent Company Guarantee is relevant or provide a revised Parent Company Guarantee when returning the counter signed Change Notice.

72.7 Where:

(a) Not used

(b) a Change or Specification Change means that the Total Contract Price or any Service Category Price is changed by more than five per cent (5%) whether by one or more amendment; or

(c) otherwise in a way which the Authority considers to be a significant change the Contract,

the Authority shall issue to the Contractor, within twenty (20) Business Days of agreeing the relevant amendment, a Consolidated Version.

72.8 The Consolidated Version issued in accordance with Clause 72.8 shall incorporate only Changes and amendments previously agreed between the parties in accordance with Schedule 30 (*Change Procedure*) and shall be signed on behalf of the Authority.

72.9 The Contractor shall, within ten (10) Business Days of receiving it:

(a) sign and return an acknowledgement to the Authority confirming that the copy of the Consolidated Version issued in accordance with to Clause 72.8, properly incorporates all amendments made to the Contract; or

(b) notify the Authority in writing why it believes that the Consolidated Version does not properly incorporate all amendments made to the Contract.

72.10 Following any notification made by the Contractor under Clause 72.9(b), the Authority and the Contractor shall seek to reach agreement on the content of the Consolidated Version, in the absence of which the matter may be resolved through the appropriate dispute resolution procedure.

72.11 Within ten (10) Business Days of the Parties reaching agreement or the matter being determined through the Dispute Resolution Procedure, the Authority shall reissue a signed Consolidated Version which accords with that agreement or determination and which the Contractor shall sign and return to the Authority within ten (10) Business Days of receiving it.

72.12 In the event, the Contractor fails to return a signed acknowledgement pursuant to Clause 72.9(a) or notify the Authority pursuant to Clause 72.9(b), within twenty (20) Business Days of receiving the Consolidated Version, the Contractor is deemed to confirm that the copy of the Consolidated Version issued by the Authority properly incorporates all relevant amendments made to the Contract.

Part 23 – Confidentiality and Disclosure/Protection of Data

73 Confidentiality and Freedom of Information

73.1 Subject to Clause 74 (*Transparency*) and except to the extent set out in this Clause 73, each of the Authority and the Contractor agrees, for itself and its respective directors, officers, employees, servants, Sub-Contractors and agents (and in the case of the Contractor, each Contractor Group Member), to keep confidential and not to disclose to any person any of the other's Confidential Information.

73.2 Notwithstanding Clause 73, and subject to Clause 73.4, the following disclosures of Confidential Information shall be permitted, provided that the relationship to any other Confidential Information is not revealed and in the case of the Authority, in so far as it is able to disclose such information:

(a) any disclosure of Confidential Information that is reasonably required by persons engaged in the performance of their obligations under this Contract or any other contract between the Parties (or the Authority and any Contractor Group Member) including disclosure to any professional advisers and insurers to the extent necessary in connection with this Contract;

(b) any disclosure of Confidential Information by the Contractor to a Sub-Contractor where such Confidential Information is reasonably required by the Sub-Contractor for the performance of the Sub-Contractor's obligations under the Sub-Contract;

(c) any use or disclosure of Confidential Information to the extent either party has the right to use or disclose that Confidential Information in accordance with any other provision of this Contract;

(d) any matter which the Authority or the Contractor can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this Contract;

(e) any disclosure to enable a determination to be made under the Dispute Resolution Procedure;

(f) any disclosure which is required by any law (including any order of a court of competent jurisdiction), any parliamentary obligation or the rules of any relevant stock exchange or governmental or regulatory authority having the force of law;

(g) any disclosure of Confidential Information which is already in the possession of the receiving Party and is not subject to obligations of confidentiality, prior to its disclosure by the disclosing Party;

(h) any disclosure as may reasonably be required:

(i) by the Authority of any Contractor Confidential Information to any person conducting an Office of Government Commerce gateway review;

(ii) by the Contractor, in respect of circulation of this Contract to a Contractor Group Member;

(i) any disclosure of Confidential Information, that was received without restriction or further disclosure from a third party who lawfully acquired it and who is itself under no obligation restricting its disclosure;

(j) any disclosure of Confidential Information any Party can show from their records that the same information was derived independently of that received under or in connection with this Contract;

(k) any disclosure of Contractor Confidential Information by the Authority to any other department, office or agency of H.M.Government for any UK Government purpose;

(l) any disclosure by the Authority of any document related to this Contract to which it is a Party and which the Contractor (acting reasonably) has agreed with the Authority contains no Contractor Confidential Information;

(m) any disclosure for the purpose of:

(i) the examination and certification of the Authority's or the Contractor's accounts; or

(ii) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources; and

(n) Not used

(o) any disclosure of Contractor Confidential Information by the Authority:

(i) to any person in connection with the preparation and analysis by that person of a review;

(ii) to any contractor of the Authority in relation to a Step-in under Clause 56 (*Step-in Rights*) (subject to the terms of Clause 56 (*Step-in Rights*));

(iii) to any proposed Incoming Contractor and its advisers for the purposes of selecting and appointing any Incoming Contractor and otherwise for the purposes of exit in accordance with Clause 63 (*Exit Strategy*) (subject to the restrictions set out in that Clause),

(p) and subsequent use by the recipient as may be required for such purposes.

73.3 Not used

73.4 Where disclosure is permitted under Clause 73.2, other than Clauses 73.2(d), 73.2(f), 73.2(g), 73.2(i), 73.2(j), 73.2(k), 73.2(m)(i), the relevant Party shall procure that the recipient of the information shall be subject substantially to the same obligation of confidentiality as that contained in this Clause 73 and will (in the case of recipients other than other Crown servants, departments, offices or agencies of HM Government) if necessary to achieve this obligation sign a confidentiality agreement containing at least equivalent provisions to those contained in this Clause 73.

73.5 For the purposes of the National Audit Act 1983 the Comptroller and Auditor General may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Contractor and any Sub-Contractor and may require the Contractor and any Sub-Contractor to produce such oral or written explanations as he considers necessary. For the avoidance of doubt it is hereby declared that the carrying out of an

examination under Section 6(3)(d) of the National Audit Act 1983 in relation to the Contractor is not a function exercisable under this Contract.

73.6 The Parties acknowledge that the National Audit Office has the right to publish details of this Contract (including Confidential Information) in its relevant reports to Parliament.

73.7 Clause 73.4 shall not prevent the Authority or any other department, office or agency of HM Government from using or disclosing any information about this Contract as necessary to secure improvements in value for money across HM Government and in any reports as necessary to comply with the objectives of the relevant department, office or agency.

73.8 The Contractor shall procure that no Contractor Group Member and no Contractor Personnel shall make use of any the Authority Confidential Information otherwise than for the purpose of this Contract and the Contractor's performance of its obligations under this Contract (or any other contract between the Parties or between the Authority and any Contractor Group Member), except with the written consent of the Authority or as permitted under Clause 73.9.

73.9 Neither the Parent nor any Contractor Group Member nor any employee of the Parent or any Contractor Group Member shall make use of any the Authority Confidential Information otherwise than for the purpose of this Contract and the Contractor's performance of its obligations under this Contract, except with the written consent of the Authority.

73.10 The Contractor acknowledges that the Authority is subject to the requirements of the Freedom of Information Act 2000 (FOI Act) and the Environmental Information Regulations and shall assist the Authority's compliance with its FOI Information disclosure requirements pursuant to the same in the manner provided for in Clauses 73.11 to 73.12 (inclusive) below.

73.11 Where the Authority receives a Request for Information in relation to FOI Information that the Contractor is holding on its behalf under this Contract, the Contractor shall at the Authority's request to the Contractor's Contract Manager and as soon as is practicable, provide an estimate of the total time for complying with the request to enable the Authority, in compliance with the FOI Act, to assess the extent to which it wishes the Contractor to provide the Authority with support as set out in this Clause 73.11. the Contractor shall then:

(a) provide the Authority Representative with a copy of all such FOI Information in the form that the Authority Representative requires; and

(b) provide all necessary assistance as reasonably requested by the Authority Representative in connection with any such FOI Information, to enable the Authority to respond to a Request for Information within the time for compliance set out in section - 10 of the FOI Act or Regulation 5 of the Environmental Information Regulations.

73.12 Following notification under Clause 73.11, and up until such time as the Contractor has provided the Authority's Representative with all the FOI Information specified in Clause 73.11 (a), the Contractor may make representations to the Authority Representative as to whether or not or on what basis FOI Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Authority shall be responsible for determining at its absolute discretion:

(a) whether any Confidential Information and/or any other FOI Information is exempt from disclosure under the FOI Act and the Environmental Information Regulations; or

(b) whether FOI Information is to be disclosed in response to a Request for Information,

and in no event shall the Contractor respond directly, or allow its Sub-Contractors to respond directly, to a Request for Information unless expressly authorised to do so by the Authority Representative.

73.13 Where the Authority is satisfied that any Confidential Information and/or any other FOI Information is exempt from disclosure under the FOI Act and the Environmental Information Regulations, it shall include in its response to the relevant request for information a

statement that the Authority is relying on the relevant exemptions for refusing to accede to such a request.

73.14 The Contractor acknowledges that any lists provided by them listing or outlining Commercially Sensitive Information, are of indicative value only and that the Authority may nevertheless be obliged to disclose Commercially Sensitive Information in accordance with the requirements of the FOI Act and the Environmental Information Regulations.

73.15 The Contractor acknowledges that (notwithstanding the provisions of Clauses 73.9 to 73.12) the Authority may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part 1 of the FOI Act 2000 (the **Code**), be obliged under the FOI Act, or the Environmental Information Regulations to disclose FOI Information concerning the Contractor:

(a) in certain circumstances without consulting with the Contractor; or

(b) following consultation with the Contractor and having taken its views into account,

provided always that where limb (a) of this Clause 73.15 applies the Authority's Representative shall, in accordance with the recommendations of the Code, take reasonable steps, where appropriate to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

73.16 The provisions of this Clause 73 are without prejudice to the application of the Official Secrets Acts 1911 to 1989.

74 Transparency

74.1 Publication of Transparency Information

74.1.1 Notwithstanding any other term of this Contract, including Clause 73 (*Confidentiality and Freedom of Information*), the Contractor understands that the Authority may publish the Transparency Information to the general public. The Contractor shall assist and cooperate with the Authority to enable the Authority to publish the Transparency Information.

74.1.2 Before publishing the Transparency Information to the general public in accordance with Clause 74.1, the Authority shall redact any information that would be exempt from disclosure if it was the subject of a request for information under the FOI Act or the Environmental Information Regulations, including the Contractor Commercially Sensitive Information.

74.1.3 The Authority shall consult with the Contractor before redacting any information from the Transparency Information in accordance with Clause 74.1.2. the Contractor acknowledges and accepts that its representations on redactions during consultation may not be determinative and that the decision whether to redact information is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the FOI Act or the Environmental Information Regulations.

74.2 Preservation of Rights

Nothing in this Clause shall affect the Contractor's rights at law.

75 Data Protection

75.1 In this Clause 75 (Data Protection), "Controller", "Data Subject", "Personal Data", Personal Data Breach and "Processor" shall have the same meanings as in Article 4 of the General Data Protection Regulation (GDPR).

75.2 Data Protection Legislation means:

(a) the GDPR (Regulation (EU) 2016/679);

(b) the Data Protection Act 2018 to the extent that it relates to processing of Personal Data and privacy; and

(c) all applicable laws about the processing of personal data and privacy.

75.3 Both Parties acknowledge that there is no processing of Personal Data associated with or intrinsic to the performance of the Contract. The incidental exchange of Personal Data for the

purpose of communication to give effect to the Contract or the business relationship is not considered to be processing of Personal Data by either Party on behalf of the other.

75.4 The Contractor shall notify the Authority promptly if it considers that any of the Authority's instructions obligate the Contractor to take on the role of Processor under the Data Protection Legislation beyond that which is contemplated in clause 75.3. The Authority agrees that the Contractor shall not be required to provide legal advice to the Authority and that such notification (or absence of notification) by the Contractor will not be construed as legal advice or representation by the Contractor.

75.5 Should the Contract be amended to require the Contractor to process Personal Data as a Processor on behalf of the Authority as a result of clause 75.4 or otherwise the Contract will be amended, to include contractual clauses to reflect role of the Authority as the Controller and the Contractor as the Processor within the meaning of Article 4 of the GDPR, in accordance with Clause 72 (Amendments to Contract). Where the Contract is amended to include processing of Personal Data as a Joint Controller, the Parties agree that they shall amend the Contract to include appropriate contractual clauses, including but not limited to clauses dealing with notification in the event of a Personal Data Breach and requests from Data Subjects for access to their Personal Data.

75.6 Notwithstanding clause 75.3, each Party undertakes to comply with its obligations as Controller under the Data Protection Legislation.

76 Authority Data

76.1 Subject to Clause 76.2, the Authority hereby grants to the Contractor, so far as it is able to do so, a royalty-free, non-exclusive, revocable, non-transferable licence during the Contract Period to use the Authority Data.

76.2 The licence granted in Clause 76.1:

(a) includes (so far as the Authority is able to do so) the right to grant sub-licences to Contractor Group Members, provided that any relevant Contractor Group Member has entered into a confidentiality undertaking with the Contractor on the same terms as set out in Clause 73 (*Confidentiality and Freedom of Information*); and

(b) is granted solely to the extent necessary for the purposes of this Contract and any other work to be carried out by the Contractor for the Authority. The Contractor shall not, and shall procure that Contractor Group Members do not, use the Authority Data for any other purpose or for the benefit of any person other than the Authority.

76.3 Save for the licence granted in Clause 76.1, the Contractor shall not acquire any right, title or interest in or to the Intellectual Property in the Authority Data and where any Contractor Group Member acquires, by operation of law, title to Intellectual Property that is inconsistent with this allocation of title, the Contractor shall procure that the relevant Contractor Group Member shall assign in writing such Intellectual Property as it has acquired to the Authority on the request of the Authority (whenever made).

76.4 The Contractor shall not (and shall procure that no Affiliate of the Contractor shall) delete or remove any proprietary notices contained within or relating to the Authority Data.

76.5 The Contractor shall not (and shall procure that no Affiliate of the Contractor shall) store, copy, disclose, or use the Authority Data except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.

76.6 The Contractor shall ensure that any system on which any Affiliate of the Contractor holds any Authority Data, including back-up data, is a secure system that complies with the Authority's security requirements, including the Security Policy Framework.

76.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Contractor's default so as to be unusable, the Authority may:

(a) require the Contractor (at the Contractor's expense) to restore or procure the restoration of the Authority Data and the Contractor shall do so as soon as practicable; and/or

(b) itself restore or procure the restoration of the Authority Data and shall be repaid by the Contractor any reasonable expenses incurred in doing so.

76.8 If at any time the Contractor suspects or has reason to believe that the Authority Data (that is held by or on behalf of the Contractor or any Contractor Group Member) has or may become corrupted, lost or degraded in any way for any reason, then the Contractor shall notify the Authority immediately.

Part 24 – Miscellaneous

77 Change in Control

77.1 The Contractor shall inform the Authority in writing, as soon as practicable, but in any event not less than thirty (30) Business Days in advance, of any proposed change in control (as defined in Clause 77.2 below) of any Contractor Group Member or Key Sub-Contractor.

77.2 For the purposes of this Clause 77, control, means the power of a person or a group of persons acting in concert (within the meaning of the City Code on Takeovers and Mergers) (New Owner(s)) to secure that the affairs of a Contractor Group Member or Key Sub-Contractor (as applicable) are conducted in accordance with the wishes of that person or group of persons (as applicable):

(a) by means of holding of shares, or the possession of voting powers in, or in relation to, a Contractor Group Member or Key Sub-Contractor (as applicable); or

(b) by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating a Contractor Group Member or Key Sub-Contractor (as applicable),

and a **Change in Control** occurs if a person or group of persons (as applicable) that control a Contractor Group Member or Key Sub-Contractor cease to do so or if another person or group of persons acquires control of a Contractor Group Member or Key Sub-Contractor.

77.3 The notification referred to in Clause 77.1 shall be submitted to the Authority Representative and to: Mergers and Acquisitions Section, Supplier Relations Team, Spruce 3b # 1301, MOD Abbey Wood, Bristol, BS34 8JH.

77.4 Advice by the Contractor of any Change in Control shall not prejudice the existing rights of the Authority under this Contract nor create or imply any rights of the Authority additional to the Authority's right to receive that information.

77.5 Where the Authority objects to the proposed Change in Control of a Contractor Group Member or Key Sub-Contractor (or where it objects to a proposed or actual Change in Control of a Contractor Group Member or Key Sub-Contractor that it was not informed about in accordance with Clause 77.1) it shall promptly notify the Contractor and shall without delay, engage with the Contractor in detailed discussions to enable the Contractor to seek to address the Authority's concerns. Where the Authority considers that its concerns have been addressed to its satisfaction it shall notify the Contractor of this fact and withdraw its objection.

77.6 In the event that there is a Change in Control of a Contractor Group Member or Key Sub-Contractor notwithstanding the objection of the Authority as set out in Clause 77.5 above (or in the event that the Authority's concerns about an actual Change in Control that it was not informed about in accordance with Clause 77.1 are not addressed to the Authority's satisfaction) the Authority shall be entitled to terminate this Contract immediately in accordance with Clause 57.4 (*Authority right to terminate Contract without further remediation*) (other than in connection with a Change in Control of the Parent, unless the Authority acting on grounds of national security considers that it is inappropriate for the new owner(s) of the Parent to become involved or interested in Contractor Group) if:

(a) the Authority, acting in the national interests or on grounds of defence, national security or national interest considers that it is inappropriate for the New Owner(s) to become involved or interested in Contractor Group; or

(b) in the opinion of the Authority, it is inappropriate for the New Owner(s) to become involved or interested in Contractor Group and its business because the Authority has received specific information from the Serious Fraud Office or the Crown

Prosecution Service or any successor to either body about the suitability of the New Owner(s) to act in such capacity in relation to Contractor Group; or

(c) any New Owner(s) has within the previous two (2) years:

(i) been convicted of a criminal offence relating to the conduct of its business or profession; or

(ii) been determined by a governmental or regulatory authority to have materially failed to comply with any obligations relating to the payment of any taxes or social security contributions; or

(iii) made any serious negligent or fraudulent misrepresentations in the tendering process for any project or matter in which the public sector has or had a significant participation; or

(d) any New Owner is currently involved in a Material Dispute with any part of HM Government.

77.7 For the purposes of this Clause **Material Dispute** means a dispute that satisfies the following criteria:

(a) the dispute has been referred to a court, arbitration or adjudication process;

(b) the court, arbitrator or adjudicator has not given their final decision in determination of the dispute; and

(c) the value of the dispute is at least thirty million pounds (£30 million) (such value to be indexed from the Commencement Date).

78 Assignment and Transfer

78.1 This Contract is binding on and shall endure for the benefit of the Parties and their respective successors and permitted assignees.

78.2 No Party to this Contract may transfer, sell, assign, novate, create any encumbrance or otherwise dispose of this Contract or any part thereof, or any benefit, interest or advantage of this Contract or any part thereof without the prior written consent of the other Parties.

79 Contract Managers

79.1 Authority Contract Manager

The Authority shall appoint the person designated as "Commercial Officer" whose name, address and telephone number are set out in DEFFORM 111 as the Authority Contract Manager.

79.2 Change in Authority Contract Manager

79.2.1 The Authority may, at any time by Notice to the Contractor change the Authority Contract Manager and Authority shall, as far as practicable, consult with the Contractor prior to the **appointment** of any replacement Authority Contract Manager, taking into account of the need for liaising and continuity in respect of this Contract. Any such Notice shall specify the date on which such change or substitution shall have effect, which date shall, other than in the case of an emergency, be such as will not cause serious inconvenience to the Contractor in the execution of its obligations under this Contract.

79.2.2 During any period when the Authority Contract Manager is unable through illness, incapacity, holidays or any other reason to carry out or exercise its functions under this Contract, the Authority Contract Manager may delegate his functions to another person by giving the Contractor Contract Manager written notice of the identity of such person and the extent of its authority.

79.3 Contractor Contract Manager

79.3.1 The Contractor shall appoint the person whose name, address and telephone number is set out in Clause 82 (*Notices*) as the Contractor Contract Manager to act as the Contractor's representative generally in connection with this Contract.

79.4 Change in the Contractor Contract Manager

79.4.1 The Contractor may, by Notice to Authority and with Authority's approval, (such approval not to be unreasonably withheld or delayed) change the Contractor Contract Manager or appoint more than one Contractor Contract Manager (provided that if more than one the Contractor Contract Manager is proposed, the Contractor shall provide written confirmation to the Authority Contract Manager of the extent of each person's authority). Where the Contractor wishes to do so it shall by Notice to the Authority propose a substitute for approval, taking into account the need for liaison and continuity in relation to the performance of the Contractor's obligations under this Contract. If the Authority approves the change to the Contractor Contract Manager, Clause 82 (*Notices*) shall be updated accordingly.

79.4.2 During any period when the Contractor Contract Manager is unable through illness, incapacity, holidays or any other reason to carry out or exercise its functions under this Contract, the Contractor Contract Manager may, with the Authority Contract Manager's approval delegate its functions to another person by giving the Authority Contract Manager Notice of the identity of such person and the extent of its authority. The Authority Contract Manager shall not unreasonably withhold or delay its approval of the delegate under this Clause 79.4.2.

79.5 Notices to Contract Managers

Subject to Clause 82 (*Notices*) and the Appendix, any Notice, information, instructions or public communication given to:

(a) the Contractor Contract Manager shall be given in writing and shall be deemed to have been given to the Contractor; and

(b) the Authority Contract Manager shall be given in writing and shall be deemed to have been given to the Authority.

80 Public relations and publicity

The Contractor shall not (and shall procure that each relevant Contractor Group Member and the employees, agents or Sub-Contractors of the Contractor and each relevant Contractor Group Member shall not):

(a) communicate with representatives of the press, television, radio or other communications media on any matter concerning this Contract; or

(b) photograph or film in or upon any Authority sites; or

(c) erect or exhibit on any part of the Authority sites any notice or advertisement, unless:

(i) the Authority's Representative has given its prior written consent;

(ii) as otherwise required to comply with Law or stock exchange requirements; or

(iii) in accordance with a written communication protocol agreed by the Parties.

81 Severability

If any provision of this Contract is held to be invalid, illegal or unenforceable for any reason then:

(a) such provision shall (to the extent it is invalid, illegal or unenforceable) be given no effect and shall be deemed not to be included in this Contract but without invalidating any of the remaining provisions of this Contract; and

(b) the Parties shall use all reasonable endeavours to replace the invalid, illegal or unenforceable provision by a valid, legal and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid, illegal or unenforceable provision.

82 Notices

82.1 All **notices**, orders or other forms of communication required to be given in writing (**Notices**) under or in connection with this Contract shall:

(a) be given in writing;

(b) be authenticated by signature or by such other method as agreed between the Parties;

(c) be marked for the attention of the appropriate department or officer; and

(d) be marked in a prominent position with the relevant Contract number.

82.2 Notices should be delivered by:

(a) hand or recorded delivery; or

(b) first-class prepaid post (or airmail, in the case of Notices to or from overseas); or

(c) electronic mail, where such a means of communication is agreed for the purposes of this Contract.

82.3 Notices shall be deemed to have been received:

(a) if delivered by hand or recorded delivery, on the day of delivery if it is the recipient's Business Day and otherwise on the first (1st) Business Day of the recipient immediately following the day of delivery;

(b) if sent by first-class prepaid post (or airmail, if appropriate), on the third (3rd) Business Day (or on the tenth Business Day, in the case of airmail) after the day of posting; or

(c) if sent by electronic means:

(i) if transmitted between 09:00 and 17:00 hours on a Business Day (recipient's time) on completion of receipt by the sender of verification of the transmission from the receiving instrument; or

(ii) if transmitted at any other time, at 09:00 on the first (1st) Business Day (recipient's time) following the completion of receipt by the sender of verification of the transmission from the receiving instrument.

82.4 The addresses (including electronic addresses) of each Party to which all Notices shall be sent are those specified in this Contract, or such other address as any party may by written Notice specify to the others for the purpose of this Clause 82:

(a) Authority

[Address]

[To Authority's Representative]

(b) [Contractor]

Attention: With a copy to the Contractor Contract Manager.

82.5 Where any Party requests written confirmation of any communication, which does not constitute a Notice, such request shall not unreasonably be refused.

83 Entire Agreement and Decoupling

83.1 Entire agreement

83.1.1 This Contract together with the [insert relevant agreements] set out the entire agreement between the Parties as to the subject matter of this Contract. Save as agreed in writing between the Parties, this Contract supersedes all previous agreements between the Parties on the subject matter of this Contract.

83.1.2 No other term, express or implied, forms part of this Contract. Save as expressly agreed in this Contract, no usage, custom or course of dealing forms part of or affects this Contract.

83.2 Decoupling

If the Contractor enters into any other contract with the Crown relating in any way to the subject matter of this Contract, then, no breach by the Crown of that other contract nor any other act or omission nor any written or oral statement nor any representation whatsoever of or by the Crown its servants or agents or other contractor relating to or connected with any other contracts as aforesaid shall regardless of any negligence on its part or their part:

(a) give the Contractor any right under this Contract to an extension of time or additional payment or damages or any other relief or remedy whatsoever against the Authority; or

(b) affect, modify, reduce or extinguish either the obligations of the Contractor or the rights or remedies of the Authority (including the right to liquidated damages under this Contract); or

(c) be taken to amend, add to, delete or waive any term or condition of this Contract.

83.3 Representations and reliance

Waiver in relation to pre-Contract representations

83.3.1 Each Party waives all Claims, rights and remedies for all representations:

(a) made to it by any person before entering into this Contract; and

(b) not set out in this Contract.

83.3.2 Each Party acknowledges that, save as set out in Clause 4.1 (*Contractor Representations, Warranties and Undertakings*), in deciding to enter into this Contract, it has not relied on any such representation.

Authority Disclosed Data

83.3.3 Subject to Clause 83.4 (*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 data and information disclosed by it to the Contractor in connection with the ITN and subsequent negotiations leading up to the entry of this Contract (**Authority Pre-Contract 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 Authority Pre-Contract Disclosed Data; or

(b) any failure to make available to the Contractor any materials, documents, drawings, plans or other information relating to this Contract and its subject matter.

83.3.4 Subject to Clause 83.4 (*Fraudulent Statements*) and without prejudice to the Contractor's rights and remedies under this Contract, 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.

83.4 Fraudulent Statements

This Clause 83 does not exclude or restrict liability for fraudulent misrepresentation or fraudulent concealment.

84 Rights of third parties

84.1 Except as provided in Clause 84.2 and notwithstanding anything to the contrary elsewhere in this Contract, no right is granted to any person who is not a party to this Contract to enforce

any term of this Contract in its own right and the Parties to this Contract declare that they have no intention to grant any such right.

84.2 Where, and only where, either by a term which has been expressly included in this Contract or by another term which specifically refers to this Clause, this Contract expressly states that a third party shall be entitled to enforce a term of this Contract:

(a) the said third party shall be entitled to enforce that term in its own right but nothing in this Contract shall prevent the Parties to it from amending this Contract;

(b) the Contractor or the Authority shall inform the said third party as soon as is reasonably practicable of the existence of the relevant right together with any other terms (including the terms of this Contract) relevant to the exercise of that right; and

(c) the third party's rights shall be subject to any provision in this Contract:

(i) that provides for the submission of disputes under this Contract generally or the said rights in particular to arbitration (such as the Dispute Resolution Procedure); and

(ii) that stipulates the law and jurisdiction that will govern this Contract.

85 Survival

Save as otherwise expressly provided in this Contract termination or expiry of this Contract shall:

(a) be without prejudice to any accrued rights and obligations (including liabilities) under this Contract as at the Termination Date; and

(b) not affect any right or obligation of the Authority or the Contractor which:

(i) is expressed to survive termination or expiry of this Contract, including any continuing rights or obligations of the Authority or the Contractor (including as applicable under Clauses 18 (*Records*), 24(*Dispute Resolution*), 28 (*Security*), 63 (*Exit Strategy*), 73 (*Confidentiality and Freedom of Information)*, 84 (*Rights of third parties*), 90 (*Governing Law and Jurisdiction*), Schedule 8 (*Intellectual Property Rights*) or under any other provision of this Contract which is required to give effect to such termination or the consequences of such termination; or

(ii) by its nature survives termination or expiry of this Contract or which by its nature is required to give effect to the termination or expiry of this Contract, or the consequences of termination.

86 Legal relationship between the Parties

86.1 No partnership

The Parties do not intend this Contract to create any partnership between them as a matter of law. Accordingly, nothing in this Contract or otherwise shall be held, implied or deemed to constitute a partnership, joint venture or other association between the Parties. Nothing in this Contract is intended to and shall not be construed or give rise to the creation or constitution of a partnership as envisaged in the Partnership Act 1890 or a joint venture or other business organisation or agency arrangement of any kind. Neither the Authority nor the Contractor shall have the authority to bind the other without that other Party's separate prior written agreement in accordance with this Contract.

86.2 Independent Contractor

The Contractor shall at all times be an independent contractor and nothing in this Contract shall be construed as creating the relationship of employer and employee between the Authority and the Contractor or any of the Contractor's Employees. Neither the Contractor, any Contractor Group Member nor any of its Sub-Contractors nor its or their respective employees shall at any time hold itself or themselves out to be the employee of the Authority and neither the Contractor nor any of, or any Contractor Group Member its or its Sub-Contractor's employee any Contractor Group Member nor any of its Sub-Contractors nor its

or their respective employees shall be entitled to any of the benefits provided by the Authority to its established or unestablished officers and staff.

86.3 No delegation

No provision of this Contract shall be construed as a delegation by the Authority of any of the Authority's statutory authority to the Contractor or any Contractor Group Member.

86.4 No Agency

Unless expressly agreed otherwise in this Contract, none of the Contractor or any other Contractor Group Member shall be or be deemed to be an agent of the Authority and the Contractor shall procure that neither itself or any other Contractor Group Member will hold itself out as having authority or power to bind the Authority in any way. Neither the Contractor nor any other Contractor Group Member shall have the benefit of any immunity of H.M. Government and, unless otherwise agreed by the Authority, the Contractor shall (and shall procure that all relevant Contractor Group Companies shall) apply for and obtain all consents, licences and permissions which the Contractor and any other Contractor Group Member would otherwise be obliged to obtain under any law on the basis that it does not have the benefit of any immunity of H.M. Government.

87 Remedies and waivers

87.1 Waiver must be in writing

If a Party breaches a term of this Contract, the rights of each other Party arising from that breach cannot be waived except:

(a) with the express written consent of that other Party; and

(b) to the extent set out in that consent,

and waiver of one breach does not waive or imply waiver of any further or other breach.

87.2 Limited exercise is not a waiver

This Clause 87 applies if a Party becomes entitled to exercise any right or remedy under this Contract or by law or regulation. No failure to exercise, no delay in exercise and no single or partial exercise of that right or remedy shall:

(a) adversely affect that right or remedy;

(b) waive it; or

(c) prevent any further exercise of it or of any other right or remedy,

except to the extent the Parties have expressly agreed otherwise in writing.

87.3 Rights and remedies are cumulative

The rights and remedies arising from this Contract are cumulative. They are not exclusive of any other rights or remedies provided by law or otherwise except to the extent this Contract expressly states otherwise.

88 Number of executed copies

The Parties shall execute two (2) originals of this Contract, each of which when executed and delivered shall be an original but together constitute one instrument.

89 Further Assurance

Each of the Parties shall, at its own cost, do all further acts and things and execute and deliver all instruments as shall be reasonably necessary for the carrying out of their respective obligations under this Contract.

90 Governing Law and Jurisdiction

90.1 English law governs this Contract, its interpretation and any non-contractual obligations arising from or connected with it.

90.2 Subject to the Dispute Resolution Procedure, the Parties irrevocably agree that the English courts are to have jurisdiction to settle any claim or matter arising out of or in connection with

this Contract. However, nothing in this Clause shall limit the right of either the Authority or the Contractor to take any suit, action or proceeding arising out of or in connection with this Contract (Proceedings) against the other Party in any other court of competent jurisdiction, nor shall the taking of any Proceedings in any one or more jurisdictions, prevent Proceedings being taken in any other jurisdiction, whether concurrently or not.

90.3 Each Party agrees that a judgment or order of an English court in a dispute falling within Clause 90.2 (without limiting any rights that such Party may have to appeal a judgment or order) is conclusive and binding on it and may be enforced against it in the courts of any other jurisdiction.

Schedule 1 – Definitions

1 Definitions

1.1 In this Contract the following words and expressions shall have the meaning given to them, except as expressly provided otherwise:

Admission Agreement has the meaning given to it in Paragraph 1.2 of Part 4 of Schedule 10 (*Personnel*).

ADR means alternative dispute resolution.

Affected Party has the meaning given to it in Clause 52.1.3 (*Force Majeure Events*).

Affected Service has the meaning given to it in Clause 37.4.1 (b) (*GFA*).

Affiliate(s) 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 1159 of the Companies Act 2006.

Annual Contract Review means a meeting between the Parties to review an Annual Contract Report and identify actions reasonably required to be to be taken as a result of the contents thereof, whether to improve performance, address risks, reduce costs or otherwise.

Annual Contract Report means a report produced by the Contractor in respect of a Contract Year pursuant to Clause 17.1 (*Annual Report and Reviews*).

Applied Headcount means full time employees of the Contractor providing Services.

AQAP means an Allied Quality Assurance Publication**.**

Asset Register means the register setting out details of the GFA issued or otherwise furnished to the Contractor from time to time.

Asset Transfer Agreement means an agreement to be entered into between the Contractor and any Incoming Contractor (on terms reasonably required by the Authority prior to termination or expiry of this Contract) in substantially the form set out in Schedule 34 (*Exit Agreements*) pursuant to which the Contractor (i) agrees to transfer Contractor Assets, (ii) agrees to transfer Sub-Contracts, and (iii) warrants matters as to ownership and use of Contractor Assets, all to assist with the smooth transition of Services.

Assets means all assets and rights used by the Contractor [or any Key Sub-Contractor] to provide the Services in accordance with the terms of this Contract (including those provided by or belonging to the Authority).

Authority Change Proposal means any Change proposed by the Authority.

Authority Confidential Information means any information received by the Contractor from the Authority in connection with this Contract, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Authority, together with all information derived from any of the above, and any other information conveyed by the Authority which is clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential.

Authority Consents has the meaning given to it in Clause 13.1 (b) (*Required Consents*).

Authority Contract Manager is the person or persons appointed pursuant to Clause 79 (*Contract Managers*).

Authority Contractor has the meaning given to it in Schedule 12 (*Liabilities, Indemnities, Insurance and Conduct of Claims*).

Authority Data means:

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

(i) supplied to the Contractor by or on behalf of the Authority; or

(ii) generated by the Contractor in performing this Contract (except to the extent that any Intellectual Property in any such material is the property of the Contractor pursuant to the provisions of this Contract); and

(b) any Personal Data which the Authority discloses to the Contractor or are generated by the Contractor in performing this Contract.

Authority Identifiable Information means all Electronic Information which is attributed to or could identify an existing or proposed Authority capability, defence activities or personnel and which the Authority requires to be protected against loss, damage, destruction, misuse, corruption, alteration and unauthorised disclosure.

Authority Pre-Contract Disclosed Data has the meaning given to it in Clause 83.3.3 (*Entire Agreement and De-coupling*).

Authority Representative means the relevant representative, or his/her delegate, of the Authority as detailed in the DEFFORM 111 provided to the Contractor or as otherwise notified to the Contractor by the Authority Contract Manager, from time to time.

Authority Responsibilities means the responsibilities of the Authority as set out or referred to in Schedule 20 (*Authority Responsibilities*)].

Authority Secondees means individuals who during the Contract Period are employees of the Authority and who are from time to time seconded by the Authority to the Contractor and/or one of the Sub-Contractors for any one of the following purposes:

(a) to perform duties, including line management responsibilities, as part of the business of the Contractor or Sub-Contractor;

(b) in accordance with Clause 56.9 (*Authority Assistance for Impacted Services*); or

(c) to perform such other duties as may be agreed between the Contractor and the Authority and/or the Sub-Contractor and the Authority from time to time,

but for the avoidance of doubt this term does not include RN Placed Personnel.

Background IP means Intellectual Property (other than Foreground IP): (a) owned by the Contractor before the date of this Contract, or created by the Contractor other than under the terms of, or in connection with, the performance of, this Contract; (b) owned by a third party and licensed to the Contractor or which is, or will be, used to fulfil the Contractor's obligations under this Contract.

Bond Provider means the company or organisation issuing the Performance Bond (or any replacement as the case may be).

Breach of Security has the meaning given to it in Clause 28.7 (*Security*).

Brexit means any Law or international agreement that is made, or any legal consequence or factual circumstances that arise, [to any substantial extent] as a result of the Prime Minister of the United Kingdom having given notice to the European Council, under Article 50, paragraph 2 of the Treaty on European Union ("Article 50"), of the United Kingdom's intention to withdraw from the European Union, including:

(a) the EU Treaties ceasing to apply to the United Kingdom in accordance with paragraph 3 of Article 50; and

(b) the conclusion and ratification (or otherwise) of any agreement setting out the arrangements for the United Kingdom's withdrawal from the European Union, or of any agreement between the United Kingdom and the European Union or the United Kingdom and any other state or states that it is proposed should take effect after the EU Treaties have ceased to apply to the United Kingdom, including any modification to a World Trade Organisation agreement as it affects the United Kingdom made in consequence of the EU Treaties no longer applying to it.

Business Day means any day excluding:

(a) Saturdays, Sundays and public and statutory holidays in England and Scotland; and/or

(b) privilege days notified by the Authority Contract Manager to the Contractor Contract Manager at least ten (10) Business Days in advance; and/or

(c) the Contractor's Christmas shut down period as notified by the Contractor Contract Manager to the Authority Contract Manager at least ten (10) Business Days in advance,

in each case, commencing at midnight and ending at the end of 23.00 hours and 59 minutes.

CAAS means the Authority's Cost Assurance & Analysis Service.

Change has the meaning given to it in Schedule 30 (*Change Procedure*).

Change in Control has the meaning given to it in Clause 77.2 (*Change in Control*).

Change in Law means, subject to Clause 1.2.15 (*Living Instruments*) the occurrence after the Effective Date of one of the following:

(a) any Law comes into effect or is repealed (without re-enactment or consolidation) or is varied or amended; or

(b) the Contractor becomes obliged pursuant to Clause 12 (*Observance of Law and Regulations*) to comply with any amendment, supplement or replacement of any Standards or Regulation; or

(c) any change to any Required Consent under Clause 13 (*Required Consents*); or

(d) any change to Data Protection Legislation; or

(e) any change to rules, regulations and requirements at Government Establishments (as referred to in Clause 25.4 (*Observance of Site Regulations*)).

Change Notice has the meaning given to it in paragraph 1.12 (*Determination of Change Proposal*) of Schedule 30 (*Change Procedure*).

Change Procedure means the procedure set out in Schedule 30 (*Change Procedure*).

Change Proposal has the meaning ascribed to the term in paragraph 1.1 (*Change Proposal*) of Schedule 30 (*Change Procedure*).

Claim means any claim, demand, action or proceeding, howsoever arising in respect of a Loss.

Collaboration Principles means the principles set out in Schedule 16 (*Collaboration*).

Commencement Date has the meaning given to it in Clause 2.2.1 (*Duration*) means the date on which the conditions precedent set out in Clause 3.1.1 (*Conditions Precedent*) have been satisfied.

Commercial Purpose has the meaning given to it in Clause 5.2 (*Commercial Purpose*).

Commercially Sensitive Information means information of a commercially sensitive nature relating to the Contractor or its business which the Contractor has indicated for the purposes of Clauses 73 (*Confidentiality and Freedom of Information*) and 74 (*Transparency*) to the Authority that, if disclosed by the Authority, would cause the Contractor significant commercial disadvantage or material financial loss.

Compensation Event means any of the events set out in Clause 53.2.1 (*Compensation Events*).

Competent Authority means:

(a) any court with the relevant jurisdiction and any local, national or supra-national government or agency, any regulator, inspectorate, minister of the Crown, minister, ministry, official or public or statutory person of Her Majesty's Government of the United Kingdom or devolved government or of the European Union;

(b) any private body to the extent it carries out one (1) or more public functions; or

(c) any other body which has jurisdiction in respect of the Services or this Contract, including the Authority.

Competition Process Agreement or **CPA** means the agreement between the Authority and the Contractor in relation to the competition for this Contract.

Comptroller and Auditor General means the government official responsible for supervising the quality of public accounting and financial reporting.

Conditions Precedent means the conditions precedent set out in Clause 3 (*Conditions Precedent*).

Confidential Information means the Authority Confidential Information and/or the Contractor Confidential Information.

Consolidated Version means a version of the Contract which incorporates into the body of the Contract all amendments made to the Contract.

Contract means this agreement.

Contract Managers means both the Authority Contract Manager and the Contractor Contract Manager.

Contract Period has the meaning given to it in Clause 2 (*Duration*).

Contract Year means a period of twelve (12) months commencing on the anniversary of the Service Delivery Date during the Contract Period, with the exception of the first Contract Year, which commences on 1st April 2021 and concludes on the last day prior to the achievement of Service Delivery Date.

Contractor Assets means all assets and rights used by the Contractor [or Sub-Contractor] to provide the Services in accordance with the terms of this Contract (excluding those provided by or belonging to the Authority).

Contractor Change Proposal means any Change proposed by the Contractor.

Contractor Confidential Information means any information received by the Authority from the Contractor or any member of the Contractor's Group or any Contractor Group Member (or any Sub-Contractor) in connection with this Contract, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and sub-contractors of the Contractor, or any member of the Contractor's Group or any Contractor Group Member together with all information derived from the above, and any other information conveyed by the Contractor or any member of the Contractor's Group or any Sub-Contractor) which is clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential, including the Commercially Sensitive Information.

Contractor Contract means any third party agreement between the Authority and the Contractor.

Contractor Contract Manager means the person or persons appointed pursuant to Clause **{** REF _Ref319074544 \r \h * MERGEFORMAT **}** (*Contract Managers*).

Contractor Default means any of the events identified in Clause 57 (*Contractor Default*).

Contractor Deliverables means the works, goods, Software, hardware and/or the Services, including packaging (and Certificate(s) of Conformity and supplied in accordance with any Quality Assurance requirements if specified) which the Contractor is required to provide under the Contract.

Contractor Employee means any person who is an employee, staff, director or officer of the Contractor or who occupies the position of a director or officer of the Contractor, by whatever title given.

Contractor Group means the Contractor and any Affiliate of the Contractor.

Contractor Group Member means any company within Contractor Group.

Contractor Party has the meaning given to it in Clause **{** REF _Ref525730689 \r \h * MERGEFORMAT **}** (*Contractor's Property*).

Contractor Personnel means the Contractor Employees, the employees, staff, directors or officers (or any person who occupies the position of a director or officer, by whatever title given) of any Sub-Contractor or agent of the Contractor in relation to this Contract.

Contractor Secondees means individuals who during the Contract Period are employees of the Contractor and/or Sub-Contractors and who are from time to time seconded by the Contractor and/or Sub-Contractors to the Authority for any one of the following purposes:

(a) to perform duties as Royal Fleet Auxiliary personnel; or

(b) to perform such other duties as may be agreed between the Contractor and the Authority from time to time.

Contractor Security Personnel means Contractor Personnel together with any employee, staff, director or officer of any Contractor Group Member that is involved with performing obligations pursuant to the fulfilment by the Contractor of its obligations under this Contract, or otherwise has access to a Secret Matter.

Controlled Information means any information in any written or tangible form which is disclosed to the Contractor by or on behalf of the Authority under or in connection with this Contract and

(a) which is identified by the legend 'Controlled Information' or other approved legend notified to the Contractor; or

(b) which:

(i) is subject to export control Law imposed by a country other than the United Kingdom and which has been received by any Contractor Group Member which is involved in the performance of the Services under the terms of an export licence to which a Contractor Group Member is a party, or

(ii) (the Authority has informed the Contractor in writing is subject to export control Law imposed by a country other than the United Kingdom (provided that the Contractor has also been informed by the Authority of the nature of such restrictions).

Controller has the same meaning as given to it in Article 4 of GDPR.

Core Transfer Services means the transition services and activities to be performed by the Contractor as part of the Exit Plan and also as set out in Clause **{** REF _Ref15627605 \r \h * MERGEFORMAT **}** (*Transfer Notices and Transfer Services*) and otherwise in this Contract.

CSM Risk Assessment Process means the risk assessment process which forms part of the Cyber Security Model and is used to measure the Cyber Risk Level for this Contract and any Sub-contract.

CSM Supplier Assurance Questionnaire means the supplier assessment questionnaire which forms part of the Cyber Security Model and is to be used by the Contractor to demonstrate compliance with Clause 48 (Cyber).

Cyber Implementation Plan means the cyber implementation plan agreed between the Authority and the Contractor which, as at the Effective Date is set out at Schedule 33 (*Cyber Implementation Plan*), and which may be varied from time to time in accordance with Clause 48.3 (*Cyber Implementation Plan*).

Cyber Risk means the risk of a Cyber Security Incident occurring.

Cyber Risk Level means the level of Cyber Risk relating to this Contract or any Sub-contract assessed in accordance with the Cyber Security Model.

Cyber Security Implementation Plan means the cyber security implementation plan agreed between the Authority and the Contractor which, as at the Effective Date is set out at Annex 1 (Contractors Solution) to Schedule 2 *(Requirements)*, and which may be varied from time to time in accordance with Clause 48.3 (Cyber Security Implementation Plan).

Cyber Security Incident means an event, act or omission which gives rise or may give rise to:

(a) unauthorized access to an information system or electronic communications network;

(b) disruption or change of the operation (including but not limited to takeover of control) of an information system or electronic communications network;

(c) destruction, damage, deletion or the change of Authority Identifiable Information residing in an information system or electronic communications network;

(d) removal or limiting the possibility to use Authority Identifiable Information residing in an information system or electronic communications network; or

(e) the appropriation, publication, dissemination or any other use of non-public Authority Identifiable Information by persons unauthorised to do so.

Cyber Security Instructions means DEFSTAN 05-138, together with any relevant ISN and specific security instructions relating to this Contract issued by the Authority to the Contractor.

Cyber Security Model and **CSM** mean the process by which the Authority ensures that Authority Identifiable Information is adequately protected from Cyber Security Incident and includes the CSM Risk Assessment Process, DEFSTAN 05-138 and the CSM Supplier Assurance Questionnaire.

Data means any data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media.

Data Loss Event means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Contract, and/or loss and/or alteration and/or destruction of Personal Data, including any Personal Data Breach.

Data Protection Legislation means:

(a) the GDPR, LED and any applicable national implementing Laws;

(b) the DPA 2018;

(c) the European Privacy and Electronic Communications Directive (Directive 2002/58/EC) or, on and from the date on which it becomes effective, the proposed Regulation on Privacy and Electronic Communications;

(d) all applicable Law about the processing of Personal Data and privacy; and

(e) any guidance, directions, decisions, determinations, codes of practise, orders, notices or demands issued by any Supervisory Authority,

each as applicable and as amended, supplemented, substituted or replaced from time to time.

Data Subject shall have the same meaning as set out in the DPA 2018.

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

Declaration of Ineffectiveness means a declaration of ineffectiveness in relation to this Agreement made by a court of competent jurisdiction under Regulation 59 of the Defence and Security Contracts Regulations 2011 (as amended) or otherwise.

Defence Authority means the Defence Safety Authority and any authority with responsibility for safety matters within the Defence Safety Authority including the Defence Ordnance Munition and Explosives Safety Regulator, Defence Maritime Regulator and Defence Nuclear Safety Regulator.

Direct Agreement means an agreement to be entered into by the Authority and a Sub-Contractor in substantially the form set out in Schedule 27 (*Form of Direct Agreement*).

Disclosure Letter means the letter entitled as such and dated the date of this Contract and in the agreed form.

Dispute means any difference or dispute of whatever nature between the Contractor and the Authority arising under, out of or in connection with this Contract (including any question regarding its existence, validity, termination or interpretation).

Dispute Resolution Procedure means the procedure for the resolution of disputes set out in Schedule 7 (*Dispute Resolution Procedure*).

DPA 2018 means the Data Protection Act 2018.

Effective Date means the date [*of Contract or date that both Parties agree the Contract, whether formally signed or not should be deemed to be effective*.]

Electronic Information means all information generated, processed, transferred or otherwise dealt with under or in connection with the Contract, including but not limited to Data, recorded or preserved on any information system or electronic communications network.

Electronic Information Sharing Agreement (EISA) means the agreement (in the form of DEFFORM 687C – edition 06/01) in respect of the Services to which each prospective User must be a party before Access is granted to that User

Enhanced Transfer Services means the transition services required pursuant to Clause 63.5.3 (*Transfer Notices and Transfer Services*) and any other services and activities required by the Authority or pursuant to the Transfer Notice.

Environment means all or any of the media of air, water, land and all or any living organisms (including man) or systems supported by any such media.

Environmental Information Regulations means the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations.

Environmental Law means all Laws relating to Environmental Matters (but excluding all such Laws as relate to the health and safety of workers in the workplace) which may from time to time be in force.

Environmental Matter means all or any matters relating to:

(a) compliance with Environmental Law

(b) pollution or contamination of the Environment;

(c) the presence, disposal, release, spillage, deposit, escape, discharge, leak, migration or emission of Hazardous Substances or waste;

(d) the storage or use of Hazardous Substances and waste, and any exposure of any person to Hazardous Substances or waste;

(e) the creation or existence of any noise, vibration, odour, radiation, common law or statutory nuisance or other adverse impact on the Environment;

(f) the condition, protection, maintenance, remediation, reinstatement, restoration or replacement of the Environment or any part of it;

(g) climate change; and/or

(h) energy efficiency.

Environmental Permits means any Required Consent issued or required under Environmental Law.

Entitled Vessels means:

(a) Authority vessels base ported at a Service Delivery Location;

(b) Authority vessels base ported elsewhere visiting a Service Delivery Location;

(c) visiting foreign warships and submarines as notified to the Contractor by the Authority; and

(d) other vessels from time to time as agreed by the Authority and the Contractor.

Exclusive Assets means those Contractor Assets used by the Contractor or a Sub-Contractor which are used exclusively or primarily to provide the Services.

Exit Information means the information to be maintained by the Contractor pursuant to Clause 63.3.1.

Exit Plan means the plan produced and updated by the Contractor during the Contract Period in accordance with Clause 63.4.

Expedited Change means a Change that requires to be implemented immediately:

(a) in order to address an emergency situation;

(b) for Health and Safety reasons;

(c) for operational reasons; or

(d) at the absolute discretion of the Authority.

Expiry Date means the later of:

(a) the Initial Expiry Date; and

(b) any other date to which this Contract is extended in in accordance with Clause **{** REF _Ref329388176 \r \h * MERGEFORMAT **}**.

Fast Track Procedure has the meaning given to it in Schedule 7 (*Dispute Resolution Procedure*).

Final GFA List has the meaning given to that term in Clause 37.2.2.

Financial Distress Event means any of the events set out in paragraph 3 of Schedule 24 *(Financial Distress*).

FMSP Strategic Benefits has the meaning given to that term in Clause 5.2 (*Commercial Purpose*).

FOI Act has the meaning given to it in Clause 73.10 (*Confidentiality and Freedom of Information*).

FOI Information has the meaning given to "Information" under section 84 of the Freedom of Information Act 2000.

Force Majeure Event has the meaning given to it in Clause 52.1.2 (*Force Majeure Events*).

Foreground IP means Intellectual Property created under the terms of, or in connection with the performance of, this Contract, together with any developments made to Background IP under the terms of or in performance of this Contract.

Forms means the forms for use in connection with the administration of this Contract set out in Schedule 18 (*Forms*).

FMSP means the Future Maritime Support Programme pursuant to which this Contract is let.

FMSP Contract means:

(a) Lot 1 – a contract between the Authority and its contractor in respect of Naval Base Services at Devonport (Contract Reference FMSP/004);

(b) Lot 2 – a contract between the Authority and its contractor in respect of Ships Engineering, Management and Delivery at Devonport, Clyde and Rosyth (Contract Reference FMSP/005);

(c) Lot 3 – a contract between the Authority and its contractor in respect of Submarine Engineering at Devonport and Clyde (Contract Reference FMSP/006);

(d) Lot 4 – a contract between the Authority and its contractor in respect of Hard Facilities Management and Alongside Services at Clyde (Contract Reference FMSP/007);

(e) Lot 5 – a contract between the Authority and its contractor in respect of Hard Facilities Management and Alongside Services at Portsmouth (Contract Reference FMSP/008);

(f) Lot 6 – a contract between the Authority and its contractor in respect of Soft Facilities Management Services at Clyde (Contract Reference FMSP/009);

(g) Lot 7 – a contract between the Authority and its contractor in respect of Soft Facilities Management Services at Portsmouth (Contract Reference FMSP/010);

(h) Lot 8/9 – a contract between the Authority and its contractor in respect of Ships Engineering Management (Class Output Management, Warship Technical Authority and Design Management Services) and Delivery at Portsmouth (Contract Reference FMSP/011);

(i) Lot 10 – a contract between the Authority and its contractor in respect of Warehousing and Distribution at Portsmouth (Contract Reference SCTX/001); and

(j) Lot 11 – this Contract between the Authority and its contractor in respect of Warehousing and Distribution at Clyde (Contract Reference SCTX/002)

GAAP means generally accepted accounting principles.

GDPR means the General Data Protection Regulation (Regulation (EU) 2016/679).

Government Furnished Assets or GFA means the services, resources, facilities, information, equipment, assets and other supplies that the Authority shall supply to the Contractor for the purpose of this Contract pursuant to Clause 37 (*GFA*).

Good Industry Practice means the exercise of that degree of skill, diligence, prudence, foresight and practice which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same type of undertaking as that to which the relevant Service relates under the same or similar circumstances to those in which that Service is to be provided.

Goods means any and all articles and all other goods and equipment and related materiel supplied by the Contractor to the Authority pursuant to this Contract.

Government Establishment means:

(a) any premises owned or operated by H.M. Government;

(b) any of Her Majesty's ships or vessels and service stations operated by H.M. Government; and

(c) any operational unit operated by H.M. Government.

Guaranteed Obligations has the meaning given to it in the form of Parent Company Guarantee.

Hazardous Substances means any natural or artificial substance (whether in solid or liquid form or in the form of a gas, vapour or ionising radiation and whether alone or in combination or in reaction with any other substance) capable of causing harm to man or any other living organism supported by the Environment or damaging the Environment or public health or welfare, including any controlled special hazardous toxic or dangerous waste or radioactive material.

Health and Safety Authority means any Competent Authority which is responsible for enforcing Health and Safety Law including without limitation the Office for Nuclear Regulation, the Health and Safety Executive, the Environment Agency and local authorities.

Health and Safety Law means all applicable Law relating to the safety of employees and non-employees who may be affected by an employer's undertaking including but not limited to the Health and Safety at Work Act 1974, all secondary legislation passed under that Act and the Nuclear Installations Act 1965 which may from time to time be in force.

Historic Contamination means the presence of Hazardous Substances at, on, in or under the Service Delivery Locations or the Leased and Licensed Areas on or before the date of this Contract.

HMRC means Her Majesty's Revenue and Customs.

Impacted Services has the meaning given in Clause 56.1.1 (*Required Action*).

Incoming Contractor means any:

(a) potential replacement service provider(s) or parties interested in performing; and/or

(b) parties nominated by the Authority to provide, the Services (or part thereof) or substantially similar services (or part thereof).

Information means any information, in any form, disclosed or acquired under or in connection with the EISA.

Initial Contract Period has the meaning given to it in Clause 2.2.2 (*Duration*).

Initial Expiry Date means the fifth anniversary of the Planned Service Delivery Date.

Initial GFA List has the meaning given to that term in Clause 37.2.1.

Input has the meaning given to that term in Part 1 of Schedule 2 *(Requirements)*.

Intellectual Property means patents, rights to inventions, trade marks, service marks, domain names, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, rights in information (including know-how and trade secrets), trade or business names and other similar rights or obligations, whether registrable or not, in any country (including the United Kingdom) for the full term of the rights together with any extensions.

Irrecoverable Loss means, even where the Party has been advised of it, any:

(a) indirect, special or consequential loss;

(b) loss of profits;

(c) loss of use;

(d) loss of production;

(e) loss of business; and

(f) loss of contract.

Issued Property means items of materiel provided by MOD to a contractor, for a particular purpose and specified period under a specific GFE scheme, with or without charge, which, unless embodied in another asset, are normally subject to physical return to MOD in the same condition as issued, fair wear and tear excepted. The items can be fixed, capital spare or consumable in nature and can either be embodied in other assets or remain in a singular state throughout the period of the contract.

ISN means Industry Security Notices issued by the Authority to the Contractor whether directly or by issue on the gov.uk website at: **{** HYPERLINK "https://www.gov.uk/government/publications/industry-security-notices-isns" **}**

ITAR means the U.S. International Traffic in Arms Regulations (22 CFR Part 120-130).

Items means any:

(a) goods, including articles, hardware, products or items;

(b) Technical data (as defined in ITAR);

(c) technology (including information comprised in software and documents such as manuals, diagrams and designs) capable of use in connection with the development, production, use or maintenance of any goods; and

(d) products or assemblies (including vessels) utilising or incorporating any of (a) and/or (b) above,

and **Items** shall include Controlled Information for the purposes of Schedule 9 (*Standards of Conduct and Required Consents*).

JSP means a Joint Service Publication.

Key Sub-Contract means a Sub-Contract under which the total remuneration of the Sub-Contractor is likely to exceed fifty percent (50%) of the Total Contract Price.

Key Sub-Contractor means a Sub-Contractor identified in Appendix A to Schedule 14 (*Supply Chain and Sub-Contracting Strategy*).

Key Performance Indicator or **KPI** has the meaning given in Schedule 5 (*Performance Management and Measurement*).

Law means any applicable law, enactment, statute, proclamation, by-law, directive, decision, notice, court decree or judgment, regulation, [European Union legislation], authorisation, rule, order, rule of court or delegated or subordinate legislation including directions, requirements or guidance issued pursuant to any legislation (provided such directions, requirements or guidance are derived from a valid legal authority, including any nuclear regulator) and any Government, NBC or other Authority documents or publications having the force of law [in each case in force in the United Kingdom at any time or from time to time].

Leased and Licensed Areas means those areas in the Service Delivery Locations which are leased or licensed to [the Contractor] pursuant to the Leases or the Licences.

Leases means the leases entered into by the Parties as referred to in Schedule 11 *(List of Leased and Licensed Areas)*.

LED means the **Law Enforcement Directive** (Directive (EU) 2016/680).

Licences means the licences entered into by the Parties referred to in Schedule 11 *(List of Leased and Licensed Areas)*.

Longstop Date means three (3) months after the Planned Service Delivery Date as such date may be extended in accordance with this Contract.

Losses means all losses, liabilities, damages, costs and expenses (including legal fees on solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise.

Lot Specific Conditions means the additional terms and conditions of this Contract applicable to particular Services set out in Schedule 3 *(Lot Specific Conditions)*.

Major Incident has the meaning given to it in Clause 25.13 (*Major Incidents*).

Major Incident Report has the meaning given to it in Clause 25.13 (*Major Incidents*).

Mandatory Change means a change contemplated in Clause 30.5.3 (a) (Entry of Secondment and Interchange Agreements). or a Change in Law or any other circumstances where this Contract expressly states that a matter shall be dealt with as a Mandatory Change.

Material Adverse Change means, in the opinion of the Authority, a material adverse change on:

(a) the ability of the Contractor to comply with its obligations under this Contract,

(b) the business, operations, condition (financial or otherwise), prospects, or assets of the Contractor or any Key Sub-Contractor insofar as the same affects its ability to comply with its obligations under this Contract, or

(c) the Services or their implementation or operation,

(d) and includes any incidences of the above which arise as a result of Brexit**.**

Material Breach has the meaning given to it in Clause 57.1.8 (*Material Breach*).

Material Dispute has the meaning given to it in Clause 77.7 (*Change in Control*).

Method Statements means the method statements set out in Annex 1 to Part 2 of Schedule 2 (*Contractor's Solution*).

Mobilisation Period means the period between the Commencement Date and the Service Delivery Date.

Monthly Service Charge has the meaning given to it in Schedule 4 (*Pricing and Payment*).

National Strikes has the meaning given to it in Clause 53.1.2(e) (*Relief Events*).

Naval Base means HMNB Clyde.

NBC or **Naval Base Commander** means the person holding from time to time such office in relation to the Naval Base or the officer appointed by the Authority to perform the duties of such office or any person authorised by such person.

Net Book Value means the net book value of the relevant Contractor Asset(s) calculated in accordance with the usual depreciation policy of the Contractor as at the Effective Date.

New Owner has the meaning given to it in Clause 77.2 (*Change in Control*).

New Version means any new version of the Software which from time to time is publicly marketed and offered for purchase by the owner of the Software in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product.

Non-Nuclear Work means any Services undertaken by, or on behalf of, the Contractor for the purpose of this Contract which is not Nuclear Work.

Notices means a notice as described in Clause 82 (*Notices*).

NSA/DSA means, as appropriate, the National or Designated Security Authority of the Contractor that is responsible for the oversight of the security requirements to be applied by the Contractor and for ensuring compliance with applicable national security regulations.

Nuclear Authorisation means the authorisation held by an NBC.

Nuclear Work means any work undertaken by, or on behalf of, the Contractor pursuant to this Contract in respect of any vessel or nuclear facility on, or in relation to, the nuclear reactor of such vessel or nuclear facility, including the control, instrumentation, nuclear fuel elements, heat exchanger

and shielding of such and the shielding of any other installation requiring shielding on account of radioactivity together with any part of the strategic weapon system of the vessel or nuclear facility.

Officer in Charge means, as appropriate, officers commanding service stations, ships' masters or senior officers, and heads of Government Establishments.

Operational Defect (OPDEF) means an operational defect in respect of an Entitled Vessel**.**

Other Party has the meaning given to it in Clause 52.1. (*Force Majeure Events*).

Outcome has the meaning given to that term in Part 1 of Schedule 2 (*Requirements*).

Outgoing Contractor means Babcock Marine (Clyde) Ltd (BMCL).

Output has the meaning given to that term in Part 1 of Schedule 2 *(Requirements*).

Output Specification means the specification set out in Schedule 2 (*Requirements*) together with any sample, pattern, specification, plan, drawing or statement of work which individually or collectively is referenced or referred to in those specifications, all as may be updated or amended from time to time through the Change Procedure.

Overriding Strategic Objective has the meaning given to it in Clause 5.2 (*Commercial Purpose*).

Parent means [insert parent entity].

Parent Company Guarantee means the parent company guarantee and indemnity provided by the Parent in favour of the Authority under a guarantee in the form set out in Schedule 25 (*Form of Parent Company Guarantee*).

Parties means the parties to this Contract and **Party** shall be construed accordingly.

Performance Bond means a bond to be procured by the Contractor in the form set out in Schedule 26 (*Form of Performance Bond*).

Performance Indicator or **PI** has the meaning given in Schedule 5 (*Performance Management and Measurement*).

Performance Measures has the meaning given to it Schedule 5 (*Performance Management and Measurement.*

Performance Deductions has the meaning given to it Schedule 5 (*Performance Management and Measurement*)

Performance Retention has the meaning given to it in Schedule 5 (*Performance Management and Measurement*)·

Performance Standard has the meaning given to it in Schedule 5 (*Performance Management and Measurement*).

Personal Data shall have the same meaning as set out in the DPA 2018.

Personal Data Breach shall have the same meaning as set out in the DPA 2018.

Planned Service Delivery Date means 1st October 2021 [to be reviewed and confirmed during Mobilisation].

Pricing Parameter means any one or more of the following:

(a) the Total Contract Price;

(b) each Target Price Services Target Cost Amount;

(c) each Firm Price Service Total Cost Amount;

(d) each Fixed Price Services Indexable Cost Amount;

(e) any Provisional Pre- Planned Deep Maintenance Programme Target Cost Amount;

(f) any Provisional Other Deep Maintenance Programme Target Cost Amount;

(g) any Extension Period Target Cost Services Target Cost Amount;

(h) the percentages used in the calculation of a Target Cost Services Incentive Fee;

(i) any Tendered Amount;

(j) any Applicable Profit Rate.

Proceedings has the meaning given to it in Clause 90.2 (*Governing law and jurisdiction*).

Property of the Authority has the meaning given to it in Clause 39.2.1 (*Accounting for Property of the Authority*).

Protective Measures means appropriate technical and organisational measures to ensure physical, organisational and logical security of Personal Data including protection against a Data Loss Event and which includes:

(a) pseudonymising and encrypting Personal Data;

(b) ensuring confidentiality, integrity, availability and resilience of systems and services;

(c) ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident; and

(d) regularly assessing and evaluating the effectiveness of such measures adopted by it.

Qualifying Change in Law means any Change in Law the effect of which is to discriminate directly against the Contractor, as a defence contractor, providing the Services and which was not foreseeable prior to the date of this Contract. A change in taxes or the introduction of a tax affecting companies generally or a change in VAT shall be deemed not to be discriminatory in any circumstances.

Redundant Materiel has the meaning given to it in Clause 40 (*Redundant Materiel*).

Reference Contract Year has the meaning given to that term in Clause 17.1 (*Annual Report*).

Referenced Documents means the documents listed in Schedule 19 (*Referenced Documents*).

Registers means the assets register and configuration database referred to in Clause 63.2 (*Asset Registers*).

Regulation has the meaning given to it in Clause 12 (*Observance of Regulations*).

Regulator means the Office for Nuclear Regulation.

Regulatory Bodies means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence parties to and/or the matters dealt with in this Contract or any other affairs of the Authority and **Regulatory Body** shall be construed accordingly.

Relevant Direct Agreements means [insert details of any Direct Agreement that the Authority requires to have been entered into at the date of signing].

Relevant Industrial Action has the meaning given to it in Clause 34 (*Industrial Action*).

Relief Event means any of the events set out in Clause 53.1.2 (*Relief Events*).

Remediation means preventing, limiting, removing, remedying, cleaning up, abating, containing or ameliorating the presence or effect of Hazardous Substances at, on, in under or introduced to or originated from the Service Delivery Locations or Leased and Licensed Areas (as applicable) and **Remediate** and **Remediating** shall be interpreted accordingly.

Reports means the reports identified in in Clause 16 (*Progress Reports*) and Schedule 22 (*Reports*).

Request for Information shall have the meaning set out in the Freedom of Information Act 2000 or the Environmental Information Regulations, as relevant (where the meaning set out for the term "*request*" shall apply).

Required Actions has the meaning given to it in Clause 56.1.1 (*Step-In Rights).*

Required Action Notice has the meaning given to it in Clause 56.1.1 (*Step-in Rights*).

Required Action Plan has the meaning given to it in Clause 56.1.1 (*Step-In Rights).*

Required Insurances means the insurances as set out in Annex 2 (*Required Insurances*) to Schedule 12 *(Liabilities, Indemnities, Insurance and Conduct of Claims)* and any insurances required by Law.

Required Rating means a rating of long-term debt by [Standard & Poor's Rating Services] of at least [A-].

Required Consents means any consent, licence, permission, authorisation, permit or approval of, or relaxation or derogation including any Nuclear Authorisation issued by or required to be issued by (as the context may require), any Competent Authority in connection with or which is necessary from time to time for the carrying out of all or any part of the Services.

Requirements means the requirements set out in the Statement of Technical Requirements [together with any sample, pattern, specification, plan, drawing or statement of work which individually or collectively is referenced or referred to in those requirements all as may be updated or amended from time to time through the Change Procedure.

Requirements Table has the meaning given to that term in Part 2 of Schedule 2 (*Requirements Table*).

Scope means the scope of this Contract as described in Clause 6 (*Scope*).

Secondees means the Authority Secondees, the Contractor Secondees and Sub-Contractor Secondees.

Secret Matter means any matter connected with this Contract or the performance of this Contract which is designated in writing by the Authority as **"Top Secret"**, **"Secret" "UK EYES ONLY (UKEO)"** and shall include any information concerning the content of such matter and anything which contains or may reveal that matter.

Security Aspects Letter or SAL means the Authority executed security aspects letter to be provided by the Authority Representative pursuant to Clause 28.2 (*Security Aspects Letter*) on or before the date of this Contract.

Security Policy Framework means the HMG Security Policy Framework relating to the Government Security Classification policy as published by the Cabinet Office as such framework is amended or updated from time to time.

Service Category has the meaning given to that term in Schedule 4 (*Pricing and Payment*).

Service Delivery Date means the first date on and from which the Contractor is required to provide the Services

Service Delivery Location means HMNB Clyde

Service Delivery Location Suppliers means other Authority contractors at the Service Delivery Location.

Service Delivery Plans means each of the plans set out in Annex 1 (*Contractors Solution*) to Schedule 2 (*Requirements*).

Services has the meaning given to it in Clause 7.1 (*Contract for Services*).

Shared Data Environment (SDE) means the SDE System together with:

(a) Information Accessed via the SDE System, and

(b) any part of the computer and software infrastructure which is controlled by a User other than the Contractor.

Shared Data Environment Service (SDE Service) means the SDE Service specified in the SDE SOR, including the provision of an SDE System by means of which Information may be Accessed.

Shared Data Environment System (**SDE System**) means the computer and software infrastructure required for the SDE Service including the computer systems, networks, software, business processes and rules but excluding:

(a) Information Accessed via that infrastructure, and

(b) Any part of the computer and software infrastructure which is controlled by a User other than the Contractor.

Sites means any premises from which Contractor Deliverables are provided in connection with this Contract or from which the Contractor or any relevant Sub-contractor manages, organises or otherwise directs the provision or the use of the Contractor Deliverables and/or any sites from which

the Contractor or any relevant Sub-contractor generates, processes, stores or transmits Authority Identifiable Information in relation to this Contract.

Software means computer programs, whether in object code or Source Code.

Software Documentation means the documentation relating to the Software, including any technical information, specifications and documentation necessary for the use of such Software.

Source Code means all source code in human readable form which when assembled or compiled generates object code, together with the scripts, build files, preparatory materials, specifications, and design documents which are required to compile such source code.

Specification means any document or item which individually or collectively is referenced in the Requirements.

SQEP has the meaning given to it in Clause 27 (*Qualifications and Experience*).

Security Standard has the meaning given to it in Clause 25.4 (a) (*Observance of Site Regulations*).

Standard means a standard as specified in Clause 11 (*Standards*).

Statement of Technical Requirements means the technical and other requirements set out in Schedule 2 *(Requirements*) including each Output and Input set out in the Requirements Table.

Sub-Contract has the meaning given to that term in the defined term Sub-Contractor.

Sub-Contractor means any person with whom the Contractor contracts in respect of the performance of any part of its obligations under this Contract (such sub-contracted part of the Contractor's obligations being **Sub-Contracted Scope**), and any person that contracts at any tier to perform any part of, or provide good or services in respect of, **Sub-Contracted Scope,** and **Sub-Contract** shall be construed accordingly.

Sub-processor means any third party appointed to process Personal Data on behalf of the Contractor related to the Contract.

Subsidiary means a subsidiary undertaking within the meaning of section 1159 of the Companies Act 2006.

Supervisory Authority has the same meaning as given to it in Article 4 of GDPR.

Supplier Cyber Protection Service means the CSM Risk Assessment Process and CSM Supplier Assurance Questionnaire.

Support Services means the Services to support and maintain Software, to be provided by the Contractor under this Contract to meet the applicable Requirements.

TAF or Task Approval Form means the form at Annex B to Schedule 18 (*Forms*).

Terminable Services has the meaning given to it in Clause 57.5 (*Authority right to terminate the Contract subject to remediation*).

Termination Date means the earlier of:

(a) the Expiry Date; and

(b) any date of early termination of this Contract (or any part thereof) in accordance with Clause 57 (*Contractor Default*), Clause 58 (*Voluntary Termination by the Authority*), Clause 59 (*Termination by the Contractor*) or Clause 60 (*Termination for prolonged Force Majeure Events*) or otherwise.

Termination Notice has the meaning given to it in Clause 57.6.6 (*Contractor Default*).

Third Party Contractor means a third party contractor (but excluding Sub-Contractors) engaged by the Authority operating at the Service Delivery Location.

Third Party Contractor Property means any property owned by a Third Party Contractor.

Third Party FMSP Contracts means an FMSP Contract other than this Contract.

Timber and Wood-Derived Products has the meaning given to it in Schedule 32 (*Timber and Wood Containing Products Supplied Under the Contract*).

Total Contract Price has the meaning given to that term in Schedule 4 (*Pricing and Payment*).

Trade Control Regulations means any and all export, import and trade control Laws (including ITAR), treaties, sanctions and embargoes (as may be amended or replaced from time to time) that impose or will impose end use, end user or re-transfer or re-export restrictions, or restrictions on disclosure to individuals based upon their nationality. Trade Control Regulations may be applicable to:

(a) Items and/or Services, or any part of them, to be provided by the Contractor to the Authority pursuant to this Contract; and/or

(b) Items and/or Services, or any part of them, to be:

(i) provided by the Authority to the Contractor; or

(ii) otherwise made available to the Contractor at the request or otherwise by or on behalf of the Authority; or

(iii) owned or controlled by the Authority, pursuant to this Contract, whether by way of individual items or higher-level assemblies (including vessels); and/or

the end use or end user of any such Items and/or Services.

Transaction has the meaning given in Schedule 5 *(Performance Management and Measurement)* to this Contract.

Transfer Notice means the notice served by the Authority on the Contractor advising the Contractor that the Services are to be transferred to the Authority or to an Incoming Contractor and requiring the Contractor to provide assistance in accordance with Clause 63 (*Exit Strategy*).

Transfer Period means the period, commencing with the service of the Transfer Notice by the Authority to the Contractor, and (unless otherwise notified by the Authority) ending on the date specified in the Transfer Notice] or such later date as the Authority may notify in terms of Clause 63.5.6 (f)].

Transfer Services means the Core Transfer Service the Enhanced Transfer Services.

Transition Services Agreement means an agreement to be entered into between the Contractor and any Incoming Contractor substantially in the form set out in Schedule 34 *(Exit Agreements)* pursuant to which the Contractor agrees to provide specified services to the Incoming Contractor to assist with the smooth transition of Services.

Transparency Information means the content of this Contract in its entirety, including from time to time agreed changes to the Contract, and details of any payments made by the Authority to the Contractor under the Contract.

TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

User means a party to the EISA.

User Protocol means the document that is appended to the EISA and which describes the overall architecture of the SDE, including the elements provided by the Contractor and those provided by other Users, the shared business processes, Information management arrangements, technical interface requirements and administrative procedures necessary for Users to operate effectively within the SDE.

Value Added Tax or **VAT** means any value added tax.

White Fleet means vehicles provided under the Authority's White Fleet contract and generally refers to passenger cars, Light Goods Vehicles (LGV) or Heavy Goods Vehicles (HGV).

WITS means warehousing IT system.

Schedule 2- Requirements

Part 1 of Schedule 2 – General

1 **Interpretation**

1.1 In this Schedule, the following terms shall have the following meanings:

Authorised Demander means the Users that are permitted to make a Materiel Request as authorised the Materiel Account Holder.

Authorised User means any party with the required authority to use specific Log IS.

Authority's Transport Provider means the party that from time to time will be responsible for providing a Carrier

Carrier means transport company, third party logistics provider or transport division of the supplier.

Defence Supply Chain means the totality of organisations involved in the procurement, storage and distribution of Defence materiel.

Defence Support Chain Operations and Movements or **DSCOM** means the organisation operated by LDOC for the purpose of coordinating materiel and personnel movements to support Defence activity.

Freight Distribution Service means the services provided to the Authority under the LCST contract.

Input means a requirement set out in the column headed "Inputs and Constraints" in the Requirements Table.

L2 Complex means the level 2 buildings and areas as indicated at Annex 3 to this Schedule 2.

Logistics Information Systems or Log IS means the Information System specified in Annex B to Schedule 15 *(GFA)* as being a Log IS application.

Materiel Account means the register used to perform Materiel Accounting

Materiel Accounting is primarily concerned with the methods for recording materiel transactions and performing internal audits such as stocktaking. It also covers the process of maintaining and auditing accounts and preparing reports on the assets and liabilities of an organisation. Materiel Accounting must be accurate, reconciled promptly and designed to provide confidence in item availability, accountability and visibility, whilst maintaining robust audit trails.

Off Base means any location outside of the physical boundary of the Naval Base.

On Base means any location inside of the physical boundary of the Naval Base.

OPDEF has the meaning given to it in BRd (Book of Reference) 3001 Fleet Engineering Orders (Surface Ships) Chapter 3 Major OPDEF Reporting Procedures.

Out of Hours means any period, Monday to Sunday inclusive, within the daily 24-hour period, outside the applicable Standard Hours.

Outcome means an outcome set out in a row headed "Outcome" in the Requirements Table.

Output means each of the outputs set out in the column headed "Outputs" in the Requirements Table.

Performance Indicator has the meaning given to it in Schedule 5 *(Performance Management and Measurement)*.

Requirements Table means the table of requirements set out in Part 2 of this Schedule 2 *(Requirements)*.

Standard Hours means 0800 – 1630 hours each weekday excluding public and statutory holidays.

Working Hours means periods when Services can be delivered whether in Standard Hours or during Out of Hours as applicable.

2 Introduction and overview

2.1 This Schedule 2 sets out requirements for the provision of Services by the Contractor of:

(a) all services required to deliver the efficient and effective management of the Outputs;

(b) receiving Defence inventory from external sources and placing it into stock at the Naval Base;

(c) picking of stock demanded from the held inventory and delivering it On Base;

(d) receiving Defence inventory from external sources and delivering it On Base;

(e) picking of stock demanded from the held inventory and preparing it for collection and Off Base delivery by the Authority's Transport Provider;

(f) receiving Defence inventory from external sources and preparing it for collection and Off Base delivery by the Authority's Transport Provider;

(g) receiving Defence inventory returned to the Naval Base and processing it for restocking into the Defence Supply Chain, onwards distribution or disposal.

3 Structure, nature and hierarchy of Requirements

3.1 The Parties agree that:

a) each Outcome represents an end state that the Authority is seeking to achieve;

b) each Output represents one or more service(s), product(s) or action(s) that must be provided or undertaken (as the case may be) by the Contractor (and references to providing an Output (and cognate expressions) shall be construed accordingly); and

c) every Input represents one or more of a requirement, condition or constraint that must be complied with by the Contractor (and references to **complying with an Input** (and cognate expressions) shall be construed accordingly).

3.2 The matters set out in each of the columns headed "*Output", "Inputs and Constraints", "Performance Standards", and "Authorities Responsibilities*", in a row in the Requirements Table all relate both to the relevant Outcome in the Requirements Table above that row, and to each other. References to:

a) an Outcome to which an Output, Input, Performance Standard, and/or Authority Responsibility relates; or

b) related Outputs, Inputs, Performance Standards and/or Authority Responsibilities; and

c) cognate expressions,

shall be construed accordingly

3.3 The Contractor shall ensure that each Output is provided, and in doing so shall ensure that every Input related to that Output is complied with.

3.4 In complying with each Input and providing each Output, the Contractor shall comply with the related Performance Standards, and any other relevant obligation in this Contract.

3.5 The Contractor shall perform its obligations in relation to each Output and each Input having regard to, and in a way that supports achieving, the Outcome to which the Output or Input (as the case may be) relates.

3.6 The Contractor shall perform all those Services that are needed to comply with this paragraph 3. Such Services shall include all those Services that are needed to provide each Output, whether or not such Service is wholly or partly specified as an Input.

3.7 The Parties intend that the Outcomes, Output and Inputs shall be interpreted consistently with one another. If, notwithstanding that intention, any inconsistency exists between them, the following descending order of precedence shall apply:

a) Outcomes;

b) Outputs; and

c) Inputs.

4 Authority Responsibilities

4.1 The Authority shall be responsible for:

a) provision of the GFA related to each Output and Input in the manner provided for in Clause 37 *(GFA)* and Schedule 15 *(GFA)*; or

b) providing or procuring the provision of each Third-Party Interface for the relevant Output or Input, in the manner provided for in Schedule 16 *(Collaboration)*, but where the relevant third party is a Contractor Group Member, the failure by the Authority to provide or procure the provision of such Third-Party Interface shall not be an Authority Responsibility.

5 Volume

5.1 The Contractor shall perform its obligation to provide each Output and comply with each Input, irrespective of the volume of Transactions or other activity as may occur or be required under this Contract.

5.2 The rights and obligations of the Parties that arise where the Contractor is required to provide or undertake specific volumes of Transactions are set out in Schedule 5 *(Performance Management and Measurement)*.

6 Response Times

6.1 The Services are to be delivered within the time periods defined in the Performance Standards attributed to each Output.

7 Hours of Operation

7.1 All Services must be provided during Standard Hours. Services may be required during Out of Hours periods as set out in the Requirements Table.

8 Scope

8.1 The Services include activity within the confines and boundary of HMNB Clyde as detailed on the map at [•].

8.2 Warehousing, storage and distribution activities are carried out at HMNB Clyde by multiple parties. Activity is segmented into the five levels described in Annex 3 to this schedule. The Contractor is responsible for Services as determined below:

a) warehousing related activities within the buildings designated as level 2 stores listed at Annex 3 to this schedule; and

b) the transportation of goods to and from delivery points within HMNB Clyde (including level 3 and level 5 activities) and the preparation of goods for collection by third parties for delivery outside of HMNB Clyde;

in each case as more particularly determined within the Requirements Table

8.3 The Defence inventory held within the Naval Base is available for issue to all Authorised Demanders. The Contractor shall operate within the Defence Supply Chain to ensure Inventory held On Base is available for issue as required to customers both on and off the Naval Base.

8.4 For On-Base customers the Contractor shall deliver the correctly demanded inventory. For Off-Base customers the Contractor shall use the Authority's Transport Provider for any deliveries.

9 Performance Standards

9.1 The Contractor shall comply with the performance standards set out in:

a) Schedule 3 *(Lot Specific Conditions)*;

b) any other part of this Contract except for the Requirements; and

c) the Requirements,

and where there is any conflict the relevant performance standard shall be determined in accordance with the order of precedence set out in this Paragraph 9.1.

Part 2 of Schedule 2 – Requirements Table

1 **Outcome CWD 1.0 General Requirements.**

1.1 All requirements are to be read in conjunction with the associated Performance Standards where provided.

UID	Output	Inputs and Constraints	Performance Standards	Authorities Responsibilities
CWD 1.1	The Contractor shall conduct investigations into discrepancies and non-conformances.	The Contractor shall provide all documentation and transactional information as requested by the Authority.		None
CWD 1.2	The Contractor may be called upon to support services in relation to management, planning and administration support as requested by the Authority.	Support to the Authority may be required in relation to: military exercises and trials; Confidentiality and Freedom of Information responses to FOI Act requests, Requests under the Data Protection Legislation, Parliamentary Questions (PQs) and information required for other ministerial business within required timescales which will be advised by the Authority. This support shall include hosting VIP's, providing tours and site talks and the support of military exercises as required.		

UID	Output	Inputs and Constraints	Performance Standards	Authorities Responsibilities
CWD 1.3	All activity undertaken by the Contractor shall be conducted in accordance with relevant Law, Regulations Standards and Site Policies.	The Contractor shall deliver all services, and operate in accordance with, and in support of, all relevant site policies. The service shall enable the processing of demands, distribution and tracking of UK/US items using the Authority's logistics information systems, including, managing returns to USA. The storage, marking, handling, movement and disposal of International Traffic in Arms Regulations (ITAR) shall be managed in accordance with Joint Service Publications to follow and DEFSTAN 05-132 - Issue 1 Dated 28 Jun 2017 - Marking of Service Materiel Items using a Unique Item Identifier (UII). The service shall include Strategic Weapons Systems (SWS) inventory for Strategic Weapon Support Systems (SWSS) and the service shall comply with all appropriate regulations related to those items including T2600 Trident Issue 7 Ch 2 Dated Apr 2012 and T3600 Issue 1 Dated Jan 2016. The Contractor shall ensure that all parties requiring access to HMNB Clyde in delivering the contracted outputs, who are not in possession of a valid pass, are escorted at all times. The Contractor must comply with the Naval Base Commander's existing arrangements for HMNB Clyde to operate safely, and with the ISO Accreditation for HMNB Clyde.		

UID	Output	Inputs and Constraints	Performance Standards	Authorities Responsibilities
CWD 1.4	The Contractor must respond to safety notices and put the appropriate corrective measures in place in order to bring themselves back into compliant operations.	Improvements to come into effect within timeframes approved or established by the Authority. All safety notices issued under the authority of the NBC must be complied with.		
CWD 1.5	The Contractor shall keep all GFA issued to them in a serviceable condition.	GFA is to be maintained and accounted for in accordance with Part 12 and Schedule 15.		
CWD 1.6	The Contractor shall provide the Exit Services at the end of this Contract.	The Contractor shall provide the Exit Services detailed in Clause 63.		

2 **Outcome CWD 2.0 - Distribution, Storage and Handling.**

2.1 The Contractor of the HMNB Clyde Warehousing and Distribution Service is an integral part of the Defence Supply Chain. The overarching outcome for the Defence Supply Chain is that all demands are met on time and in full. The Contractor shall ensure that demands fulfilled from held inventory meet the required due date and that items delivered from external sources are expedited through the Naval Base to the relevant delivery point in a timely manner, either through direct delivery by an external contractor or through this Contract.

UID	Outcome	Inputs and Constraints	Performance Standard	Authority Responsibilities
CWD 2.0	The Contractor must ensure that all Defence Materiel is distributed, stored and handled in	The Contractor shall meet the performance targets as detailed in this Part 2 to Schedule 2.	See Outputs **{**	See Outputs

	accordance with UK MOD Policy.		HYPERLINK \l "WDPI5" }	

UID	Output	Inputs and Constraints	Performance Standards	Authority Responsibilities
CWD 2.1	The Contractor shall provide a service for the receiving of materiel. (Goods In).	Items arriving at the Contractor's "Goods In" will be placed as stock in the L2 Complex (in accordance with CWD 2.2), for onward distribution (in accordance with CWD 2.4) or for on-site distribution (in accordance with CWD 2.6) The Contractor shall ensure that the consignment matches the appropriate shipping documentation and is in good condition based on a reasonable visual inspection. Items without the required documentation or damaged should be rejected by the Contractor and returned to the carrier. The Contractor shall ensure that items received are entered as 'arrived' on the relevant consignment tracking system. The Contractor shall ensure appropriate documentation is in place for items received. Where appropriate this shall include acceptable quality, certification or licencing documentation. Where vehicles are unloaded at the L2 Complex, the Contractor shall be responsible for the safe unloading. If special handling arrangements are required, the Contractor shall work with the carrier and ensure the correct Mechanical Handling Equipment (MHE) is available. This output has an Out of Hours requirement in accordance with CWD 2.19.	**{** HYPERLINK \l "WDPI1" } **{** HYPERLINK \l "WDPI2" }	The Authority and Third-Party Contractors are to 1. Ensure materiel is delivered with the relevant documentation in accordance with Defence Policy. 2. Packages are clearly marked with their intended final destination and routing information.

UID	Output	Inputs and Constraints	Performance Standards	Authority Responsibilities
CWD 2.2	The Contractor shall inspect and store materiel destined for storage in the L2 Complex and ensure it is stored in accordance with CWD 2.14 and that the appropriate Log IS is updated. (Receipts to Stock).	The Contractor shall ensure appropriate licences and certifications are in place for items stored, where appropriate, to ensure they are available upon subsequent issue. Items destined for storage in the L2 Complex (e.g. replacement stock) should be put to stock within the required timeframes. The Contractor shall identify and report any non-conformances (in accordance with CWD 2.14 and CWD 2.17) encountered. Any non-conforming stock must be quarantined by the Contractor.	**{** HYPERLINK \l "WDPI3" **}**	
CWD 2.3	The Contractor shall pick items ready for onward distribution in accordance with specified ready dates, including meeting high priority demands, including for Operational Defects (OPDEFs).	The Contractor shall pick items held under their control as directed by the appropriate Log IS. Onward distribution may be delivered through the on base distribution service (in accordance with CWD 2.6) or via the Authority's shipping agents (in accordance with CWD 2.7) and should be consignment packed (in accordance with CWD 2.5 and CWD 2.8) accordingly. This output has an Out of Hours requirement in accordance with CWD 2.19.	**{** HYPERLINK \l "WDPI4" **}**	The Authority will provide onward distribution via the Authority's shipping agents if relevant to the demand.
CWD 2.4	The Contractor shall process and prepare materiel for onward distribution (cross docking).	The Contractor shall configure packages for transportation depending on the method of transport required. (in accordance with CWD 2.5 and CWD 2.7) This output has an Out of Hours requirement in accordance with CWD 2.19.	**{** HYPERLINK \l "WDPI5" **}**	

UID	Output	Inputs and Constraints	Performance Standards	Authority Responsibilities
CWD 2.5	The Contractor shall provide a consignment packing service, to include special to type packaging as required by the Authority.	The Contractor shall provide a service that will supply the needs of both internal and external distribution as directed by the Log IS. The Contractor shall be capable of processing individual consignments which contain a mix of picked (internally sourced in accordance with CWD 2.3) and cross-docked (from Goods In in accordance with CWD 2.1) goods. The Contractor shall consolidate consignments to minimise the number of consignments for onward distribution. The Contractor shall prepare freight for overseas shipping by surface, sea or air that meets the requirements of the Authority and other relevant transport regulations, including JSP 800 Defence Movement and Transport Regulations. This output has an Out of Hours requirement in accordance with CWD 2.19.	**{** HYPERLINK \l "WDPI6" **}**	Appropriate sea and air freight containers will be provided by the Authority.

UID	Output	Inputs and Constraints	Performance Standards	Authority Responsibilities
CWD 2.6	The Contractor shall provide an HMNB Clyde freight distribution service.	The Contractor shall deliver to notified reception points within HMNB Clyde. The service shall integrate with the Authority's National Freight Distribution Service where reasonably required by the Authority. The Contractor shall put in place all measures reasonably necessary to safeguard Hazardous Substances or special goods in transit, unless the Authority provides prior written notification that the Authority accepts such responsibility for putting in place such measures. The Contractor shall use the existing White Fleet Contract at the Authority's discretion. The Contractor shall respond to reasonable requests for additional distribution services within HMNB Clyde, but outside of the normal Defence Supply Chain. Such requests shall be processed through the SPOC and Authorised Demanders will be agreed by the Operations Coordination Board. The Contractor must obtain and retain proof of delivery to the notified reception point. The Contractor must update the relevant consignment tracking information in the relevant Log IS This output has an Out of Hours requirement in accordance with CWD 2.19.	**{** HYPERLINK \l "WDPI7" **}**	

UID	Output	Inputs and Constraints	Performance Standards	Authority Responsibilities
CWD 2.7	The Contractor shall arrange with the relevant Authority Transport Provider for the collection and scheduling of consignments that require Off Base freight distribution.	The Contractor shall ensure that all special handling requirements are communicated to and understood by the carrier. The Contractor shall support the Authority with arrangements for surface, sea or air freight shipments within the Defence supply Chain in liaison with the Authority and Authorised Demander. This service is to provide sufficient and accurate information to DSCOM for freight coordination and control including: alignment of incoming and outgoing shipments, enabling air and sea freight shipments within the joint supply chain, monitoring and control of Operational Defect (OPDEF) items (Cat A1 - B2) in their distribution system. The contractor shall comply with CWD 2.8 in the delivery of this service. This output has an Out of Hours requirement in accordance with CWD 2.19.	**{** HYPERLINK \l "WDPI8" **}**	Overseas freight movement will be coordinated through DSCOM and DSCOM will determine the information required.

UID	Output	Inputs and Constraints	Performance Standards	Authority Responsibilities
CWD 2.8	The Contractor shall load consignments and transfer physical custody to the Authority's Carrier	Carriers may load their consignment using their own MHE. The Contractor shall defer to the Carrier regarding loading, ensure safe loading and provide all reasonable assistance. The Contractor must obtain and retain proof of collection from the Carrier that includes: date and time of collection; agreement that the consignment was correctly packaged; consignment complied with supplied paperwork; and if the consignment was self-loaded by the Carrier The Contractor shall update the relevant Consignment Tracking Log IS with the required despatch information. The Contractor shall conduct investigations into losses (e.g. by providing proof of collection and details of consignment tracking shipments as requested). This output has an Out of Hours requirement in accordance with CWD 2.19.	**{** HYPERLINK \l "WDPI9" **}**	All Packages loaded onto outbound freight, with Proof of Collection completed and correctly recorded by the Contractor

UID	Output	Inputs and Constraints	Performance Standards	Authority Responsibilities
CWD 2.9	The Contractor shall provide a receiving service for Items returned from Authorised Users (Returns Service) for Authority-owned materiel.	This process includes the operation of the returns facility (known as the Returns Store and currently building 29), control of the returns Material Account, and routing of received items to the appropriate destination as defined by the responsible Inventory Manager. The Contractor shall inspect and assess returned items to ensure they are suitably packaged and are accompanied by the relevant documentation for identification of the item. Where the ability to assess returned items is out of scope of the W&D Technical Services team (in accordance with CWD 2.17) the Contractor is to request additional assistance from the Authority. The contractor shall minimise waste by ensuring serviceable items are made available through the Defence Supply Chain for re-issue.	**{** HYPERLINK \l "WDPI10" **}**	The Authority will respond to escalations within a reasonable time frame. The Authorised User is to provide accurate and complete paperwork to accompany all items sent to the returns store.
CWD 2.10	The Contractor shall provide, as and when required by the Authority, a packing and packaging service.	This Service shall include: a specialist joinery service; a wood drying service (Timber Kiln); special to type packaging; repairing damaged packaging, The Contractor shall ensure that Items received by the Returns Service (in accordance with CWD 2.9) are appropriately packaged before onward distribution to prevent further damage. The Contractor shall ensure compliance with sanitation requirements for wood packaging destined for overseas transfer. The Contractor shall ensure that all waste is disposed of through the Authority's centralised waste disposal service.	**{** HYPERLINK \l "WDPI11" **}**	

UID	Output	Inputs and Constraints	Performance Standards	Authority Responsibilities
CWD 2.11	The Contractor shall liaise with the Authority for the delivery of consignments to On Base, including direct delivery to On Base, but outside of the L2 Complex.	The Contractor shall manage the internal flow of goods to minimise hold ups at the entrance to the Naval Base and the time taken to process consignments at Goods In in accordance with CWD 2.1. On Base customers have a requirement for some consignments to be delivered direct rather than having them cross docked through the L2 complex. Delivery will be completed by the original Carrier with no requirement for "Cross Docking" under CWD 2.4 or CWD 2.5. The Contractor shall liaise with the Customer to enable direct delivery while still ensuring the security of stock and integrity of the information held in the Log IS. This output has an Out of Hours requirement in accordance with CWD 2.19.	No undue delays to receiving external consignments and deliveries.	

UID	Output	Inputs and Constraints	Performance Standards	Authority Responsibilities
CWD 2.12	The Contractor shall ensure that all warehousing Mechanical Handling Equipment (MHE) and storage media is appropriate with the volumes, requirements and standards for storage of materiel held.	The Contractor shall satisfy themselves as to the condition and appropriateness of the supplied Government Furnished Equipment (GFE) as detailed in Part 12 and Schedule 15 to this Contract. The Contractor shall work with the Authority to ensure Authority storage facilities are adequate, safe and serviceable. The Contractor will provide maintenance and repair of the GFA as highlighted at Annex A to Schedule 15 (*GFA*). This includes; undertaking an annual inspection of the storage systems (including fixed Adjustable Pallet Racking (APR)) and equipment, ensuring it's fit for purpose for Entitled Users; providing specialist technical storage system advice to Entitled Users; the maintenance / dismantling / assembly of storage media; the installation of new storage media to meet changes in inventory holdings; ensuring warehousing and storage areas are kept clean.	**{** HYPERLINK \l "WDPI12" **}**	Existing storage media and MHE will be provided to the Contractor as GFE by the Authority as detailed in Schedule 15. Additional MHE or specialist lifting equipment can be made available by the Authority.
CWD 2.13	The Contractor shall ensure stored items are accounted for in accordance with the mandated stocktaking policy. (Materiel Accounting)	The Contractor shall comply with all relevant procedures for accounting for stock held on account, and Authority reporting cycles for reporting damages, losses, discrepancies, suspected fraud and/or theft. The Contractor shall investigate stock discrepancies in conjunction with the Authority, with the goal of reducing stock variances and improving stock management processes and cooperate in the conducting of audits of the same processes and policies.	**{** HYPERLINK \l "WDPI13" **}**	The Authority will work collaboratively with the Contractor to investigate stock discrepancies with a goal of reducing stock variances and improving stock management processes.

UID	Output	Inputs and Constraints	Performance Standards	Authority Responsibilities
CWD 2.14	The Contractor shall ensure stored items are inspected, maintained and packaged in accordance with item-specific requirements and regulations.	The Contractor's Service to the Authority must include: the inspection of packaging of Authority owned materiel to ensure its condition meets the required standards for safe storage and transportation; assisting the Authority to ensure the quality and test certification remains valid where applicable and / or ensuring the items in storage receive all required maintenance / calibration activities where applicable. Where packaging is below the required standard, the Contractor shall rectify damaged packaging and return items to stock. Packaging can be rectified by the Packaging Cell (in accordance with CWD 2.10). Where this is not possible the Contractor is to arrange for the item to be rectified through the Authority. The Contractor shall dispose of discarded packaging and waste through the Authority's centralised waste disposal service.	**{** HYPERLINK \l "WDPI14" **}**	
CWD 2.15	The Contractor shall provide a service to remove all surplus or obsolete stock from storage and prepare it for disposal action in accordance with the Authority's direction.	On request by the Authority, the Contractor shall provide the disposal service in accordance with the Authority's instructions, and where directed release material to authorised Contractors. The Contractor's Service shall include treatment of all stock authorised by the Authority as surplus or obsolete. The Contractor shall ensure appropriate segregation and storage of the redundant stock in accordance with the Authority's disposal instructions and relevant safety requirements. The Contractor shall follow instructions and guidance from the Intelligent Customer Group and Defence Equipment Sales Authority (DESA). The Contractor shall dispose of discarded packaging and waste through the Authority's centralised waste disposal service.	**{** HYPERLINK \l "WDPI15" **}**	On receipt of instructions to issue item(s) for disposal The Authority will nominate a Disposal Agent.

UID	Output	Inputs and Constraints	Performance Standards	Authority Responsibilities
CWD 2.16	The Contractor shall access and use the Authority's Logistic Information Systems, solely to fulfil the Contractor's obligations to record all transactions related to the movement and storage of materiel.	The Contractor shall ensure compliance to the correct use and access to all Log IS in accordance with the application's Security Operating Instructions. The Contractor shall ensure that their authorised users are trained to the required Authority standard.	None	The Authority will provide appropriate training packages for Authority authorised Contractor trainers. Authority owned Log IS will be provided to the Contractor as GFA. A list of Log IS that the Contractor will be required to use is contained at Schedule 15.
CWD 2.17	The Contractor shall provide on-site Technical Services in support of Authority Authorised Customers to inspect storage media, stores and / or other materials.	The Contractor shall provide technical advice and information to Authorised Customers. This may include: The identification of and / or the provision of technical specifications data of NATO codified items. Inspection of controlled items at pre-issue and on-receipt, to ensure the item documentation and specification matches. Resolving discrepancies arising from the delivery of the Contracted for service Quality Assurance of other materiel as required by the Authority. Advice on required storage systems and inspect storage systems in accordance with CWD 2.12, for buildings outside of the Level 2 complex, but on HMNB Clyde, at the request of the Authority. Surveys conducted when requested through the SPOC and results reported in the requested time scale Escalation of non-conformances will be notified to the Authority.	**{** HYPERLINK \l "WDPI16" **}**	The Authority will respond to escalations within a reasonable time frame.

UID	Output	Inputs and Constraints	Performance Standards	Authority Responsibilities
CWD 2.18	The Contractor shall provide an integration point for the reception of Service Requests through the SPOC.	The Contractor shall provide a suitable contact point to the SPOC so that relevant service requests can be routed to them. The Contractor shall use the SPOC for placing Service Requests against other Naval Base Services required to deliver the Contract Services. The Contractor shall respond to the Authority's Customer Feedback Form (CFF) process at HMNB Clyde through the Service Delivery Working Group detailed at Schedule 6 *(Governance)*.		The Authority will provide a SPOC for all users and stakeholders of the associated services.
CWD 2.19	The Contractor shall plan capacity to meet routine and known **{** DISPLAYNFC \l 1 **}**peak demands, and identify capacity to meet unplanned surge demands	The Contractor must provide out of hours cover which shall be available within one (1) Hour Notice. This service is applicable to the indicated outputs only.		
CWD 2.20	The Contractor shall ensure that items entering the stores complex have their packaging weight and dimensions recorded on the Log IS.	There is no requirement to measure static stock and each unique line item only needs to be measured once.	SCPI 3	The authority will be responsible for entering the information into the Log IS.

3 **Outcome CWD 3.0 - Cost Transparency and Service Optimisation**

3.1 The Authority requires the Contractor to provide transparent cost information relating to the provision of Services under this Contract pursuant to Clause 16 to this Contract. The Authority expects the Contractor to optimise the Service to reduce costs and provide evidence to demonstrate how those costs have been reduced, while ensuring all Services are delivered to the relevant Performance Standards and in accordance with this Contract.

UID	Outcome	Inputs and Constraints	Performance Standard	Volumetric	Authority Responsibilities
CWD 3.0	The costs relating to the provision of the Contractor's Services are transparent and optimised.		See Outputs	None	None
UID	**Output**	**Inputs and Constraints**	**Performance Standard**	**Volumetric**	**Authority Responsibilities**
CWD 3.1	The Contractor shall deliver, and provide evidence of, the optimisation of costs relating to the fulfilment of this Contract.	The Contractor shall propose and deliver (where approved by the Authority) initiatives that will deliver a sustained optimisation of cost in the delivery of this Contract without detriment to Service Performance	CTPI 1	None	None

4 **Outcome CWD 4.0 - Supply Chain Maturity.**

4.1 The Authority is at an early stage in developing plans for maturing the Defence Supply Chain (DSC). These initiatives include, but are not limited to, Supply Chain Transformation Expansion (SCTX) and the Defence Modernisation for Support programmes. This Service is an integral part of the DSC and the Contractor shall work with the Authority to ensure that initiatives developed by these programmes for improving the DSC are fully implemented at HMNB Clyde to ensure continuous integration with the rest of the DSC.

UID	Outcome	Inputs and Constraints	Performance Standard	Volumetric	Authority Responsibilities
CWD 4.0	The Contractor shall ensure their component of the Defence Supply Chain matures in alignment with other Authority managed initiatives to improve the overall maturity of the Defence Supply Chain.	The Contractor shall work with the Authority in good faith to accommodate any proposed changes without creating unreasonable delays to any DSC maturity initiatives.	See Outputs	See Outputs	None

UID	Outputs	Inputs and Constraints	Performance Standards	Volumetric	Authorities Responsibilities
CWD 4.1	The Contractor shall work with the Authority to ensure any Authority planned IT updates or upgrades can be implemented with minimum disruption to the Contractor's Service.	Full participation in the roll out of any new IT systems or upgrades to current IT systems. The Contractor shall on request be required to provide a cost model of how they would determine the costs for implementing any changes, to include purchase of physical assets and/or resources, including man hours and additional expenses as required.	SCPI 1	None	None
CWD 4.2	The Contractor shall work with the Authority to support the optimisation of the number of storage buildings utilised by the Service.	This Contractor, working with the Authority and its authorised Contractors and/or Sub-Contractors, may propose the consolidation of stock into fewer buildings. Any proposal to remove a building from service must take due consideration of any requirements for stock segregation and special handling requirements of individual line items, as well as potential spikes in capacity requirements. The Contractor shall work with relevant parties to plan and implement building rationalisation initiatives, including relocating stock to other facilities, both on and off base, to enable stock optimisation.	SCPI 2	None	None

UID	Outputs	Inputs and Constraints	Performance Standards	Volumetric	Authorities Responsibilities
CWD 4.3	The Contractor shall work with the Authority to reconfigure the managed facilities to support the intake planning, receipt, storage and distribution of additional or different line items or the removal of existing line items whether permanent or based on operational requirements.	The Contractor shall work with the Authority to remove line items in accordance with inventory management guidelines and advice. The Contractor shall work with the Authority to introduce new line items in support of additional platforms or capabilities required by the Authority. The Contractor shall work with the Authority to increase or reduce the number of external delivery points (external units) that are provided stock from Naval Base facilities in accordance with inventory management guidelines or advice.	SCPI 2 WDPI 6	None	The Authority will provide the Contractor as much notice of inventory adjustments as possible.

Annex 1 to Schedule 2 – Contractor's Solution

1 **Method Statements**

1.1 In performing the requirements the Contractor shall comply with the methods and processes set out in the following method statements:

a) the document titled Method Statement 01 – Stock Replenishment set out in Appendix 1 to this Annex 1 of this Schedule 2 (Contractor's Solution);

b) the document titled Method Statement 02 – On Base Distribution of Naval Base Stock set out in Appendix 2 to this Annex 1 of this Schedule 2 (Contractor's Solution);

c) the document titled Method Statement 03 – Naval Base held Stock consignment packed for Off Base Distribution set out in Appendix 3 to this Annex 1 of this Schedule 2 (Contractor's Solution);

d) the document titled Method Statement 04 – External Stock consignment packed for Off Base Distribution set out in Appendix 4 to this Annex 1 of this Schedule 2 (Contractor's Solution);

e) the document titled Method Statement 05 – On Base Distribution of External Stock set out in Appendix 5 to this Annex 1 of this Schedule 2 (Contractor's Solution);

f) the document titled Method Statement 06 – Returns Service set out in Appendix 6 to this Annex 1 of this Schedule 2 (Contractor's Solution);

2 **Service Delivery Plans**

2.1 In performing the requirements the Contractor shall comply with the methods and processes set out in the following Service Delivery Plans:

a) the document titled Service Delivery Plan 01 - Transition Plan set out in Appendix 7 to this Annex 1 of this Schedule 2 (Contractor's Solution);

b) the document titled Service Delivery Plan 02 - Integration Plan set out in Appendix 8 to this Annex 1 of this Schedule 2 (Contractor's Solution);

c) the document titled Service Delivery Plan 03 – Workforce Management Plan set out in Appendix 9 to this Annex 1 of this Schedule 2 (Contractor's Solution);

d) the document titled Service Delivery Plan 04 – Flexibility and Agility Plan set out in Appendix 10 to this Annex 1 of this Schedule 2 (Contractor's Solution).

Annex 2 to Schedule 2 - List of Buildings in scope for Warehousing Function

1 **Buildings utilised as stores**

1.1 The following table details the buildings that are in scope for the purposes of this Contract and are highlighted on the map of HMNB Clyde held in the Data Room.

Building Number	Level 2 Buildings	Purpose	Size / Capacity
37	RNAD Coulport No 37	Bulk Storage	8500m3
27 Upper Level	RNAD Coulport No 27	Main store for storage and processing materials at Coulport - similar to the role of the GPSS	11250m3
27 Lower Level	RNAD Coulport No 27	Bulk Storage	No cubic meter data available. 77m x 35m
216	RNAD Coulport No 216	A storage facility to support materials not able to be stored within building 27.	19000m3
216a	RNAD Coulport No 216a	Hazardous/Paint Store	2000m3
1201	Dangerous Goods Store Faslane	Storehouse - Hazardous Materiel. One facility comprising of a number of sections including a returns area	1054m3
1213	Returns Store, Classified Store and Specialist Packaging Area Faslane	Building 1213 consists of: • Returns Store • Classified Store • Specialist Packaging Area There are plans to move the Returns Store capability to Building 1250 (GPSS) during the Summer of 2020. The Classified Store and Specialist Packaging Area will remain in scope for the W&D Contractor.	Returns Store - 447m3 Classified Store - 114m3 No dimensions for Specialist Packaging Area

1250	General Purpose Support Store (GPSS) Faslane	Storehouse - Non-Specialised Materiel Module 3 - Handling and Packing area to transit materials. This capacity consists of the following storage media: Steel Bin Equipment (small parts storage), Long Span Shelving, Vertical Carousel (small parts storage), Narrow Aisle Adjustable Pallet Racking (APR) and Wide Aisle APR. Module 6 - utilised to support the goods inward/outwards and associated tasking.	GPSS Modules 1- 5 Total 16,140m³. Usable Capacity as follows: Module 1 - 3624m³ Module 2 - 4039 ³ Module 3 - 196m³ Module 4 - 3862m³ Module 5 - 2827m³ Module 6 - 5440m³
1454	SSB4 Faslane	A bulk storage facility near the GPSS utilised to support oversized stock not suitable for storage in standard pallet racking.	
11C	RNAD Coulport No 11C	An unmanned bulk storage facility near building 37.	No cubic meter data available. 35m x 15m

Annex 3 to Schedule 2 - Service Boundaries

1 **Service Boundaries**

1.1 Warehousing, storage and distribution activities are carried out at HMNB Clyde by multiple parties. Activity is segmented into the five levels described in this Annex 3 to this Schedule 2. The Contractor shall deliver Services at levels 2 and 3, whilst ensuring integration with the other levels. The detail below describes all five levels to illustrate to the Contractor how the service boundaries fit together. The Contractor shall be required to ensure that the Services they perform are integrated with the other Naval Base services.

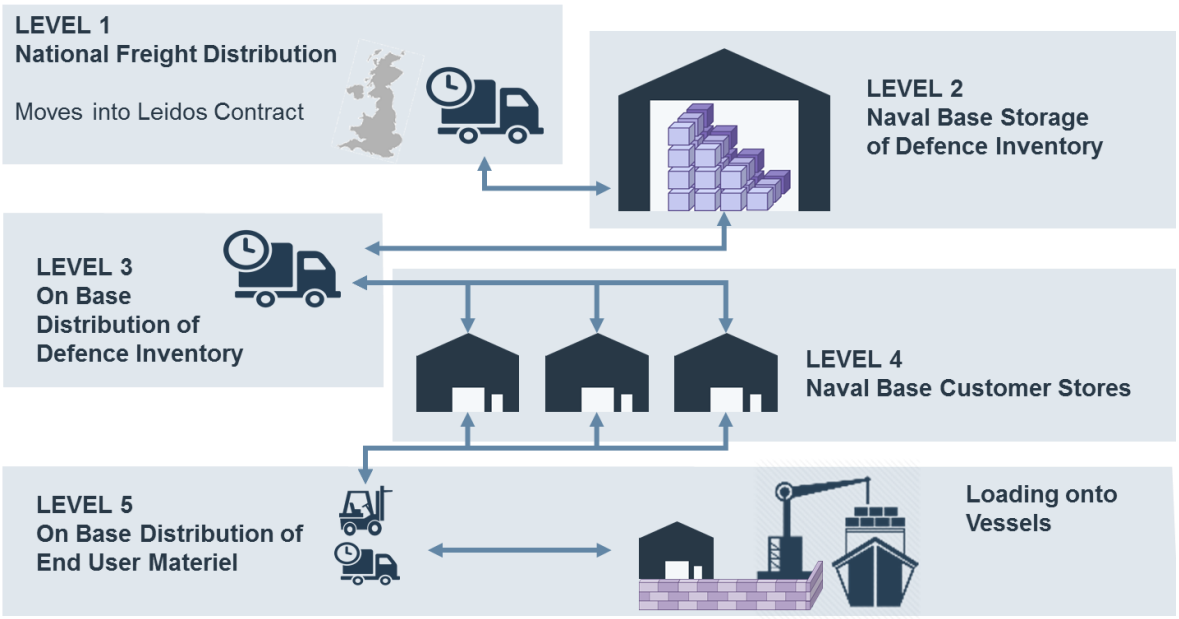


Figure **{** SEQ Figure * ARABIC **}** - Generic Levels of Supply Chain Activity

2 **Level 1: National Freight Distribution**

2.1 Level 1 is the National Freight Forwarding service and consists of the transportation of Defence materiel to and from the Naval Base boundary. For the purposes of FMSP this service will be delivered through the existing Logistics Commodities and Services Transformation (LCST) Contract (Contract number LCS(T)/0001), which is being delivered by the Authority's Delivery Partner, Leidos Europe Ltd. Transportation may be from a Leidos controlled warehouse (Base Inventory) or from other military units within the UK (Base Inventory Held Forward).

2.2 It is likely that some large, single load items could be delivered direct to the end customer, without physically transiting through the level 2 stores complex. For the purposes of this Contract, that means it would not require additional transportation services under level 3 and could be delivered direct to a level 4 store or even to the dockside for loading onto a ship.

2.3 It is likely that some goods will arrive at a Naval Base by direct delivery from a Third-Party Contractor. This will increase as the Authority promotes the method of contractors holding stock and delivering when required, rather than bulk storage within the strategic base. All movement of inventory beyond the Naval Base boundary should always use the Authority provided service where it is appropriate to do so.

3 **Level 2: Naval Base Storage of Defence Inventory**

3.1 Level 2 consists of all stores that contain Defence inventory that is available for issue to any military unit. Stock availability is managed through the Logistics Information System. Stock available for issue is in contrast to stock that has been issued to the end user and brought onto account by the host military unit or contractor. This type of inventory would normally be within a level 4 store.

4 **Level 3: On Base Distribution of Defence Inventory**

4.1 Level 3 encompasses the transportation of all Defence materiel within the dockyard boundary. This excludes all passenger transportation. Figure 1 above shows level 3 distribution operating at two levels, from level 2 to level 4 stores and from level 4 to the dockside. Level 3 includes movements between level 2 buildings. This is for illustration only as the true picture is more complex and varies between Naval Bases.

4.2 The high-level requirement is to provide a service to move Defence materiel between level 2 buildings and the end user, usually a level 4 building. That delivery can however be to any required point on the base and this Contract does not constrain the Contractor to a set of fixed locations. It includes the movement of any "returns" from locations within the Naval Base back into the Defence Supply Chain.

5 Level 4: Naval Base Customer Stores[4]

5.1 Level 4 includes all other buildings and stores used to manage inventory that has been delivered to the end user. This will include stores used to deliver other contracted services as well as storage for Defence materiel that has been issued to the end user.

5.2 Ad hoc storage in buildings not designated as stores is excluded from level 4, e.g. a store cupboard or room within an accommodation block. Hard standing is included at level 4 where the space is predominantly used for storage.

6 Level 5: On Base Distribution of End User Materiel

6.1 Level 5 distribution consists of internal distribution of end user materiel between level 4 stores and workshops. It also includes the requirement to move stock from an alongside store, where stock may have been temporarily stored in preparation for delivery to service a ship. This is generally managed either by the end user or specific industry partners.

[4] Customer in this context means customer of the Warehousing and Distribution Service

Annex 4 to Schedule 2 - Performance Indicators

1 **Distribution, storage and handling (Outcome 2)**

PI Ref	Measure Description, Targets & Performance Standards
{ HYPERLINK \l "PWD21" **}**	**Goods In.** This PI measures the time taken from an item arriving at "Goods In" to being correctly processed and made ready for the next stage of onward distribution or for receipting to stock. The purpose of this PI is to ensure the physical backlog in the “Goods in” area is minimised. The Contractor shall monitor, record and report the time taken to correctly process all items. This PI relates to items that fully conform when received. Non-conforming items will not be included in the reporting of this PI. The Contractor’s Performance success shall include the recording of the item on the appropriate Consignment Tracking (CT) Logistics Information Systems with the item being trackable, correctly located and ready for onward distribution or for processing receipts to stock. **Targets - Conforming Items.** **Consignments due for Onward Distribution.** The Contractor shall prepare the received consignments for onward distribution in accordance with the timelines stated within the Required Delivery Date (RDD) and Standard Priority Code (SPC). **Consignments due for Stock Replenishment (Receipts).** The Contractor shall prepare the received consignments for stock replenishment (receipts) within one (1) Business Day unless otherwise notified by the Authority. **Performance Standards.** Received consignments are correctly tracked using appropriate CT Log IS and prepared for next stage.

PI Ref	Measure Description, Targets & Performance Standards
{HYPERLINK \l "PWD21"}	**Discrepancies at Goods In.** This PI measures the number of items discrepant at "Goods In". The Contractor shall record and report the volume of items that are discrepant. The report shall identify if the item's origin was internal or external. Where an item is discrepant, the Contractor's report shall state if the issue was resolved internally or was returned to the originator of the delivery. Note: This PI excludes items that were found to have faulty packaging under CWD 2.14 and repackaged successfully internally using CWD 2.10 but shall include items under CWD 2.14 that had to be repackaged by an OEM or other external Contractor. The Contractor shall Monitor, Record and Report on the discrepant items. **Targets.** There is no target for this PI for items arriving from an external source. For Items arriving at Goods In from the Returns Facility under CWD 2.9, the rejecting rate must not exceed 0.5% of transaction volumes. **Performance Standards.** All consignment discrepancies identified by the CT system in regard to packages despatched and actual packages received are to be investigated in accordance with the CT system discrepancy procedures. All non-conformance returns must be identified and have a receipt code allocated in accordance with the DLF Extracts Document in the Data Room

PI Ref	Measure Description, Targets & Performance Standards
{ HYPERLINK \l "PWD22" **}**	**Receipts to Stock.** This PI measures the total time taken from an item arriving at "Goods In" to being correctly processed, receipted and stored into the correct stock location. This PI relates to both conforming and non-conforming receipts. **Conforming Receipts to Stock.** The Contractor shall monitor, record and report the time taken to correctly process all receipts to stock. **Non-Conforming Receipts and Receipt Discrepancies.** This PI includes the time taken by Technical Services in dealing with non-conforming receipts and receipt discrepancies. **Targets.** **Conforming Receipts.** For restocking of a Level 2 store, the total transit time taken for individual items arriving at Goods In to being correctly processed and receipted onto the appropriate Logistics Information System and put away in the correct stock location by the Contractor is not to exceed five (5) Business Days. The Contractor's Performance success shall include the recording of the item as received on the appropriate Logistics Information Management Systems and the item being trackable and correctly stored in location. **Non-conforming Receipts and Receipt Discrepancies.** All non-conforming receipts and other discrepancies are to be identified and reported to Technical Services within one (1) Business Day. Technical Services shall resolve discrepancies in accordance with the following times: Discrepancy Reports are to be submitted within the following timeframes: Consignment Received - Within thirty (30) calendar days from receipt of the consignment Consignment Not Received - Supply Chain Processing Time plus thirty (30) calendar days or thirty (30) calendar days from output date of notification of issue **Performance Standards.** Non-conforming receipts and receipt discrepancies are to be processed in accordance with DEFSTAN 05-099 Part 2 Issue 1 Dated 14 Jul 17 Annex C - Receipt Discrepancies.

PI Ref	Measure Description, Targets & Performance Standards
{ HYPERLINK \l "PWD23" }	**Picking.** This PI measures the time taken from a request for an item being notified on the Log IS to being available for consignment packing to its routed destination. Supply Chain Pipeline Times (SCPT) and all Theatre Codes can be found in the Standard Priority System (SPS) Policy Document Dated 15 Dec 14 Schedule 19 *(Referenced Documents).* The Contractor shall monitor, record and report on elapsed Materiel Handling Time (MHT) of the item being picked. **Targets.** All Demands picked from stock will be picked within the following timeframes or earlier to meet the customer's RDD: SPC 01 and 05 Immediate - within two (2) Hours or earlier. SPC 02 and 09 Priority - within twenty-four (24) Hours or earlier. SPC 03 and 13 Routine - within four (4) days or earlier. SPC 04 and 16 Routine - within four (4) days or earlier. **Performance Standards.** Correct item and quantity, selected from stock, complete with all required paperwork and in time for required despatch times.
{ HYPERLINK \l "PWD24" }	**Prepare Consignment for Onward Distribution.** This PI measures the total time taken from an item arriving at "Goods In" to being prepared and ready for collection by the appropriate Authority Transport Provider. The Contractor shall monitor, record and report the time taken to correctly process all items. This PI relates to items that fully conform when received. The Contractor shall report on all items that have insufficient time left on the "Time for Distribution" from the SCPT to meet the targets for this PI. The Contractor shall return all non-conforming items to "Goods In". The Contractor's Performance success shall include the recording of the item on the appropriate Consignment Tracking Logistics Information Systems with the item being trackable, correctly located and available for onward distribution. **Targets.** **On Base Distribution.** The Contractor shall ensure all Items that are to be delivered On Base are available at the internal distribution point within and in sufficient time for despatch to meet the Customers Required Delivery Date (RDD). **External Onward Distribution.** The Contractor shall ensure all Items that are to be delivered (off-base) are available at the external distribution point within the "Time for Distribution" of the SCPT and in sufficient time for despatch to meet the Customer's RDD. **Performance Standard** The Time for Distribution will vary on the Theatre where the customer is based. Times for Distribution can be found in the DLF Extracts Document in the Data Room.

PI Ref	Measure Description, Targets & Performance Standards
{ HYPERLINK \l "PWD25" **}**	**Consignment Packing Service.** This PI measures the effectiveness of the consignment packaging service. The Contractor shall record and report on the number of consignments that were rejected by an authorised carrier. The reporting shall suitably categorise the reasons for rejection by the carrier. Consignments that are repacked and subsequently accepted by the carrier are Service failures, unless the repackaging occurs before the carrier is due to depart. The Contractor shall prepare packaging in accordance with: International Standard for Phytosanitary Measures 15 (Regulation of wood packaging material in international trade) – Produced by the Secretariat of the International Plant Protection Convention, adopted 2018, published 2019; LCST Supplier Manual LDOC/CMO/V2.0 - Version 2 Dated 28 June 2019 as appropriate. **Targets.** Zero consignments are rejected as unsuitable for transportation by an external carrier. Zero delays to the Authority's Transport Providers. **Performance Standards.** All consignments to be collected under the LCST contract are to be prepared in accordance with the LCST Supplier Manual. All packing requirements are to be met, in accordance with the Authority's specified standards and any relevant International Standards for transportation or storage.

PI Ref	Measure Description, Targets & Performance Standards
{ HYPERLINK \l "PWD26" **}**	**On-Base Distribution.** This PI measures the effectiveness of the On-Base Distribution Service (CWD 2.6) The contractor shall measure the time elapsed from an item being ready for despatch (from CWD 2.5) to the time it is accepted by the end customer as received. Proof of delivery shall be recorded on the relevant Consignment Tracking Log IS system or manual paperwork to record that the customer has received the item(s). The Contractor shall Monitor, Record and Report: the elapsed time for the service; the volume of work undertaken by the service; all RDD failures all failures to meet an urgent delivery requirement in agreed timescales. **Targets.** The Contractor shall ensure that all consignments are despatched within the 'Time for Distribution' of the Supply Chain Pipeline Time (SCPT) below and in sufficient time to meet the Customer's RDD. **Time for Distribution:** Standard Priority Code (SPC) 01 and 05 Immediate - within twenty-two (22) Hours/by RDD. Standard Priority Code (SPC) 02 and 09 Priority - within one to five (1-5) days/by RDD. Standard Priority Code (SPC) 03 and 13 Routine - within three (3) days/by RDD. Standard Priority Code (SPC) 04 and 16 Routine - within three (3) days/by RDD. **Performance Standards.** Consignments correctly delivered within the Customer's RDD. Identification, Classification, Handling, Storage and Transportation of Dangerous Goods and Hazardous Materials is to be carried out in accordance with JSP 515 - The MOD Hazardous Stores Information System (and related JSPs therein) and JSP 800 - Defence Movement and Transport Regulations.

PI Ref	Measure Description, Targets & Performance Standards
{ HYPERLINK \l "PWD27" **}**	**Prepare Freight for Off-Base Distribution.** This PI measures the effectiveness of the preparation of consignments for off base distribution under CWD 2.5, 2.7 and the integration with the Authority transport providers. Consignments are to be managed to minimise the total end to end delivery times. The Contractor shall Monitor, Record and Report: the volume of work undertaken by the service; all RDD failures all failures to meet an urgent delivery requirement in agreed timescales. time taken from a consignment being available for collection to collection being booked with the Freight Distribution Service. time taken from a consignment being available for collection to being collected. number of consignments rejected by the Authority's Transport Provider with the reason for rejection failure of the Authority's Transport Provider to collect consignments within the agreed time window. **Targets.** The Contractor shall ensure that all consignments are ready for off-base distribution within the following timeframes or earlier to meet the customer's RDD: SPC 01 and 05 Immediate - within two (2) hours or earlier. SPC 02 and 09 - Priority - within twenty-four (24) hours or earlier. SPC 03 and 13 - Routine - within four (4) days or earlier. SPC 04 and 16 Routine - within four (4) days or earlier. **Performance Standards.** Consignments prepared to required standard with all required paperwork completed correctly and in time for required despatch times. Consignments shall be prepared in accordance with JSP 515 - The MOD Hazardous Stores Information System (and related JSPs therein) and JSP 800 - Defence Movement and Transport Regulations.

PI Ref	Measure Description, Targets & Performance Standards
{ HYPERLINK \l "PWD28" **}**	**Despatch for Off-Base Distribution.** This PI measures the effectiveness of consignments being despatched off-base and the utilisation of the Off-Base Freight Distribution Service and all other Commercial Freight Contract Services (CWD 2.8). The Contractor shall obtain and retain proof of collection from the Transport Provider. The Contractor shall Monitor, Record and Report: date and time of collection; agreement that the consignment was correctly packaged; consignment complied with supplied paperwork; and if the consignment was self-loaded by the Transport Provider. The Contractor shall update the relevant Consignment Tracking Log IS system or manual paperwork to record that the consignment has been received by the Transport Provider. **Targets** The Contractor shall ensure that all consignments are despatched as soon as possible and within the 'Time for Distribution' of the Supply Chain Pipeline Time (SCPT) to ensure sufficient time for delivery to meet the Customer's RDD. **Performance Standards.** The Time for Distribution can be found in the DLF Extracts Document in the Data Room. Consignments prepared to required standard with all required paperwork completed correctly and in time for required despatch times and in accordance with JSP 800 Defence Movement and Transport Regulations. .

PI Ref	Measure Description, Targets & Performance Standards
{ HYPERLINK \l "PWD29" **}**	**Unit Returns.** This PI measures the time from an item arriving at the Returns Store to the recording of the item on the appropriate Information Management system with the appropriate routing information and ready for collection by On Base distribution. The Contractor shall monitor, record and report the time taken from arriving at the Returns store to being available for collection through the On Base Distribution service. **Non-Conforming Returns (Unit) (NCR(U)).** The Contractor shall maintain a record of NCRUs and the action taken. This is to be made available on a monthly basis for the following purposes: To determine the percentage of all Unit Receipts that are non-conforming against total Receipts. To monitor the percentage of NCRUs and monitor trends to identify shortfalls in training or target specific units which continuously fail to comply. The NCRU process is considered to be completed when the NCRU item is rectified and taken on account by the Contractor or disposed of in accordance with disposal process. **Targets.** The total transit time taken for conforming items arriving at the Returns Store to being ready for collection is not to exceed twenty-five (25) Business Days. All non-conforming returns and other discrepancies, once identified, are to be reported to Technical services within one (1) Business Day. The Contractor shall advise the issuing unit on the reason for the Non-Conforming Receipt so that the issuing unit can take appropriate action. **Performance Standards.** All non-conformance returns must be identified and have a receipt code allocated in accordance with the DLF Extracts Document in the Data Room. The Contractor shall expedite the resolution of Non-conforming returns with the customer within the mandated timeframes specified by the Authority and in accordance with the DLF Extracts Document in the Data Room.

PI Ref	Measure Description, Targets & Performance Standards
{ HYPERLINK \l "PWD210" **}**	**Packaging Service.** This PI measures the volume of work undertaken by the Packaging Service (CWD 2.10). The Contractor shall Monitor, Record and Report on the volume of work undertaken by the packaging service, suitably categorised into types of work undertaken. **Targets** There is no target nominated for this PI. **Performance Standards.** DEFSTAN 81-041 Packaging of Defence Materiel - Part 1 Issue 9 Dated 14 Dec 16 Introduction to Defence Packaging Requirements DEFSTAN 81-041 Packaging of Defence Materiel - Part 2 Issue 9 Dated 14 Jan 17 Design DEFSTAN 81-041 Packaging of Defence Materiel - Part 3 Issue 6 Dated 12 Jun 14 Environmental Testing DEFSTAN 81-041 Packaging of Defence Materiel - Part 4 Issue 9 Dated 14 Aug 18 Service Packaging Instruction Sheet DEFSTAN 81-041 Packaging of Defence Materiel - Part 5 Issue 9 Dated 14 Aug 18 Packaging Process DEFSTAN 81-041 Packaging of Defence Materiel - Part 6 Issue 10 Dated 14 Feb 18 Package Marking For packaging of SWS - Sect 14 - Packaging Introduction, Policy and Scope to CSSE T2600 - UK Strategic Weapons System Project Team Logistics Policy, Issue7, Change 2, Dated October 2012
{ HYPERLINK \l "PWD212" **}**	**Storage Media.** This PI measures the suitability and condition of the warehousing storage media. The Contractor shall monitor, record and report on all instances of stored items (either contents or packaging) degraded through faulty or inappropriate storage media. The Contractor shall record and report on all remedial action taken to maintain the storage media to an acceptable standard. **Targets.** Zero items are to be damaged or degraded through faulty storage media, including stock handling equipment. **Performance Standards.** The Contractor shall account for GFA in accordance with Schedule 15 and DEFSTAN 05-099 Managing Government Furnished Equipment in Industry - Part 1 Issue 1 Dated 14 Jul 17.

PI Ref	Measure Description, Targets & Performance Standards
{ HYPERLINK \l "PWD213" }	**Stocktaking.** This PI measures the volumes of Defence Materiel held and controlled by the Contractor by verifying the accuracy, quantity, quality and availability of inventory stocks held. The Contractor shall maintain accurate records of all stock held on their charge. The Contractor shall maintain accurate records of the movements of all stock in their care. The Contractor shall report on: the stock taking cycle undertaken; all stock discrepancies against control accounts; the volume of stock held (aggregate) by value, accuracy, serviceability, total quantity and unique line items; the volume of transactions undertaken. **Targets.** **Stock Taking Policy:** Stocktaking Type Category Code (STCC) 1 - (Attractive to Criminal and Terrorist Organisations (ACTO), Attractive, Security Classified and Nominated by Management) - 100% check every year. Stocktaking Type Category Code (STCC) 6 - (All items not covered by STCC 1 above) - 25% each year and completing 100% STCC 6 in a 4-year cycle. **Discrepancy Error Rates (DER):** Percentage DER not to exceed: 2% - Total Value of Inventory Counted 7% - Total Line Item/NSN of Inventory Counted Only discrepancy adjustments made from the mandatory in year stocktake are to be used in the DER calculations. For all Authority owned materiel for which the Contractor provides a warehouse management function, the Authority shall, in accordance with its Regulations: authorise write-off, write-down and account adjustment of materiel lost, damaged or otherwise not properly accounted for; and co-ordinate the preparation of stocktaking and loss reports drawing upon performance data provided by the Contractor. **Performance Standards.** The Contractor must manage stock in accordance with DEFSTAN 05:099 Part 2 - Issue 1 Dated 14 Jul 17 Annex B - Physical Verification, Stocktaking and Reconciliation.

PI Ref	Measure Description, Targets & Performance Standards
{ HYPERLINK \l "PWD214" }	**Stock Maintenance, Certification and Serviceability.** This PI measures the performance of stock maintenance under the control of the Contractor. The Contractor shall monitor, record and report on: the number of items inspected monthly; the number of items requiring re-certification; the number of items requiring routine servicing; the monthly servicing of items; the time items are unavailable due to requiring servicing or invalid certification. **Targets.** No stocked items should breach their certification. All relevant items are serviced within the appropriate servicing intervals. **Performance Standards.** No damage to stock resulting from damaged or inadequate packaging. Stock requiring routine maintenance is always fit for issue. All certified items have up to date certification. Packaging Standards include: LCST Supplier Manual LDOC/CMO/V2.0 - Version 2 Dated 28 June 2019 For packaging standards see WDPI 11. Identification, Classification, Handling, Storage and Transportation of Dangerous Goods and Hazardous Materials is to be carried out in accordance with JSP 515 - The MOD Hazardous Stores Information System (and related JSPs therein)
{ HYPERLINK \l "PWD215" }	**Disposals.** This PI measures the Contractor's effectiveness of processing materiel for disposal. The Contractor shall monitor, record and report on the time elapsed from notification to consignment preparation. **Targets.** On receipt of instructions to issue item(s) for disposal the Contractor will pick, pack and prepare Items for collection by the Authority's Disposal Agent within twenty (20) Business Days. The Contractor will be required to prepare the consignment and complete all necessary paperwork to the expected standard described in the Disposal Instructions. **Performance Standards.** The disposal of International Traffic in Arms Regulations (ITAR) shall be managed in accordance with Joint Services Publication to follow and DEFSTAN 05-132 - Issue 1 Dated 28 Jun 2017 - Marking of Service Materiel Items using a Unique Item Identifier (UII).

PI Ref	Measure Description, Targets & Performance Standards
{ HYPERLINK \l "PWD217" **}**	**On-Site Technical Services.** This PI measures the volume of work undertaken by On-Site Technical Services (CWD 2.17). The Contractor shall Monitor, Record and Report on the volume of work undertaken by Technical Services, suitably categorised into types of work undertaken. The Contractor shall monitor, record and report on all instances of Non-Conforming Returns by type and frequency in accordance with WDPI 10. **Targets.** Targets for Non-Conforming Returns can be found at WDPI 10. Targets for processing Receipt Discrepancies can be found at WDPI 3 **Performance Standards**. The Contractor shall investigate and progress all discrepancies in accordance with DEFSTAN 05-099 Part 2 Issue 1 Dated 14 Jul 17 - Annex C and in liaison with the Authority For Non-Conforming Returns see WDPI 10.

Table C**{** SEQ Table * ARABIC **}** - Distribution, storage and handling Performance Indicators

2 Cost Transparency (Outcome 3)

PI Ref	Measure Description & Targets
CTPI 1	This PI measures the effectiveness of all cost optimisation improvements proposed and implemented under this Contract. The Contractor shall monitor measure and report: the initiatives that have been identified; the initiatives that have been implementation; the benefit / cost reduction realised by each initiative, and; the cumulative benefit / cost reduction achieved over the life of the contract

Table C{ SEQ Table * ARABIC } - Cost Transparency Performance Indicators

3 Supply Chain Maturity (Outcome 4)

PI Ref	Measure Description & Targets
SCPI 1	This PI measures the impact of changes to the IT or IS systems on the Service Delivery. The measure will use existing service PIs to identify any impact on the service caused by the transition process or the actual changes. Any changes to targets against these PIs will be agreed as part of the service transition plan. Additional PIs may be introduced to measure the effectiveness of the transition. These will be agreed as part of the service transition plan. The Contractor shall provide regular reporting of initiative implementation including cost, time invested and impacts on Services. Frequency of reporting to be agreed as part of the transition plans. **Targets** Targets for each new PI and temporary amendments to existing PIs will be agreed as part of the service transition plan for the change. **Performance Standards** Changes to the IT or IS will not change any performance standards unless explicitly agreed between the Authority and the Contractor through the Contract Change mechanisms at Schedule 30 *(Change Procedure)*.
SCPI 2	This PI measures the effective utilisation of the available storage capacity. Storage facilities shall be matched to stock levels with sufficient tolerance for inventory fluctuation and contingency planning. The Contractor will monitor, record and report on; average monthly storage utilisation rate; volume of storage space that is vacant (m^3) cumulative volume of usable storage space made available through stock optimisation through the period of the contract **Targets** The Contractor shall aim for a storage utilisation rate of 95%, excluding contingency planning for peaks or operational requirements. This target shall not be contractually binding. The authority expects utilisation figures to fluctuate as stock is rationalised under CWD 4.2 and CWD 4.3. The target of 95% shall be used as a guide for decision making on any release of buildings.

PI Ref	Measure Description & Targets
SCPI 3	This PI measures the number of Unique line items that have had their packaging volumetrics (weight and dimensions) added to the Log IS under this contract. The contractor will record the required measurements and pass the information to the Authority monthly. **Targets** No codified items are accepted into storage without the required packaging volumetrics. **Performance Standard** The following information should be captured: a. The NCAGE or name, address and contact details of the Design Control Authority (DCA). b. The name of the Item of Supply, as recognised by the DCA. c. Identifying References: i. the DCA's drawing or part number(s), and National or International Standard or Specification Reference, or both (indicating definitive or non-definitive). The references will be assumed to be fully definitive unless stated otherwise; ii. where the Contractor's own identifying reference differs from the DCA's reference, this shall also be provided; iii. any associated bar code or product identification numbers, assigned by companies compliant with EAN International or the Uniform Code Council (UCC); iv. for medical items, the ATC Code (World Health Organisation (WHO) Anatomical Therapeutic Codes), BNF code (British National Formulary) or the ECRI Universal Medical Device Nomenclature code shall be supplied where relevant. d. The following Volumetric Data. Definitions equate to those in ASD S2000M and the data is to be supplied in the format specified therein: i. length, width and height / depth of packaged unit (SPU), used with an associated unit of issue code; ii. length, width and height / depth of unpackaged unit (SUU), used with an associated unit of issue code; iii. gross weight of packaged unit (WPU), used with an associated unit of issue code; iv. gross weight of unpackaged unit (WUU), used with an associated unit of issue code.

Schedule 3 – Lot Specific Conditions

1 **Clyde Naval Base Commander**

1.1 The Contractor shall co-operate with the Naval Base Commander and his authorised officials in the fulfilment of his statutory duties, powers and responsibilities and shall comply with instructions given by him pursuant to those duties, powers and responsibilities

1.2 Without prejudice to the generality of Paragraph 1.1, to the extent that there are any interfaces between the activities of the Contractor required or permitted to be performed pursuant to this Contract (including the provision of the Services) and the areas of responsibility of the Clyde Naval Base Commander, the Contractor shall perform such activities in such a manner as to avoid unnecessary disruption to and so as not to impede the Clyde Naval Base Commander in the fulfilment of his statutory duties, powers and responsibilities.

1.3 It is acknowledged by the Contractor that such interfaces as are referred to in Paragraph 1.2 are most likely to exist in respect of the following areas of responsibility of the Clyde Naval Base Commander:

a) the implementation of the requirements of the Dockyard Ports Regulation Act 1865 and regulations made thereunder and the Clyde Dockyard Port of Gareloch and Loch Long Order 2011, as updated and amended by Local Notices to Mariners;

b) overseeing the activities of the Base Services Coordination Officer and the Base Services Coordination Centre;

c) managing interfaces with bodies and organisations affected by or having involvement with the areas of responsibility of the Clyde Naval Base Commander;

d) the coordination of oil spill contingency plans for the Clyde Harbour; and

e) the coordination of any emergency that occurs within Clyde Harbour.

Schedule 4 – Pricing and Payment

Part 1 of Schedule 4 - Definitions

1 **Interpretation**

1.1 In this Schedule, the following terms shall have the following meanings:

Contract Phase means any one of the following periods within the Contract Period (and each Contract Phase shall have the meaning set out below):

Contract Phase means any one of the following periods within the Contract Period (and each Contract Phase shall have the meaning set out below):

(a) **Phase 1** means the period of three years after the Service Delivery Date;

(b) **Phase 2** means the period of two years subsequent to Phase 1;

(c) **Extension Phase 1** means the period of two years subsequent to Phase 2 (if applicable pursuant to Clause 2.4 (*Contract Period Extension*); and

(d) **Extension Phase 2** means the period of one year subsequent to Extension Phase 1 (if applicable pursuant to Clause 2.4 (*Contract Period Extension*).

Current Month has the meaning given in paragraph 3.5 of Part 2 of this Schedule 4.

Current Price Band means the Price Band as determined under paragraph 3.4 to 3.6 of Part 2 of this Schedule 4.

Extension Phase 1 Service Category 1 Services means all of the Service Category 1 Services carried out during Extension Phase 1.

Extension Phase 1 Service Category 2 Services means all of the Service Category 2 Services carried out during Extension Phase 1.

Extension Phase 1 Service Category 3 Services means all of the Service Category 3 Services carried out during Extension Phase 1.

Extension Phase 2 Service Category 1 Services means all of the Service Category 1 Services carried out during Extension Phase 2.

Extension Phase 2 Service Category 2 Services means all of the Service Category 2 Services carried out during Extension Phase 2.

Extension Phase 2 Service Category 2 Services means all of the Service Category 3 Services carried out during Extension Phase 2.

Final Month means the last Month of the Contract Period.

Month means a calendar Month.

Monthly Net Payment or MNP has the meaning given in paragraph 6.1 of Part 4 of this Schedule 4.

Monthly Service Charge or MSC has the meaning given to it at paragraph 2 of Part 4 of this Schedule 4.

Monthly Transactions means the number of Transactions in respect of Service Category 2 Services completed in the applicable Month, as determined under Schedule 5 *(Performance Management and Measurement)*.

Phase 1 Service Category 1 Services means all of the Service Category 1 Services carried out during Phase 1.

Phase 1 Service Category 2 Services means all of the Service Category 2 Services carried out during Phase 1.

Phase 1 Service Category 3 Services means all of the Service Category 3 Services carried out during Phase 1.

Phase 1 Service Category 4 Services means all of the Service Category 4 Services carried out during Phase 1.

Phase 2 Service Category 1 Services means all of the Service Category 1 Services carried out during Phase 2.

Phase 2 Service Category 2 Services means all of the Service Category 2 Services carried out during Phase 2.

Phase 2 Service Category 2 Services means all of the Service Category 3 Services carried out during Phase 2.

Price Band means each of the bands, being the Higher Band 2, Higher Band 1, Standard Band, Lower Band 1 and Lower Band 2 set out in the table in paragraph 3.1 of Part 2 of this Schedule 4.

Price Index means K8ZU – All Services

Services Total Amount means the total amount payable for all Service Categories as determined under paragraph 3 of Part 2 of this Schedule 4 in respect of a Contract Phase.

Service Category means, as the context requires or permits, one or more of the following (and each Service Category shall have the meaning set out below):

(a) **Service Category 1 Services** means all of the Services described as Service Category 1 in Table 1 within Part 3 of Schedule 5 *(Performance Management and Measurement)*;

(b) **Service Category 2 Services** means all of the Services described as Service Category 2 in Table 1 within Part 3 of Schedule 5 *(Performance Management and Measurement)*;

(c) **Service Category 3 Services** means all of the Services described as Service Category 3 in Table 1 within Part 3 of Schedule 5 *(Performance Management and Measurement)*;

(d) **Service Category 4 Services** means all of the Services described as Service Category 4 in Table 1 within Part 3 of Schedule 5 *(Performance Management and Measurement)*; and

Service Categories shall be construed accordingly.

Service Category Price means the price payable in respect of a Service Category, as determined in accordance with Part 2 of this Schedule 4.

Total Contract Price means be an amount equal to the aggregate of each Service Category Price over the Contract Period.

Part 2 of Schedule 4 - Contract Price

1 **Not used**

2 **Pricing of Service Category 1 Services**

The Service Category Price for Service Category 1 Services shall be determined as follows:

a) for Phase 1, the Service Category 1 Services shall be priced at **£******;**

b) for Phase 2, the Service Category 1 Services shall be priced at **£******,** adjusted in accordance with Part 6 of this Schedule 4;

c) for Extension Phase 1, the Service Category 1 Services shall be priced at the level determined for Phase 2 pursuant to paragraph 2(b) above, adjusted in accordance with Part 6 of this Schedule 4; and

d) for Extension Phase 2, the Service Category 1 Services shall be priced at the level determined for Extension Phase 1 pursuant to paragraph 2(c) above, adjusted in accordance with Part 6 of this Schedule 4.

3 **Pricing of Service Category 2 Services**

3.1 Five Price Bands apply to Service Category 2 Services. Each Price Band has a minimum and maximum number of Monthly Transactions which shall be used to determine the amounts payable pursuant to this Schedule 4. The applicable Price Bands are as follows:

	Minimum Number of Monthly Transactions	**Maximum Number of Monthly Transactions**
Higher Band 2	8601	9400
Higher Band 1	7801	8600
Standard Band	6201	7800
Lower Band 1	5401	6200
Lower Band 2	4600	5400

3.2 For Service Category 2 Services, the Service Category Price for each Price Band, within the applicable Contract Phase, shall be determined as follows:

a) for Phase 1, the Service Category 2 Services shall be priced at the following levels:

(i) Higher Band 2 at £******;

(ii) Higher Band 1 at £******;

(iii) Standard Band at £******;

(iv) Lower Band 1 at £******; and

(v) Lower Band 2 at £******;

b) for Phase 2, the Service Category 2 Services shall be priced at the following levels:

(i) Higher Band 2 at £******;

(ii) Higher Band 1 at £******;

(iii) Standard Band at £******;

(iv) Lower Band 1 at £******; and

(v) Lower Band 2 at £******;

, adjusted in accordance with Part 6 of this Schedule 4;

c) for Extension Phase 1, the Service Category 2 Services shall be priced at the levels determined for Phase 2 pursuant to paragraph (b) above, adjusted in accordance with Part 6 of this Schedule 4; and

d) for Extension Phase 2, the Service Category 2 Services shall be priced at the levels determined for Extension Phase 1 pursuant to paragraph (c) above, adjusted in accordance with Part 6 of this Schedule 4.

3.3 Not used.

Determining the Current Price Band

3.4 For the first four (4) Months following the Service Delivery Date, the Current Price Band shall be the Standard Band.

3.5 For the fifth (5th) Month following the Service Delivery Date and for each subsequent Month (in each case the "Current Month"), the Current Price Band shall be determined by calculating the average Monthly Transactions in respect of Service Category 2 Services over the preceding four (4) Months. Where the average Monthly Transactions in respect of Service Category 2 Services over the preceding four (4) Months falls within a higher or lower Price Band than the Price Band which was the Current Price Band in the Month immediately prior to the Current Month as determined by the band limits set out in paragraph 3.1 of Part 2 of this Schedule 4, then, subject to paragraph 3.6 below, that Price Band shall become the Current Price Band for the Current Month.

3.6 The process of determining the Current Price Band, described in paragraph 3.5 above, shall be carried out once in respect of each Month. The Current Price Band which is determined by the said process cannot differ by more than one band as compared with the Price Band which was the Current Price Band in respect of the Month immediately prior to the Current Month and this limitation applies notwithstanding it being determined, by the process described in paragraph 3.5 above, that the Current Price Band would differ by more than one band.

Determining the applicable pricing in the Current Month

3.7 Where the total of the Monthly Transactions in respect of any Month exceeds the upper limit of the Current Price Band for that Month, as such limits are set out in paragraph 3.1 to Part 2 of this Schedule 4, the price for Service Category 2 Services delivered in that Month shall be determined on the basis of the pricing which is applicable to the total of the Monthly Transactions in respect of that Month as detailed in paragraph 3.2 of Part 2 of this Schedule 4.

3.8 Where the total of the Monthly Transactions is within or lower than the limits of the Current Price Band for a Month, as such limits are set out in paragraph 3.1 to Part 2 of this Schedule 4, the price for Service Category 2 Services delivered in that Month shall be the amount detailed in paragraph 3.2 of Part 2 of this Schedule 4 that is appropriate for the Current Price Band.

3.9 The Service Category Price for Service Category 2 Services shall be the amount set out in the relevant paragraph within paragraphs 3.2 (a)(i) to (v) of Part 2 of this Schedule 4, determined in accordance with paragraphs 3.7 and 3.8 above.

4 **Pricing of Service Category 3 Services**

The Services Category 3 Services shall be priced in accordance with Schedule 30 (*Change Procedure*) to this Contract and the Service Category Price shall be the amounts determined pursuant to Schedule 30 (*Change Procedure*).

5 **Pricing of Service Category 4 Services**

The Services Category 4 Services shall be priced at £******.

Part 3 – Not Used

Part 4 - Payment of Contract Price

1 **Payment for Services**

The Authority shall (subject to and in accordance with this Contract) pay the Contractor in accordance with the pricing provisions set out in Part 2 of this Schedule 4 in consideration for performing the Services comprised in each Service Category. Such consideration shall be the Contractor's sole entitlement to remuneration for performance of its obligations under this Contract.

2 **Entitlement to Monthly Service Charge (MSC)**

The Contractor shall (subject to and in accordance with paragraph 6 to paragraph 9 (inclusive) of Part 4 of this Schedule 4) be entitled to receive from the Authority an instalment of the Services Total Amount in respect of each Month of the Contract Period from the Service Delivery Date onwards and calculated in accordance with Paragraph 3 of this Part 4 of Schedule 4. (the **Monthly Service Charge or MSC).**

3 **Calculation of MSC**

3.1 The value of the MSC in respect of any Month in respect of each of the Service Categories shall be determined in accordance with whichever of paragraph 3.2, paragraph 3.3, paragraph 3.4 or paragraph 3.5 is applicable to the relevant Month.

3.2 This paragraph 3.2 shall apply to a Month if it falls during Phase 1. The value of the MSC for that Month shall be the aggregate of the following:

a) 1/36 of the Service Category Price for Phase 1 Service Category 1 Services;

b) 1/36 of the Service Category Price for Phase 1 Service Category 2 Services;

c) the Service Category Price for all Phase 1 Service Category 3 Services falling due for payment during the Month;

d) the Service Category Price for Phase 1 Category 4 Services (payable only once, and in the Month when all Category 4 Services are agreed to have been delivered); and

e) actual costs of Employer Contributions incurred during the Month.(Paragraph 2.2 of Part 4 of Schedule 10 refers.)

3.3 This paragraph 3.3 shall apply to a Month if it falls during Phase 2. The value of the MSC for that Month shall be the aggregate of the following:

a) 1/24 of the Service Category Price for Phase 2 Service Category 1 Services;

b) 1/24 of the Service Category Price for Phase 2 Service Category 2 Services;

c) the Service Category Price for all Phase 2 Service Category 3 Services falling due for payment during the Month; and

d) actual costs of Employer Contributions incurred during the Month.(Paragraph 2.2 of Part 4 of Schedule 10 refers.)

3.4 This paragraph 3.4 shall apply to a Month if it falls during Extension Phase 1. The value of the MSC for that Month shall be the aggregate of the following:

a) 1/24 of the Service Category Price for Extension Phase 1 Service Category 1 Services;

b) 1/24 of the Service Category Price for Extension Phase 1 Service Category 2 Services;

c) the Service Category Price for all Extension Phase 1 Service Category 3 Services falling due for payment during the Month; and

d) actual costs of Employer Contributions incurred during the Month.(Paragraph 2.2 of Part 4 of Schedule 10 refers.)

3.5 This paragraph 3.5 shall apply to Month it falls during Extension Phase 2. The value of the MSC for that Month shall be the aggregate of the following:

a) 1/12 of the Service Category Price for Extension Phase 2 Service Category 1 Services;

b) 1/12 of the Service Category Price for Extension Phase 2 Service Category 2 Services;

c) the Service Category Price for all Extension Phase 2 Service Category 3 Services falling due for payment during the Month; and.

d) actual costs of Employer Contributions incurred during the Month.(Paragraph 2.2 of Part 4 of Schedule 10 refers.)

4 **Not Used**

5 **Not Used**

6 **Calculation of Monthly Net Payment**

6.1 Within ten (10) Business Days of the receipt by the Authority of the applicable documents supplied by the Contractor pursuant to Clause 16 (*Progress Reports and Financial Reports*), Schedule 5 (*Performance Management and Measurement*) and Schedule 22 (*Reports*), the Authority shall, where applicable using the said documents, calculate and notify the Contractor of the net payment for the Month to which the information relates (the "**Monthly Net Payment**" or "**MNP**"), calculated as follows:

MNP = MSC – KPIA – RA

Where:

MSC is the Monthly Service Charge for the relevant Month determined in accordance with paragraph 3 of Part 4 of this Schedule 4;

KPIA is the deduction or addition (which, if an addition, shall be expressed as a negative number) to be made in respect of KPIs for the relevant Month, as determined in accordance with Schedule 5 *(Performance Management and Measurement)*; and

RA is any reconciling amount determined by the Authority in accordance with paragraph 8 of Part 4 of this Schedule 4, expressed as a negative number if it is an amount due from the Authority to the Contractor).

6.2 If the Monthly Net Payment calculated in accordance with paragraph 6.1 of Part 4 of this Schedule 4 is:

a) a positive amount, it shall be payable by the Authority to the Contractor in accordance with paragraph 7.1 of Part 4 of this Schedule 4; and

b) a negative amount, it shall be payable by the Contractor to the Authority in accordance with paragraph 7.2 of Part 4 of this Schedule 4.

7 **Payment of Monthly Net Payment**

7.1 If the Monthly Net Payment calculated and notified by the Authority pursuant to paragraph 6 of Part 4 of this Schedule 4 is a positive amount:

a) the Contractor shall submit an invoice in the amount of such payment to the Authority in accordance with Part 5 of this Schedule 4; and

b) the Authority shall, following receipt of a valid invoice in accordance with this paragraph 7, pay such invoice in accordance with paragraph 4 of Part 5 of this Schedule 4, and for the purposes of this paragraph 7.3 an invoice is "valid" if, on examination by the Authority, it is free from material errors.

7.2 If the Monthly Net Payment calculated and notified by the Authority pursuant to paragraph 6 of Part 4 of this Schedule 4 is a negative amount:

a) the Authority shall be entitled to submit an invoice to the Contractor in the amount of such payment; and

b) the Contractor shall, following receipt of a valid invoice in accordance with this paragraph 7.2, pay such invoice within thirty (30) days.

8 **Reconciliation Payments**

8.1 If at any time it is agreed or determined that any previous calculation of a Monthly Net Payment or any other amount payable by one Party to the other was lower or higher than it should have been:

a) the amount of the excess or shortfall (as the case may be) shall be a negative or positive (as the case may be) reconciling amount for the purposes of paragraph 6.2 of Part 4 of this Schedule 4; and

b) such reconciling amount shall be due from one Party to the other in the applicable amount, and shall be payable in the manner provided for under paragraph 6 and paragraph 7 of Part 4 of this Schedule 4.

8.2 Whether or not a previous reconciling amount has been paid or payable in respect of the amount or matter concerned, if it becomes apparent (whether as a result of any audit or examination of any open book information or of any other records, or by any other means) that there remains any discrepancy or error in any previously invoiced amount then, such discrepancy or error shall be corrected by an adjustment or reconciling amount reflected in a subsequent invoice.

9 **Final Reconciliation Payment**

9.1 Without prejudice to paragraph 6.1, within ninety (90) days of the end of the Contract Period the Authority shall determine and notify the Contractor of its detailed calculation of the overall Total Contract Price and a breakdown of its component elements.

9.2 If the aggregate total of all Monthly Net Payments previously paid by and/or invoiced to the Authority prior to the start of the Final Month (the Invoiced Total):

a) is equal to the Total Contract Price determined and notified under paragraph 9.1 of Part 4 of this Schedule 4, there shall no final payment of Total Contract Price payable in respect of the Final Month; or

b) exceeds the Total Contract Price, the Contractor shall make a reconciling payment to the Authority in amount equal to:

(i) the Invoiced Total; less

(ii) the Total Contract Price; or

c) is less than the Total Contract Price, the Authority shall make a final payment of Total Contract Price to the Contractor in amount equal to:

(i) the Total Contract Price; less

(ii) the Invoiced Total.

Part 5 – Miscellaneous Provisions

1 **Errors**

1.1 Subject to paragraph 1.2 of Part 5 of this Schedule 4, if at any time it becomes apparent that any error has been made in the operation of this Schedule 4, that error shall be corrected as soon as reasonably practicable (and in any event within sixty (60) Business Days of the Authority becoming aware of such error) and such provision shall be made for amendment to items agreed, estimated, determined or calculated pursuant to this Schedule 4 as may be requisite to correct the error concerned and secure that neither Party is financially disadvantaged as a result of the error having been made. The Contractor shall notify the Authority as soon as practicable upon becoming aware of such error.

1.2 Except in cases of fraud, paragraph 1.1 of Part 5 of this Schedule 4 shall apply only in respect of errors which have come to light and been notified by one Party to the other within six (6) years after the date on which the error was made.

2 **Not used**

3 **Not used**

4 **Payment and Recovery of Sums Due**

4.1 Payment for the Services shall be made by electronic transfer and prior to submitting any claims for payment under Part 4 of this Schedule 4 the Contractor shall be required to register their details (Supplier on-boarding) on the Contracting, Purchasing and Finance (CP&F) electronic procurement tool. All invoices submitted by the Contractor pursuant to this Contract shall be submitted through CP&F

4.2 Where the Contractor submits an invoice to the Authority in accordance with paragraph 7 of Part 4 of this Schedule 4, the Authority shall consider and verify that invoice in a timely fashion.

4.3 After the invoice has been verified and agreed by the Authority, the Authority shall pay the Contractor any agreed sums due under such an invoice no later than a period of thirty (30) days from the date on which the Authority has determined that the invoice is valid and undisputed.

4.4 Where the Authority fails to comply with Paragraph 4.2 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of Paragraph 4.3 after a reasonable time has passed.

4.5 The approval for payment of a valid and undisputed claim for payment by the Authority shall not be construed as acceptance by the Authority of the performance of the Contractor's obligations nor as a waiver of its rights and remedies under this Contract.

4.6 Without prejudice to any other right or remedy, the Authority reserves the right to set off any amount owing at any time from the Contractor to the Authority against any amount payable by the Authority to the Contractor under the Contract or under any other contract with the Authority, or with any other Government Department.

4.7 All payments under or pursuant to this Contract due or to become due by the Contractor shall be made by the Contractor no later than thirty (30) Calendar Days (or other such period as set out in this Contract) from the date on which they become due and free of any deduction whatsoever and the Contractor hereby irrevocably waives and disclaims, in relation to any matter under this Contract, any and all rights, past present or future, of retention, set off, compensation or lien as against the Authority.

4.8 In no event shall the Contractor be able to claim payment for an invoice that has not been verified and accepted by the Authority in accordance with paragraph 4.3 of Part 5 of this Schedule 4.

5 **Disputed payments**

If the payment or deduction of any amount referred to in paragraph 4 of Part 5 of this Schedule 4 above 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.

6 VAT and Import Duty

6.1 VAT

a) Any amount that is due and payable under this Contract (including the Total Contract Price) excludes any UK output Value Added Tax (VAT) and any similar EU (or non-EU) taxes chargeable on the supplies of Services by the Contractor to the Authority.

b) If the Contractor is required by UK VAT law to be registered for UK VAT (or has registered voluntarily) in respect of its business activities at the time of any supply, and the circumstances of any supply are such that the Contractor is liable to pay the tax due to HM Revenue and Customs (HMRC), the Authority shall pay to the Contractor in addition to the Total Contract Price (or any other sum due to the Contractor) a sum equal to the output VAT chargeable on the tax value of the supplies of Services, and all other payments under the Contract according to the law at the relevant tax point. In the event of any doubt about the applicability of the tax in such cases, the Authority may require the Contractor to obtain and pass to the Authority a formal ruling from HMRC.

c) The Contractor is responsible for the determination of VAT liability. The Contractor shall contract its HMRC Client Relationship Manager or the HMRC Enquiries Desk and not the Authority Contract Manager in cases of doubt. The Contractor shall notify the Authority Contract Manager of the Authority's VAT liability under the Contract, and any changes to it, within twenty (20) Business Days of becoming aware that the liability is other than at the standard rate of VAT. In the event of any doubt about the applicability of the tax in such cases, the Authority may require the Contractor to obtain, and pass to the Authority, a formal ruling from HMRC. The Contractor shall comply promptly with any such requirement. Where the Contractor obtains a ruling from HMRC, it shall supply a copy to the Authority within three (3) Business Days of receiving that ruling unless it proposes to challenge the ruling. Where the Contractor challenges the ruling it shall supply to the Authority a copy of any final decisions issued by HMRC on completion of the challenge within three (3) Business Days of receiving the decision.

d) Where the Services come within the scope of UK VAT, but the Contractor is not required by UK VAT law to be registered for UK VAT (and has not registered voluntarily), the Authority shall be responsible for assessing and paying over directly to HMRC any UK output VAT due in respect of the Services. The Contractor shall be responsible for ensuring it takes into account any changes in VAT law regarding registration.

e) Where Services are deemed to be supplied to the Authority outside the UK, the Contractor may be required by the laws of the country where the supply takes place to register there for EU (or non-EU) turnover or similar tax. In that event, the Authority shall pay to the Contractor in addition to the Total Contract Price (and any other sum due to the Contractor under the Contract) a sum equal to the tax the Contractor is liable to pay to the tax authorities of the country in question in relation to the Services within thirty (30) calendar days of a written request for payment of any such sum by the Contractor.

f) In relation to the Services supplied under the Contract the Authority shall not be required to pay any sum in respect of the Contractor's input VAT (and/or similar EU and non-EU input taxes). However, these input taxes shall (if they are on a supply to it which is used or to be used exclusively in performing the Services or any of the obligations or provisions under this Contract) be appropriate, attributable and reasonable costs where it is proven to the Authority that, despite the Contractor having taken all reasonable steps to recover them, it has not been possible to do so. Where there is any doubt that the Contractor has complied with this requirement the matter shall be resolved under the Dispute Resolution Procedure.

g) Should HMRC decide that the Contractor has incorrectly determined the VAT liability, in accordance with paragraph 6.1(b) of Part 5 of this Schedule 4, the Authority shall pay the VAT assessed by HMRC. In the event that HMRC so

determines, the Contractor shall pay any interest charged on any assessment or penalties or both directly to HMRC. Such interest or penalties or both shall not be recoverable from the Authority under this Contract or any other contract. The Contractor shall supply the Authority with a copy of all correspondence between HMRC and the Contractor's advisors regarding the VAT assessment within three (3) Business Days of a written request from the Authority for such correspondence.

Part 6 – Determination, Agreement and Pricing of Change

1 **Indexation**

1.1 For the purposes of Paragraphs 2(b), 3.2(b) and 6(b) of Part 2 of this Schedule 4, the adjustment referred to in each of these Paragraphs shall be calculated in accordance with the following formula:

V = P (Oi/Oo) - P

Where:

V represents the variation of price

P represents the relevant ***annualised prices*** for Phase 1 of the Contract.

O represents the Price Index:

Oo represents the average Price Index figure for the four (4) Quarters published most recently prior to the Service Delivery Date.

Oi represents the average Price Index period for the four (4) Quarters published most recently prior to the start of Phase 2.

1.2 For the purposes of Paragraphs 2(c), 3.2(c) and 6(c) of Part 2 of this Schedule 4, the adjustment referred to in each of these Paragraphs shall be calculated in accordance with the formula in paragraph 1.1 above, subject to the following amendments:

P represents the relevant ***annualised prices*** for Phase 2 of the Contract.
Oo represents the average Price Index figure for the four (4) Quarters published most recently prior to the start of Phase 2.
Oi represents the average Price Index period for the four (4) Quarters published most recently prior to the start of Extension Phase 1.

1.3 For the purposes of Paragraphs 2(d), 3.2(d) and 6(d) of Part 2 of this Schedule 4, the adjustment referred to in each of these Paragraphs shall be calculated in accordance with the formula in paragraph 1.1 above, subject to the following amendments:

P represents the relevant ***annualised prices*** for Extension Phase 1 of the Contract.
Oo represents the average Price Index figure for the four (4) Quarters published most recently prior to the start of Extension Phase 1.
Oi represents the average Price Index period for the four (4) Quarters published most recently prior to the start of Extension Phase 2.

1.4 The Index referred to in paragraph 1.1 above shall be taken from the Office of National Statistics (ONS) website: **{** HYPERLINK "https://emea01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.ons.gov.uk%2F&data=02%7C01%7CJonathan.Mcconville954%40mod.gov.uk%7C8a85c151f7eb486f4e8908d69b18c0a9%7Cbe7760ed5953484bae95d0a16dfa09e5%7C0%7C0%7C636866927942676899&sdata=4IpD7Lq66qeb2dg%2B0p4%2B4iwtoDOIAsAYMpjvyPIGUWk%3D&reserved=0" **}**.

1.5 Indices published with a B or F marker or a suppressed value, in the last 3 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.

1.6 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) to match the original index to the new series shall be applied.

1.7 In the event the agreed index or indices cease to be published (e.g. because of a change in the Standard Industrial Classification (SIC) System) 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 (as in Clause 1.4 above) shall then be applied.

1.8 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.

1.9 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.

1.10 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.

Schedule 5 - Performance Management and Measurement

Part 1 of Schedule 5 - Definitions

1 **Interpretation**

1.1 In this Schedule, the following terms shall have the following meanings:

Contract Transition means the period when the Transition Plan activities are being implemented.

Demand means a demand for specified quantities of one NSN/SKU made under the Standard Priority System by an Authorised Demander for any:

(a) Authority Managed Materiel (AMM) which is available for issue; or

(b) Commodities,

and the verb 'to Demand" (in any of its forms) shall be construed accordingly.

Despatched means when a consignment has been recorded on the Consignment Tracking System as being received by the carrier.

Item means a separate article of defence stock.

Key Performance Indicator or **KPI** means a Performance Indicator that the Authority has determined as being of sufficient importance such that a Performance Retention or a Performance Deduction may be applied in accordance with paragraph 3 to Part 3 of this Schedule, as set out in Annex 1 to this Schedule 5.

Level 2 Store means the areas described as "Level 2" in Annex 3 to Schedule 2 (*Requirements*).

Package means items of defence materiel packed for consignment to the end user.

Performance Deduction means an amount that is not payable to the Contractor due to the Service Performance not meeting the relevant Performance Standard.

Performance Indicator or **PI** means the method used to measure Service Performance and in each case is detailed in Annex 4 to Schedule 2 *(Requirements)*.

Performance Retention means an amount that is deferred from the Monthly Service Charge for a Month due to the Service Performance not meeting the relevant Performance Standard.

Performance Standard means the level of service required for each KPI as defined at Annex 1 to this Schedule 5.

Received means to have taken possession of a delivery of goods**.**

Receipted means to bring items on charge onto the Base Inventory System account.

Reporting Period means a period of one (1) month.

Service Category 1 Services has the meaning given in Schedule 4 (*Pricing and Payment*) of this Contract.

Service Category 2 Services has the meaning given in Schedule 4 (*Pricing and Payment*) of this Contract.

Service Category 3 Services has the meaning given in Schedule 4 (*Pricing and Payment*) of this Contract.

Service Category 4 Services has the meaning given in Schedule 4 (*Pricing and Payment*) of this Contract.

Service Performance means the comparison of the Services delivered by the Contractor in a Reporting Period against the Performance Standards.

Transaction means a completed Service activity, where completion is assessed against the criteria defined at paragraph 4.1 to Part 2 to this Schedule 5.

Part 2 – Performance Measurement

1 **Performance Measurement**

1.1 Service Performance shall be monitored through the Key Performance Indicators (KPI).

1.2 This Schedule 5 sets out the remedies available to the Authority for a failure to achieve the Performance Standards set for each KPI.

2 **Key Performance Indicators (KPIs)**

2.1 The assessment of the Contractor's Service Performance for each Reporting Period will, unless otherwise stated, result in a Red, Amber or Green level of performance being allocated to each KPI as determined in accordance with Annex 1 to this Schedule 5.

2.2 The remedies to be applied in accordance with paragraph 1.2 of Part 2 to this Schedule 5, shall be calculated in accordance with paragraph 3 to Part 3 to this Schedule 5

2.3 A Transaction shall only be counted against one (1) KPI.

3 **Performance Indicators (PIs)**

3.1 PIs provide a more detailed view of Service Performance than the KPIs and can be used to investigate underlying causes where the KPI Performance Standards are not being met. PIs shall be used to identify whether the measures detailed at Part 17 (Service Continuity) to this Contract are necessary to ensure that Performance Standards will be achieved.

3.2 Annex 4 to Schedule 2 *(Requirements)* provides the PIs and associated Performance Standard for each Output.

4 **Completed Transactions**

4.1 For the purposes of Service Performance against the KPIs, the completion of a Transaction will be assessed as follows:

a) 2.1 Stock Replenishment; a completed Service activity is one where an item that has been Received from an external source or the designated returns facility and Receipted into the correct stock location.

b) 2.2 On Base Distribution of Naval Base held Stock; a completed Service activity is one where a Demand is processed for a consignment, sourced from the Level 2 Store and recorded as Received by an on-base customer.

c) 2.3 Naval Base held Stock consignment packed for Off Base Distribution; a completed Service activity is one where a Demand is processed for a consignment, sourced from the Level 2 Store and recorded as Despatched to an off-base customer.

d) 2.4 External Stock consignment packed for Off Base Distribution; a completed Service activity is one where a Package has been Received from an external source and recorded as Despatched to an off-base customer.

e) 2.5 On Base Distribution of External stock; a completed Service activity is one where a Package has been Received from an external source and recorded as Received by an on-base customer.

f) 2.6 Returns Service; a completed Service activity is one where an item that has been Received at the designated returns facility and recorded as Despatched from the designated returns facility or disposed of in accordance with an agreed disposal process.

Part 3 – Performance Management

1 **Service Categories**

1.1 For the purposes of performance management, the required Outputs defined in the Requirements Table at Part 2 to Schedule 2 *(Requirements)* have been grouped into Service Categories as shown in Table 1 below.

Service Category	Description	Schedule 2 Output
1	Warehouse Management	CWD 2.10, CWD 2.12, CWD 2.13, CWD 2.14, CWD 2.16, CWD 2.17, CWD 2.18, CWD 2.19,
2	2.1 Stock Replenishment	CWD 2.1, CWD 2.2, CWD 2.14, CWD 2.22
	2.2 On Base Distribution of Naval Base held Stock	CWD 2.3, CWD 2.5, CWD 2.6
	2.3 Naval Base held Stock consignment packed for Off Base Distribution	CWD 2.3, CWD 2.4, CWD 2.5, CWD 2.7, CWD 2.8, CWD 2.15, CWD 2,21
	2.4 External Stock consignment packed for Off Base Distribution	CWD 2.1, CWD 2.4, CWD 2.5, CWD 2.7, CWD 2.8
	2.5 On Base Distribution of External stock	CWD 2.1, CWD 2.5, CWD 2.6, CWD 2.11
	2.6 Returns Service	CWD 2.1, CWD 2.4, CWD 2.9
3	Additional Tasking	CWD 4.1, CWD 4.2, CWD 4.3, CWD 3.1
4	Contract Transition	N/A

Table 1 - Service Categories with associated required Outputs

2 **Performance Reporting**

2.1 Without prejudice to Clause 16 (*Progress Reports and Financial Reports*) and Schedule 22 *(Reports)*; the Contractor shall, within ten (10) Business Days after the end of each Month, provide a report detailing the Service Performance against the KPIs for the Reporting Period. The Contractor's failure to comply with this paragraph 2.1 shall entitle the Authority to treat the Contractor's performance against all KPIs in the relevant Reporting Period as Red for the purposes of paragraph 3 of this Part 2 to this Schedule 5.

2.2 Any event, act or omission which results in a failure against a KPI may also give rise to a separate cause of action against the Contractor under terms of this Contract, not related to the Contractor's performance of the Services. Accordingly, the remedies available to the Authority in respect of the Contractor's failure against KPIs as set out at in this Schedule 5 are without prejudice to any separate cause of action under this Contract which arises from the same event, act or omission.

2.3 Where a report submitted pursuant to paragraph 2.1 identifies that the Performance Standard against any KPI has not been met, the Contractor shall provide a written remedial plan with the report in respect of the KPI that has not been met detailing how the Contractor proposes to ensure that the required Performance Standards will be achieved within the next Reporting Period.

2.4 The Authority reserves its rights to act to restore the Service Performance to the Green status under Part 17 to this Contract, if applicable, including where the rectification measures detailed in Clause 2.3 of Part 2 to this Schedule 5 have not been effective.

2.5 In the event the Authority makes a Performance Deduction, it reserves the right, at its absolute discretion, to repay the relevant Performance Deduction to the Contractor where the Contractor can demonstrate to the Authority's satisfaction that it has met the KPI and has achieved the Performance Standards, in each case within the next Reporting Period, and has met any other requirements or commitments as were detailed in the relevant written remedial plan submitted pursuant to paragraph 2.3 to this Part 3.

3 **Performance Retentions and Deductions**

3.1 Subject to Clause 53 (*Relief Events and Compensation Events*) if the Contractor's performance against any KPI (single or multiple) in the relevant Reporting Period is Red or Amber the Authority shall be entitled to make a Performance Retention or Performance Deduction in accordance with the following:

a) If a single KPI is assessed as Amber (with all other KPIs at Green) in a Reporting Period, payment of 5% of the Monthly Service Charge for that Month will be retained for one (1) Month;

b) If a single KPI is assessed as Red (with all other KPIs at Green) in a Reporting Period, payment of 6% of the Monthly Service Charge for that Month will be retained for one (1) Month;

c) If the KPI at (a) or (b) is assessed as improved to Green in the next Reporting Period, then the sum retained will become payable by the Authority the following Month;

d) If the KPI at (a) or (b) remains assessed as Amber or Red for a consecutive Reporting Period, the Performance Retention will be permanently retained as a Performance Deduction. A Performance Retention will be incurred in respect to the consecutive Reporting Period in accordance with (a) or (b) as if it were the first Reporting Period that the KPI was assessed as Red or Amber;

e) If the KPI at (b) is assessed as improving from Red to Amber in the next Reporting Period, then:

(i) A Performance Deduction will be applied as if the KPI had been assessed at Amber during the previous reporting period; and,

(ii) the balance between the amount that was the Performance Retention at para (b) (for being Red) and the amount deducted at paragraph 3.1 (e) (i), above, will become payable by the Authority the following Month; and,

(iii) an additional Performance Retention will be applied in accordance with paragraph 3.1 (a) as if it were the first Reporting Period that the KPI was assessed as Amber.

f) If the KPI at paragraph 3.1 (a) is assessed as deteriorating from Amber to Red in the next Reporting Period, then:

(i) the Performance Retention will be permanently retained as a Performance Deduction; and.

(ii) an additional Performance Retention will be applied in accordance with paragraph 3.1 (b) as if it were the first Reporting Period that the KPI was assessed as Red.

g) Where a Performance Retention has been determined by paragraphs 3.1 (a) or (b) for the relevant Reporting Period, then for each additional KPI that is assessed as Amber in that Reporting Period, a sum equivalent of 1% of the Monthly Service Charge will be added to the Performance Retention determined by paragraphs 3.1 (a) or (b) for the first KPI as appropriate;

h) Where a Performance Retention has been determined by paragraphs 3.1 (a) or (b) for the relevant Reporting Period, then for each additional KPI that is assessed as

Red in a single Reporting Period, a sum equivalent of 2% of the Monthly Service Charge will be added to the Performance Retention determined by paragraphs 3.1 (a) or (b) for the first KPI as appropriate;

i) Where more than one KPI is assessed as Red or Amber, if the KPI at paragraphs 3.1 (a) or (b) is assessed as improving to Green or Amber as appropriate in the next Reporting Period but the KPI at paragraphs 3.1 (g) or (h) does not, then the KPI at paragraphs 3.1 (g) or (h) will be treated as if it were the KPI at paragraphs 3.1 (a) or (b) and the treatment of the Monthly Service Charge will be as determined in paragraphs 3.1(a) to (f) in that:

(i) The Performance Retention for the KPI at 3.1 (a) or (b) will be treated as if it were at 3.1 (g) or (h) and become payable by the Authority; and

(ii) The Performance Retention for the KPI at 3.1 (g) or (h) will be treated as if it were at 3.1 (a) or (b) and will be permanently retained as a Performance Deduction;

j) If more than one KPI is assessed as Amber or Red at paragraphs 3.1 (a), (b), (g) or (h), and is assessed as remaining at Amber or Red for a consecutive Reporting Period, the Performance Retention determined in the previous Reporting Period will be permanently retained as a Performance Deduction for each non-improving KPI;

k) If some of the KPIs at paragraphs 3.1 (j), improve then the Performance Deduction in respect of the improving KPI will be reduced in accordance with the method determined by paragraph 3.1 (e), and the balance of the Performance Retention will become payable by the Authority.

l) For the avoidance of doubt:

(i) Where there are any KPIs assessed as Amber in a Reporting Period the minimum Performance Retention will always be 5% of the Monthly Service Charge.

(ii) Where there are any KPIs assessed as Red in a Reporting Period the minimum Performance Retention will always be 6% of the Monthly Service Charge.

(iii) Where there are any KPIs assessed as not improving from Amber or have been assessed as improving from Red to Amber, in the next Reporting Period the minimum Performance Deduction will always be 5% of the Monthly Service Charge.

(iv) Where there are any KPIs assessed as not improving from Red in the next Reporting Period the minimum Performance Deduction will always be 6% of the Monthly Service Charge.

(v) The maximum Performance Retention for a Reporting Period is 16% of the Monthly Service Charge and subsequently if there is no improvement in the next Reporting Period the maximum Performance Deduction will also be 16%.

3.2 Table 2 below is not an exhaustive list of possible KPI performance permutations. It illustrates the principles of how the Performance Retentions and Performance Deductions determined in Clause 3.1 will be applied across a number of scenarios based on a single KPI. In the event of any conflict between Clause 3.1 of Part 3 to this Schedule and this Table 2, Clause 3.1 of Part 3 to this Schedule takes precedence over this Table 2:

Period (Contract Month) 1		Period (Contract Month) 2		Period (Contract Month) 3	
KPI Rating	**Action**	**KPI Rating**	**Action**	**KPI Rating**	**Action**
Red	6% Performance Retention against period 1.	Red	Period 1 (6%) Performance Retention becomes a Performance Deduction and an additional 6% Performance Retention is held against Period 2.	Red	Period 2 Performance Retention becomes a Performance Deduction and an additional Performance Retention is held against Period 3.
Red	6% Performance Retention against period 1.	Amber	1% Performance Retention Released and 5% Performance Deduction against period 1. 5% Performance Retention against Period 2.	Amber	5% Performance Deduction against Period 2. 5% Performance Retention against Period 3.
Red	6% Performance Retention against period 1.	Amber	1% Performance Retention Released and 5% Performance Deduction against period 1. 5% Performance Retention against Period 2.	Green	5% Performance Retention released against Period 2 No retentions against Period 3
Amber	5% Performance Retention against period 1.	Red	5% Performance Deduction against period 1. 6% Performance Retention against Period 2.	Amber	1% Performance Retention Released and 5% Performance Deduction against period 2. 5% Performance Retention against Period 3.
Amber	5% Performance Retention against period 1.	Amber	5% Performance Deduction against period 1. 5% Performance Retention against Period 2.	Green	5% Performance Retention released against Period 2 No retentions against Period 3

Amber	5% Performance Retention against period 1.	Green	5% Retention Released against Period 1 No retentions against Period 2	Green	No retentions against Period 3
Green	No retentions against Period 1	Green	No retentions against Period 2	Green	No retentions against Period 3

Table 2 - Example Retention and Deductions for a single KPI.

3.3 Table 3 below is not an exhaustive list of possible KPI performance permutations. It illustrates the principles of how the Performance Retentions and Performance Deductions determined in Clause 3.1 will be applied across a number of scenarios based on multiple KPIs. In the event of any conflict between Clause 3.1 of Part 3 to this Schedule and this Table 3, Clause 3.1 of Part 3 to this Schedule takes precedence over this Table 3:

Period (Contract Month) 1		**Period (Contract Month) 2**		**Period (Contract Month) 3**	
KPI Rating	**Action**	**KPI Rating**	**Action**	**KPI Rating**	**Action**
1-Red 2-Red 3-Red	10% Performance Retention against period 1.	1-Red 2-Red 3-Red	Period 1 (10%) Performance Retention becomes a Performance Deduction and an additional 10% Performance Retention is held against Period 2.	1- Green 2- Green 3-Green	Period 2 Performance Retention is released and no additional Performance Retention is held against Period 3.
1-Red 2-Red 3-Green	8% Performance Retention against period 1.	1-Green 2-Amber 3-Green	3% Performance Retention Released and 5% Performance Deduction against period 1. 5% Performance Retention against Period 2.	1-Green 2-Amber 3-Green	5% Performance Deduction against Period 2. 5% Performance Retention against Period 3.
1-Green 2-Amber 3-Red	7% Performance Retention against period 1.	1-Green 2-Amber 3-Amber	1% Performance Retention Released and 6% Performance Deduction against period 1. 6% Performance Retention against Period 2.	1-Green 2-Amber 3-Green	1% Performance Retention released and 5% Performance Deduction against Period 2. 5% Performance Retention against Period 3

Table 3 - Example Retention and Deductions for multiple KPIs.

4 Termination and Partial Termination for Performance Failures

4.1 Subject to paragraph 4.2 below, for the purposes of Clause 57.1.11 (*Failure of Performance*) a Contractor Default shall occur if:

a) Six (6) of the individual KPIs, in aggregate, are Red or Amber at any point in any six (6) consecutive Reporting Periods. For example, this number can be achieved by;

(i) An individual KPI being Red or Amber for six (6) consecutive months; or

(ii) Two KPIs being Red or Amber three (3) times each at any point in the six (6) Reporting Periods; or

(iii) Six (6) different KPIs each Red or Amber once at any point in the six (6) Reporting Periods.

b) Any three (3) of the KPIs are red at any point in any six (6) consecutive Reporting Periods.

c) any single KPI is red for three (3) consecutive Reporting Periods.

4.2 Where any failure under paragraph 2.1 to this Part 3 results in the Authority applying its entitlement to assess all KPIs as Red, these will not be counted for the purposes of paragraph 4.1 to this Part 3.

Annex 1 – Key Performance Indicators

1 **Service Category 1 Services**

1.1 There are no KPIs associated with the Service Category 1 Services.

2 **Service Category 2 Services**

2.1 The following Service Category 2 Services have an associated KPI, which can be found at Table 1 to this Annex 1:

a) 2.1 Stock Replenishment - Stowing stock receipted into the Level 2 Store;

b) 2.2 On Base Distribution of Naval Base held Stock - Picking held stock and delivering it to customers within the Naval Base;

c) 2.3 Naval Base held Stock consignment packed for Off Base Distribution - Picking held stock and consignment packing inventory for delivery to customers off the Naval Base. (This does not include actual delivery. This will be undertaken by the Authority's Transport Provider);

d) 2.4 External Stock consignment packed for Off Base Distribution - Receiving and consignment packing inventory for delivery to customers off the Naval Base. (This does not include actual delivery. This will be undertaken by the Authority's Transport Provider.);

e) 2.5 On Base Distribution of External Stock - Receiving and delivering consignments to customers within the Naval Base.

f) 2.6 Returns Service - Conditioning and repurposing of surplus stock. Routing of serviceable and unserviceable stock for re-stocking, re-issue, scrap or disposal.

3 **Service Category 3 Services**

3.1 There are no KPIs set for Service Category 3 Services at the Commencement Date. All PIs or KPIs will be set for individual changes in accordance with Schedule 30 (*Change Procedure*) to this Contract.

4 **Service Category 4 Services**

4.1 There are no KPIs set for Service Category 4 Services. Performance for Service Category 4 Services will be against the agreed milestones detailed in Schedule 13 *(Transition Arrangements)*.

SERVICE	PERFORMANCE MEASURE	RATING
2.1 Stock Replenishment Stowing of stock received and receipted into the L2 warehousing Complex.	**Description** This KPI measures the total time taken from an item arriving at "Goods In" to being correctly processed, received, receipted and stored into the correct stock location. This KPI relates to conforming receipts only. **Recording and Reporting** To comply with this KPI the Contractor shall Monitor, Record and Report on: the elapsed time for the complete service for each transaction; the number of items received, receipted and stowed; the number and type and consignor of all non-conforming receipts received. **Required Performance.** For restocking of a Level 2 store, the total transit time taken for individual items arriving at "Goods In" to being correctly processed, received, receipted and put away in the correct stock location is not to exceed five (5) Business Days. The Contractor's Performance shall include the recording of the item as received on the appropriate Consignment Tracking Logistics Information Management System and receipted onto the appropriate Logistic Information System with the item being trackable, visible and accurately stored in the correct location.	**Green** At least 98% of the total amount of conforming items received at Goods In that are required for stock replenishment have been correctly stowed within the required timescale during a Contract Month. **Amber** Less than 98% but more than or equal to 95% of the total amount of conforming items received at Goods In that are required for stock replenishment have been correctly stowed within the required timescale during a Contract Month. **Red** Less than 95% of the total amount of conforming items received at Goods In that are required for stock replenishment have been correctly stowed within the required timescale during a Contract Month.

SERVICE	PERFORMANCE MEASURE	RATING
2.2 On Base Distribution of Naval Base held Stock Picking held stock and delivering it to customers within the Naval Base	**Description** This KPI measures the total time taken from an item being demanded from a NB Level 2 store and delivered to the on-base customer. The delivery of this service has no external dependencies. **Recording and Reporting** The contractor shall measure the total transit time from the item being requested to the item being received and signed for by the customer. To comply with this KPI the Contractor shall Monitor, Record and Report on: the elapsed time for the complete service for every transaction; the number of items issued and delivered; all failures to meet the required timescales all failures to meet an urgent delivery requirement in agreed timescales. **Required Performance** The Contractor's Performance shall include the recording of all transactions on the appropriate Logistic Information System. Proof that the item has been despatched and that the customer has received the item is to be recorded on the relevant Consignment Tracking Log IS system or manual paperwork. The total time for picking held stock and delivering it to customers within the Naval Base shall be: Standard Priority Code (SPC) 01 and 05 Immediate - within twenty-four (24) hours or by RDD. Standard Priority Code (SPC) 02 and 09 Priority - within two to six (2 – 6) days or by RDD. Standard Priority Code (SPC) 03 and 13 Routine - within seven (7) days or by RDD. Standard Priority Code (SPC) 04 and 16 Routine - within seven (7) days or by RDD.	**Green** At least 98% of the total amount of issues made from the NB held stock required for on-base customers have been delivered within the required timescale during a Contract Month. **Amber** Less than 98% but more than or equal to 95% of the total amount of issues made from the NB held stock required for on-base customers have been delivered within the required timescale during a Contract Month. **Red** Less than 95% of the total amount of issues made from the NB held stock required for on-base customers have been delivered within the required timescale during a Contract Month.

2.3 Naval Base held Stock consignment packed for Off Base Distribution Picking held stock, consignment packing inventory for despatch to customers off the Naval Base Does not include actual delivery. This will be undertaken by the Authority's Transport Provider.	**Description** This KPI measures the total time taken from an item being requested from a Level 2 store, to being despatched to an off-base customer for delivery by the Authority's Transport Provider. **Recording and Reporting** The contractor shall measure the total transit time from the item being requested to the time the item is despatched, including the time taken to notify the Authority's transport provider to collect the item and when the item is collected. To comply with this KPI the Contractor shall Monitor, Record and Report on: the number of packets processed by the service (Individual Transactions); all failures to meet the required timescales; the elapsed time for the complete service for every transaction time taken from a consignment being booked with the Authority's Transport Provider to the time the consignment being despatched; number of consignments rejected by the Authority's Transport Provider with the reason for rejection; failure of the Authority's Transport Provider to collect consignments within the agreed time window. **Required Performance.** The Contractor's performance shall include recording all transactions on the appropriate Logistic Information System. Proof that the item has been despatched is to be recorded on the relevant manual paperwork and subsequently on the Consignment Tracking Log IS. The Contractor shall ensure that 100% of SPC 01, 05, 02 and 09 timeframes are fully met within a Contract Month. The Contractor shall ensure that all consignments, including OPDEFs are picked, packed and despatched for off-base distribution, within the following timeframes or earlier to meet the customer's RDD: SPC 01 and 05 Immediate – within two (2) hours or earlier. SPC 02 and 09 - Priority - within twenty-four (24) hours or earlier. SPC 03 and 13 - Routine - within four (4) days or earlier. SPC 04 and 16 Routine - within four (4) days or earlier.	**Green** At least 98% of the total amount of issues made from the NB held stock required for off-base customers have been despatched within the required timescale during a Contract Month. **Amber** Less than 98% but more than or equal to 95% of the total amount of issues from the NB held stock required for off-base customers have been despatched within the required timescale during a Contract Month. **Red** Less than 95% of the total amount of issues made from the NB held stock required for off-base customers have been despatched within the required timescale during a Contract Month.

SERVICE	PERFORMANCE MEASURE	RATING
2.4 External Stock consignment packed for Off Base Distribution Receiving and consignment packing inventory and despatching to customers off the Naval Base. Does not include actual delivery.	**Description** This KPI measures the total time taken from an item arriving at "Goods In" to being packed, prepared and collected by the appropriate Authority Transport Provider. This KPI relates to items that fully conform when received. **Recording and Reporting** To comply with this KPI the Contractor shall Monitor, Record and Report on: The number of items processed by the service (Individual Transactions); the number of items that have been received at "Goods In" that have already exceeded SCPT or Customer's RDD. the elapsed time for the complete service for every transaction all failures to meet the required timescales; time taken from a consignment being booked with the Authority's Transport Provider to the time the consignment being despatched; number of consignments rejected by the Authority's Transport Provider with the reason for rejection; failure of the Authority's Transport Provider to collect consignments within the agreed time window. The amount, type and consignor of Non-Conforming Items received. **Required Performance.** The Contractor's Performance success shall include the recording of the item on the appropriate Consignment Tracking Logistics Information Systems with the item being trackable, correctly located and despatched for off-base distribution within the required timeframe. The Contractor shall ensure that 100% of SPC 01, 05, 02 and 09 timeframes are fully met during a Contract Month. Proof that the item has been received and despatched is to be recorded on the relevant manual paperwork and subsequently on the Consignment Tracking Log IS system. The Contractor shall ensure that all items, including OPDEFs that are for off-base distribution are despatched within twelve (12) Working Hours of being received at "Goods In".	**Green** At least 98% of the conforming items received at Goods In, that required off-base distribution have been despatched within the required timescale during a Contract Month. **Amber** Less than 98% but more than or equal to 95% of conforming items received at Goods In that required off-base distribution, have been despatched within the required timescale during a Contract Month. **Red** Less than 95% of the total amount of conforming items received at Goods In, that required off-base distribution, have been despatched within the required timescale during a Contract Month.

SERVICE	PERFORMANCE MEASURE	RATING
2.5 On Base Distribution of External stock Receiving and delivering consignments to customers within the Naval Base.	**Description** This KPI measures the total time taken from an item arriving at "Goods In" to being packed, prepared, despatched and delivered to the on-base customer. This KPI relates to items that fully conform when received. The Contractor shall return all non-conforming items to "Goods In". **Recording and Reporting** To comply with this KPI the Contractor shall Monitor, Record and Report on: the elapsed time for the complete service for every transaction; The number of items processed by the service (Individual Transactions). the time and date of all items being received at "Goods In". the time and date of all items that are received at "Goods In" that have already exceeded the SCPT. the amount, type and consignor of all non-conforming items received. the time taken for all items that are re-packed or consolidated for further distribution time taken from a consignment being available for collection to being delivered to the customer. The Contractor's Performance success shall include the recording of the item on the appropriate Consignment Tracking Logistics Information Systems with the item being trackable, correctly located and despatched. The Contractor shall ensure that 100% of SPC 01, 05, 02 and 09 timeframes are fully met. Proof that the item has been received and despatched and that the customer has received the item(s) is to be recorded on the relevant manual paperwork and subsequently on the Consignment Tracking Log IS system. **Required Performance.** The Contractor shall ensure all Items are delivered to the on-base Customer within twelve (12) hours of the item arriving at "Goods In" or in sufficient time to meet the Customer's RDD.	**Green** At least 98% of the total amount of conforming items received at Goods In, that required on-base distribution, have been delivered within the required timescale during a Contract Month. **Amber** Less than 98% but more than or equal to 95% of conforming items received at Goods In, that required on-base distribution, have been delivered within the required timescale during a Contract Month. **Red** Less than 95% of the total amount of conforming items received at Goods In, that required on-base distribution, have been delivered within the required timescale during a Contract Month.

SERVICE	PERFORMANCE MEASURE	RATING
2.6 Returns Service Conditioning and repurposing of surplus stock. Routing of serviceable and unserviceable stock for re-stocking, re-issue, scrap or disposal.	**Description** This KPI measures the total time taken from an item arriving at the Returns Facility, inspected, packed, brought to account and being made available for collection by the On-Base Distribution Service, or made available for disposal. This KPI is for Conforming Returns only. The Returns process is considered to be completed when the item is brought to account by the contractor, despatched to a third party or disposed of in accordance with an agreed disposal process. **Recording and Reporting** To comply with this KPI the Contractor shall Monitor, Record and Report on: the number of items processed by the service (Individual Transactions); the time and date of all items arriving at the Returns Facility; the time taken for processing the conforming items within the Returns Facility. The total time taken from an item being received at the Returns Facility to being correctly and appropriately processed (brought to account, made available for collection or made available for disposal). **Required Performance** The Contractor's Performance success shall include the recording of the item on the appropriate Logistics Information Systems with the item being trackable and correctly packaged. The total transit time taken for conforming items being received at the "Returns Facility" to being correctly and appropriately processed (brought to account, made available for collection or made available for disposal) is not to exceed twenty-five (25) Business Days.	**Green** At least 98% of the total amount of conforming items received at Returns have been assessed and despatched or made available for disposal within the required timescale during a Contract Month. **Amber** Less than 98% but more than or equal to 95% of conforming items received at Returns have been assessed and despatched or made available for disposal within the required timescale during a Contract Month. **Red** Less than 95% of the total amount of conforming items received at Returns have been assessed and despatched or made available for disposal within the required timescale during a Contract Month.

Table **{**SEQ Table_ * ARABIC**}** - KPIs for Services

Schedule 6 – Governance

1 **Interpretation**

1.1 In this Schedule 6 (*Governance*) the following words and expressions shall have the meanings set respectively against them:

Operating Board has the meaning as described in paragraph 3.5 of this Schedule.

Operational Representatives means any member of the Operations Support Team at the Naval Base who are responsible to the Operations Manager.

Operations Manager has the meaning the manager in charge of service delivery. For the Authority the Operations Manager is the appointed Logistic Delivery Operating Centre (LDOC) Operations Manager.

Lot Owner means the Authority's 1* head of Logistic Delivery Operating Centre (LDOC).

Operations Coordination Board has the meaning as described further in paragraph 3.7.

Service Delivery Location Supplier means a supplier who is party to a FMSP Contract at the Service Delivery Location.

Service Delivery Working Group or **SDWG** has the meaning as described in paragraph 3.3 of this Schedule.

Strategic Board has the meaning as described further in paragraph 3.10.

2 **Introduction**

2.1 This Schedule 6 (*Governance*) outlines the governance bodies and procedures by means of which:

a) the Authority shall exercise governance of this Contract and provide leadership, direction and accountability;

b) the Authority and all Service Delivery Location Suppliers (including the Contractor) shall participate in wider collaboration activities, and

in both cases so as to facilitate achievement of the Commercial Purpose.

2.2 Each Party shall bear all its own costs relating to the operation of the governance process described in this Schedule 6 (Governance).

2.3 The costs of any facilities (including use of buildings and infrastructure) provided for the purpose of the operation of the governance process described in this Schedule 6 (Governance) shall be borne by the Party making the provision.

3 **Governance Structure**

3.1 Governance meetings will be held between the Authority and the Contractor throughout the Contract Period as detailed in this Schedule. Further meetings, as may be agreed between the Parties, may also be held in order to facilitate the correct delivery of this Contract, which may include (but are not limited to);

a) coordination meetings to review prior, current and forthcoming operational activities; and

b) daily meetings or calls (as required) to discuss daily operational requirements.

3.2 The following meetings will be used to provide the required governance:

a) Service Delivery Working Group;

b) Operating Board;

c) Operations Coordination Board (Naval Base led); and

d) Strategic Board;

and the method of how they operate together is illustrated at Annex 5 to this Schedule 6.

Service Delivery Working Group (SDWG)

3.3 The SDWG is the weekly body that will deal with the day to day operation and management of this Contract. It will provide low level direction and guidance for the provision of the

Services in order to ensure the timely resolution of issues and events that may affect the achievement of the Performance Standards.

3.4 The terms of reference for the SDWG are set out in Annex 1 to this Schedule 6 (*Governance*).

Operating Board

3.5 The Operating Board is the Monthly committee responsible for the effective management and reporting of the performance of this Contract, in accordance with Schedule 5 *(Performance Management and Measurement)* and is responsible to the Strategic Board.

3.6 The terms of reference for the Operating Board are set out in Annex 2 to this Schedule 6 (*Governance*).

Operations Coordination Board

3.7 The Operations Coordination Board is the forum in which the Naval Base Commander, Authority Operations, Financial and Commercial representatives and all Service Delivery Location Suppliers (including the Contractor), will review the collaborative working relationships of all Service Delivery Location Suppliers to inform future operational plans, address any issues and foster best practice and collaboration.

3.8 Other attendees may be invited to Operations Coordination Board meetings as appropriate, as specified in Paragraph 3.3 of Annex 3 *(Terms of Reference – Ops Coordination Board)*.

3.9 The terms of reference for the Operations Coordination Board are set out in Annex 3 to this Schedule 6 (*Governance*).

Strategic Board

3.10 The Strategic Board is the annual top-level committee responsible for providing strategic direction and guidance to ensure the effective delivery of the Services, management and monitoring of the operations and performance of this Contract at a senior level.

3.11 The terms of reference for the Strategic Board are set out in Annex 4 to this Schedule 6 *(Governance)*.

4 Authorised Approvers

4.1 Where this Contract expressly provides a requirement for the agreement, consent or approval of or to any matter by the Contractor, pursuant to this Contract**,** the following individuals and/or post-holders are authorised to grant that agreement, consent or approval on behalf of the Contractor:

a) the Contractor Contract Manager;

b) the Contractor's representatives on the Service Delivery Working Group, in respect of all matters relating to the Service Delivery Working Group;

c) the Contractor's representatives on the Operating Board, in respect of all matters relating to the Operating Board;

d) the Contractor's representatives on the Operations Coordination Board, in respect of all matters relating to the Operations Coordination Board;

e) the Contractor's representatives on the Strategic Board, in respect of all matters relating to the Strategic Board; and

f) any other individual or post-holder notified from time to time in writing by the Contractor Contract Manager to the Authority Contract Manager but only to the extent of that individual or post-holder's authorisation (as set out in such notice),

and provided always that amendments to this Contract must comply with Schedule 30 (*Change Procedure*) (where relevant).

4.2 Where this Contract expressly provides a requirement for the agreement, consent or approval of or to any matter by the Authority, pursuant to this Contract, the following individuals and/or post-holders are authorised to grant that agreement, consent or approval on behalf of the Authority:

a) the Authority Contract Manager;

b) the Authority representatives on the Service Delivery Working Group, in respect of all matters relating to the Service Delivery Working Group;

c) the Authority representatives on the Operating Board, in respect of all matters relating to the Operating Board;

d) the Authority representatives on the Operations Coordination Board, in respect of all matters relating to the Operations Coordination Board;

e) the Authority representatives on the Strategic Board, in respect of all matters relating to the Strategic Board; and

f) any other individual or post-holder notified from time to time in writing by the Authority Contract Manager to the Contract Manager but only to the extent of that individual or post-holder's authorisation (as set out in such Notice),

and provided always that amendments to this Contract must comply with the process set out at Schedule 30 (*Change Procedure*) (where relevant).

Annex 1 – Terms of Reference for the SDWG

1 **Introduction**

1.1 The SDWG is the weekly body that will deal with the day to day operation and management of this Contract. It will provide low level direction and guidance for the provision of the Services in order to ensure the timely resolution of issues and events that may affect the achievement of the Performance Standards.

2 **Accountability**

2.1 The SDWG is accountable to the Operating Board Operations Manager.

3 **Purpose of the SDWG**

3.1 The purpose of the SDWG is to;

a) Receive an update on Contractor's progress in populating the relevant information in preparation for the Monthly Operating Board including progress against KPIs;

b) Progress against the Transition Plan (during the Transition Period);

c) Review of previous week's outputs and the forecast demand for the following week;

d) Review key risks and mitigation plans pursuant to the management of this Contract and the achievement of the FMSP Commercial Purpose;

e) Receive an update on any ongoing changes or change proposals;

f) Respond to Customer Feedback Forms and;

g) Any GFA matters.

4 **Operation of the SDWG**

4.1 Membership - The SDWG is a sub-committee of the Operating Board and shall be attended by the Contractor's Operational Representative and Authority's Operational Representative. The SDWG will be chaired by the Authority.

4.2 The members of the SDWG are the individuals holding the following posts:

Authority Members	**Contractor Members**
[●] Operational Representatives	[●] Contractor Equivalent

4.3 If any member of the SDWG is unable to attend, they shall ensure that:

a) a suitably empowered delegate attends the relevant meeting in his/her place who (wherever possible) is properly briefed and prepared; and

b) that he/she is debriefed by such delegate after the meeting

4.4 Frequency - The first SDWG shall be no later than one (1) week after the date of this Contract or such other date as the Parties agree and thereafter will be held on a weekly basis.

5 **Authority**

5.1 The SDWG has no authority to make decisions that change the structure and operation of this Contract including the terms and conditions, governance, finance and contracting frameworks and reporting processes.

Annex 2 – Terms of Reference for the Operating Board

1 **Introduction**

1.1 The Operating Board is the committee responsible for the effective management and monitoring of the operations and performance of this Contract.

2 **Purpose of the Operating Board**

2.1 The purpose of the Operating Board is to:

a) manage, co-ordinate and administer this Contract in accordance with the requirements of these terms of reference and in a manner that is consistent with the achievement of the Commercial Purpose; and

b) Reviewing the required Operating Board management information, in accordance with Schedule 22 *(Reports)* to review the Contractor's cost and service performance

c) Considering change proposals, in accordance with Schedule 30 *(Change Procedure)*

d) Considering any disputes and referring to the Strategic Board, as required, in accordance with Schedule 7 *(Dispute Resolution Procedure)*

e) apply appropriate levels of competent and authorised resource to maintain and improve the effectiveness and efficiency of Contract governance.

2.2 The activities and remit of the Operating Board are set out at paragraph 5.6 below.

3 **Membership**

3.1 The Operating Board will comprise the Authority's commercial contract manager, a financial representative of the Authority and the Authority Operations Manager (as required) and equivalent representatives appointed by the Contractor. Both Parties shall ensure that their representatives as specified in this paragraph 3.1 or replacements as notified in accordance with paragraph 5.3 of this Annex 2, shall be present at face-to-face meetings of the Operating Board (unless otherwise agreed by the Parties).

3.2 As at the date of this Contract, the representatives appointed to the Operating Board by each of the Authority and the Contractor are as detailed in this paragraph 3.2. Either Party may replace its representative(s) on the Operating Board (whether permanently or temporarily) through prior written notification to the other Party.

Authority Members	**Contractor Members**
[●] Commercial Lead	[●] Contractor Equivalent
[●] Finance Lead (as required)	[●] Contractor Equivalent
[●] Operations Lead	[●] Contractor Equivalent

4 **Delegation**

4.1 The Operating Board may establish such subsidiary bodies as it reasonably requires for the efficient operation of this Contract. In the event that the Operating Board establishes a subsidiary body, it shall agree the terms of reference for that subsidiary body prior to its operation.

4.2 The Authority and the Contractor shall use reasonable endeavours to make available suitable persons as are reasonably required, and at the times reasonably required, to give effect to any subsidiary body established by the Operating Board. In so doing, each Party shall ensure compliance with its own corporate governance

5 **Operation of the Operating Board**

Meetings

5.1 The Operating Board shall convene Monthly and be chaired by the Authority's Operations Manager in respect of this Contract.

5.2 The chair of the Operating Board shall have the power to:

a) convene and chair meetings of the Operating Board every Month or as otherwise agreed by the Parties;

b) arrange for others to attend Operating Board meetings as appropriate and as agreed by the Parties;

c) determine the agenda for each meeting;

d) monitor the progress of any follow up tasks and activities agreed to be carried out following Operating Board meetings; and

e) facilitate the process or procedure by which any decision agreed at any Operating Board meeting is given effect in the appropriate manner.

5.3 If any member of the Operating Board is not able to attend a meeting, they shall use all reasonable endeavours to ensure that:

a) a suitably empowered delegate attends the relevant meeting in his/her place who (wherever possible) is properly briefed and prepared; and

b) that he/she is debriefed by such delegate after the meeting

5.4 The first meeting of the Operating Board shall be no later than one (1) Month after the date of this Contract or such other date as the Parties agree.

5.5 Provisions allowing an Operating Board meeting to be called on an ad hoc basis i.e. where the Operating Board chairman considers it necessary or a Dispute Notice is served in accordance with Schedule 7 (*Dispute Resolution*). Either Party may request an extraordinary meeting of the Operating Board in addition to the regular Monthly meetings on reasonable notice (being no less than five (5) Business Days' notice unless otherwise agreed by the Parties). The Parties shall use reasonable endeavours to ensure that their representatives on the Operating Board, or suitable replacements as notified in accordance with paragraph 5.3 of this Annex 2, attend such meetings and that the matter(s) or issue(s) to be addressed are determined expeditiously.

Activities

5.6 At each meeting of the Operating Board, the Operating Board shall:

a) assess the overall effectiveness and operation of this Contract and its management arrangements, including the effectiveness of any subsidiary body established pursuant to paragraph 4.1 of this Annex 2;

b) review compliance with contractual processes to ensure effective Contract assurance;

c) review any reports provided by the Contractor under this Contract, including those provided pursuant to Clause 16 *(Performance Reports and Financial Reports)*, Clause 17 *(Annual Report and Reviews)*, Schedule 22 *(Reports)* or otherwise commissioned by the Operating Board;

d) discuss and manage any issues relating to the Contractor's performance of this Contract including in relation to the application of Schedule 5 *(Performance Management and Measurement)*;

e) monitor and assure the effectiveness of financial controls and conduct financial management;

f) discuss any matters relating to payments or invoices in respect of this Contract

g) review key risks and mitigation plans pursuant to the management of this Contract and the achievement of the Commercial Purpose;

h) review the status and progress of Change Proposals;

i) monitor the integration and coherence of agreed transformation plans and their effect upon this Contract;

j) consider and seek to resolve any issues between the Parties or otherwise take action in accordance with Schedule 7 *(Dispute Resolution Procedure)*;

k) plan for, and review the implementation of any change necessary to improve the effectiveness and efficiency of management arrangements;

l) review relationship and behavioural issues affecting the delivery of this Contract in relation to each of the Parties, in accordance with Schedule 16 *(Collaboration)*, and agree any actions;

m) agree any output report required for this Contract or corporate governance purposes; and

n) review such other matters as the Operating Board may consider relevant to the management of this Contract.

5.7 The Authority shall provide a secretary for meetings of the Operating Board to record the decisions made, actions to be undertaken and any strategy or plan on how to take key issues or initiatives forward under or pursuant to this Contract.

5.8 The Parties shall conduct Operating Board meetings in accordance with the Collaboration Principles set out in Schedule 16 (*Collaboration*). However, the Lot Owner in respect of this Contract shall, subject to paragraph 5.11 and paragraph 7, have the ultimate authority (acting reasonably) to make any decision of the Operating Board, which shall be binding on both Parties.

5.9 If a Dispute is referred to the Operating Board in accordance with Paragraph 6 *(Ordinary Procedure)* of Schedule 7 *(Dispute Resolution Procedure)*, any decision(s) in relation to that Dispute shall require the agreement of both Parties and shall be recorded in writing and signed by a duly authorised representative of each Party

Records

5.10 The Authority shall issue the record of decisions made and actions placed including their status within three (3) Business Days of an Operating Board meeting. Both Parties shall, within five (5) Business Days of the date of issue of such record, either agree that record or revise and agree an amended record.

5.11 The Authority shall circulate an agenda and any supporting material/management information five (5) Business Days prior to a meeting of the Operating Board, unless the meeting has been convened on less than five (5) Business Days' notice, in which case the Authority shall use reasonable endeavours to circulate an agenda and relevant information forty eight (48) hours before the meeting convenes.

6 Accountability

6.1 The Operating Board is accountable to the Strategic Board.

7 Authority

7.1 The Operating Board has no authority to make decisions that change the structure and operation of this Contract including the terms and conditions, governance, finance and contracting frameworks and reporting processes.

(a) Without prejudice to the above, ultimate decision making in respect of Leased and Licensed Areas compliance matters is reserved solely for the Authority.

Annex 3 – Terms of Reference for the Operations Coordination Board

1 Introduction

1.1 The Operations Coordination Board is the forum in which the Authority (represented by the Lot Owners and the Operations Managers) and all Service Delivery Location Suppliers (including the Contractor) will review the collaborative working relationships of all Service Delivery Location Suppliers to inform future operational plans, address any issues and foster best practice and collaboration.

2 Purpose of the Operations Coordination Board

2.1 The purpose of the Ops Coordination Board is to:

a) Review and plan the activities of all Service Delivery Location Suppliers to coordinate activities and dependencies across relevant FMSP Contracts and allow for efficient delivery;

b) identify actual and potential risks and issues at the Service Delivery Location and determine mitigating actions;

c) facilitate the sharing of best practice, learning and know-how amongst Service Delivery Location Suppliers;

d) ensure that all Service Delivery Location Suppliers comply with the Collaboration Principles as set out in Schedule 16 *(Collaboration)*; and

e) consider and manage the interfaces between the scope of this Contract and the Parties' other activities outside the scope of the Contract.

3 Operation of the Operations Coordination Board

Membership

3.1 The Operations Coordination Board will comprise:

a) all Lot Owners in respect of the Service Delivery Location;

b) the [Operations Managers]; and

c) representatives from each of the Service Delivery Location Suppliers (who shall each have full power and authority to act for and to make decisions on behalf of the relevant Service Delivery Location Supplier).

Meetings

3.2 The Operations Coordination Board shall convene Monthly and be chaired by the Naval Base Commander.

3.3 All representatives, or replacements as notified in accordance with paragraph 3.4 of this Annex 3, shall be present in a face-to-face meeting (unless otherwise agreed by the Parties) for the Operations Coordination Board to be quorate.

3.4 If any member of the Operations Coordination Board is not able to attend a meeting, that person shall use all reasonable endeavours to ensure that:

a) a suitably empowered delegate attends the relevant meeting in his/her place who (wherever possible) is properly briefed and prepared; and

b) that he/she is debriefed by such delegate after the meeting.

3.5 The chair of the Operations Coordination Board shall have the power to:

a) convene and chair meetings of the Operations Coordination Board every Month or as otherwise agreed by the Parties;

b) arrange for others to attend Operations Coordination Board meetings as appropriate and as agreed by the Parties;

c) determine the agenda for each meeting;

d) monitor the progress of any follow up tasks and activities agreed to be carried out following Operations Coordination Board meetings; and

e) facilitate the process or procedure by which any decision agreed at any Operations Coordination Board meeting is given effect in the appropriate manner.

3.6 Either Party (or any Service Delivery Location Supplier other than the Contractor) may request an extraordinary meeting of the Operations Coordination Board in addition to the regular Monthly meetings on reasonable notice (being no less than five (5) Business Days' notice unless otherwise agreed by the Parties). The Parties shall use reasonable endeavours to ensure that their representatives on the Operations Coordination Board or suitable replacements as notified in accordance with paragraph 3.4 of this Annex, attend such meetings and that the matter(s) or issue(s) to be addressed are determined expeditiously.

3.7 The first meeting of the Operations Coordination Board shall be no later than one (1) Month after the date of this Contract, or such other date as the Parties agree.

3.8 The Authority shall provide a secretary for meetings of the Operations Coordination Board to record the decisions made, actions to be undertaken and any strategy or plan on how to take key issues or initiatives forward in relation to the joint working relationships of the Service Delivery Location Suppliers.

3.9 The Parties shall participate in meetings of the Operations Coordination Board in a collaborative manner and in accordance with the Collaboration Principles set out in Schedule 16 *(Collaboration)*. The attendees shall endeavour to reach a common consensus in relation to any decision required to be taken at an Operations Coordination Board meeting and the Naval Base Commander shall be the deciding authority in the event that a common consensus cannot be achieved.

Records

3.10 The Authority shall issue the record of decisions made and actions placed including their status within three (3) Business Days of an Operations Coordination Board meeting. Both Parties shall, in consultation with the other Service Delivery Location Suppliers and within five (5) Business Days of the date of issue of such record, either agree that record or revise and agree an amended record.

3.11 The Authority shall circulate an agenda and any supporting material/management information five (5) Business Days prior to a meeting of the Operations Coordination Board , unless the meeting has been convened in accordance with Paragraph 3.6 of this Annex 3 on less than five (5) Business Days' notice, in which case the Authority shall use reasonable endeavours to circulate an agenda and relevant information forty eight (48) hours before the meeting convenes.

4 Authority

4.1 The Operations Coordination Board has no authority to make decisions that change the structure and operation of this Contract, including the terms and conditions, governance, finance and contracting frameworks and reporting processes.

Annex 4 – Terms of Reference for the Strategic Board

1 **Role**

1.1 The Strategic Board will provide senior level guidance, leadership and strategy for the Project including:

a) ensuring the Contract is operating in a manner which provides value for money for the Authority;

b) Authorisation of changes to payments in accordance with Schedule 4 *(Pricing and Payment)*;

c) Reviewing required Strategic Board management information;

d) Reviewing proposed Changes referred from the Operating Board; and

e) Considering and resolving Disputes (where possible) and referring unresolved Disputes to the Dispute Resolution Procedure in accordance with Schedule 7 (*Dispute Resolution Procedure*).

2 **Frequency**

2.1 The first Strategic Board meeting shall take place within three (3) Months after the Contract Effective Date. After this it may meet as often as deemed necessary, but no less than annually. Provisions allowing a Strategic Board meeting to be called on an ad hoc basis i.e. in connection with a security incident, dispute resolution, termination and measures in a crisis.

3 **Participants**

3.1 3 (three) members of the Authority and 2 (two) members of the Contractor, the ratio shall always be 60:40 unless otherwise agreed between the Parties. Each Party is also permitted to invite any other person(s) (such as Key-Subcontractors) to attend any meeting provided that such person signs an undertaking confirming that they are bound by the provisions of Part 23 (*Confidentiality*) and complies with the relevant security requirement

3.2 The members of the of the Strategic Board hold the following posts;

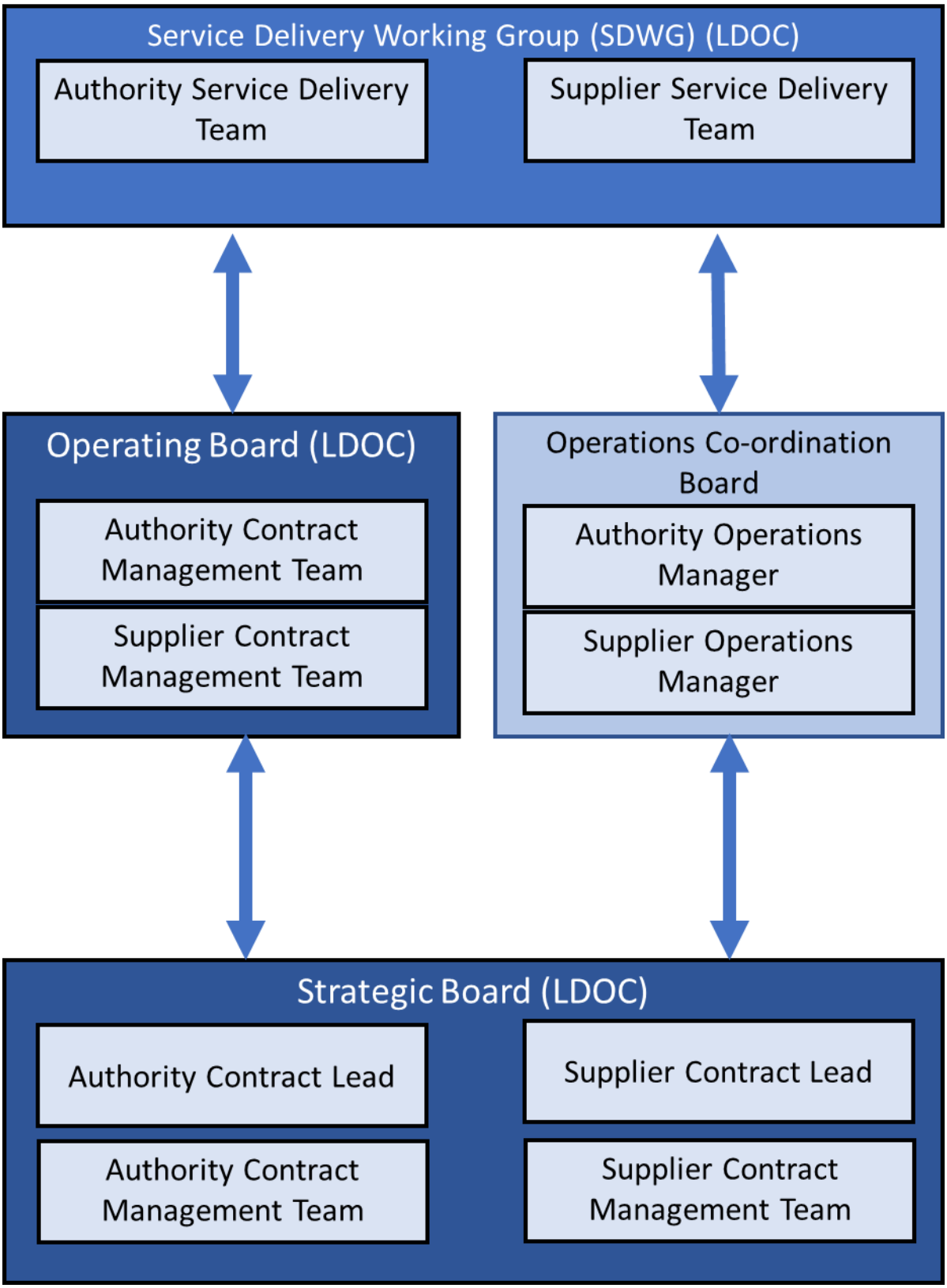
Authority Members	**Contractor Members**
[●] Commercial 1* Lead	[●] Contractor Equivalent
[●] Lot Owner	[●] Contractor Equivalent (as required)
[●] Operations Lead	[●] Contractor Equivalent
[●] Finance Lead (as required)	N/A

4 **Delegation**

4.1 The Strategic Board may establish such subsidiary bodies as it reasonably requires for the efficient operation of this Contract. In the event that the Strategic Board establishes a subsidiary body, it shall agree the terms of reference for that subsidiary body prior to its operation.

4.2 The Authority and the Contractor shall use reasonable endeavours to make available suitable persons as are reasonably required, and at the times reasonably required, to give effect to any subsidiary body established by the Strategic Board. In so doing, each Party shall ensure compliance with its own corporate governance.

Annex 5 – Governance Design Diagram



Schedule 7 – Dispute Resolution Procedure

1 **Definitions**

1.1 In this Schedule 7 the following words and expressions shall have the meanings set respectively against them:

Adjudication means the process to be followed by the Adjudicator pursuant to Schedule 7 to resolve a Dispute.

Alternative Dispute Resolution (ADR) Notice has the meaning given in Paragraph 9.4 (*Choice of External Dispute Resolution*).

Arbitration means the process to be followed by the Arbitrators pursuant to this Schedule 7 to resolve a Dispute.

Chief Executive means (a) in the case of the Contractor, its chief executive officer with ultimate managerial responsibility for its business and (b) in the case of the Authority, 2* Head of Logistic Delivery Operating Centre (LDOC)

Dispute Notice has the meaning given in Paragraph 4.1 (*Giving Notice of a Dispute*).

Dispute Owner has the meaning given in Paragraph 4.3 (*Giving Notice of a Dispute*).

Dispute Report has the meaning given in Paragraph 5.1 (*Dispute Reports*).

Dispute Resolver has the meaning given in Paragraph 9.4 (a) (*Choice of External Dispute Resolution*).

Escalation Date has the meaning given in Paragraph 9.1 (*Choice of External Dispute Resolution*).

Fast Track Dispute means Disputes over the following matters:

(a) any Dispute in relation to Clause 52 (*Force Majeure Events*);

(b) any Dispute specified under this Contract as being required to be dealt with through the Fast Track Procedure; and

(c) any other Dispute which the Parties may agree from time to time to have determined pursuant to the Fast Track Procedure.

Fast Track Notice has the meaning given in Paragraph 7.1 (*Fast Track Procedure*).

Fast Track Procedure means the dispute resolution procedure for Fast Track Disputes outlined in Paragraph **{** REF _Ref325018918 \r \h * MERGEFORMAT **}** (*Fast Track Pro*cedure).

HGCRA means the Housing Grants Construction and Regeneration Act (as amended by the Local Democracy, Economic Development and Construction Act 2009).

HGCRA Dispute means a Dispute involving construction operations within the meaning of section 105 of the HGCRA.

Internal Dispute Resolution Bodies means the Parties' respective representatives, and the representatives which make up the governance bodies, referred to in Paragraph 6 (*Ordinary Procedure*).

Operating Board has the meaning set out in Schedule 6 (*Governance*).

Ordinary Dispute means any Dispute that is not a Fast Track Dispute.

Ordinary Procedure the dispute resolution procedure for Ordinary Disputes outlined in Paragraph 6 (*Ordinary Procedure*).

Referring Party means, in relation to any Dispute, the Party who declares a Dispute pursuant to Paragraph 4 (*Giving Notice of a Dispute*) or refers a Dispute to alternative dispute resolution pursuant to Paragraph 9 (*Choice of External Dispute Resolution*).

Related Agreement means any agreement [entered into by the Authority] relating to the provision of goods and/or services to the Authority at HMNB Clyde*.*

Related Dispute means any dispute under (a) this Contract or (b) a Related Agreement, which (i) arises from substantially the same facts or matter or (ii) raises issues which are substantially the same, as a Dispute for which a Dispute Notices has been sent under this Contract.

Responding Party means the Party to a Dispute who is not the Referring Party.

Rules has the meaning set out in Paragraph 9.6 (*Choice of External Dispute Resolution*).

Stage means each stage through which a Dispute progresses under the Dispute Resolution Procedure set out in this Schedule 7.

Strategic Board has the meaning set out in Schedule 6 *(Governance).*

2 General

2.1 Neither Party shall commence any legal proceedings in relation to any Dispute until it has followed the dispute resolution procedure set out in this Schedule 7, provided that nothing in this Contract shall prevent a Party from seeking interim or interlocutory relief in any court.

2.2 Before notifying a Dispute, the Parties, acting in good faith, shall make every effort to resolve any issues promptly in discussions at an operational level.

2.3 Any timescales set out in this Schedule 7 may be shortened or extended by agreement in writing by the Parties.

3 Designation of Disputes

3.1 For the purposes of this Contract, Disputes are divided into two (2) categories:

a) Fast Track Disputes, to which Paragraph 7 (Fast Track Procedure) applies; and

b) Ordinary Disputes, being all other Disputes, to which Paragraph 6 (*Ordinary Procedure*) applies.

4 Giving Notice of a Dispute

4.1 To declare a Dispute, either Party shall send Notice (a **Dispute Notice**) to the other setting out full particulars of the nature and circumstances of the Dispute.

4.2 Unless specified as a Fast Track Dispute in the Dispute Notice or as otherwise designated in this Contract, each Dispute shall be deemed to be an Ordinary Dispute.

4.3 Within five (5) Business Days (or such longer period as agreed by the Parties) of a Party serving a Dispute Notice, each Party shall appoint a representative from within its organisation as the owner of the Dispute for the purposes of this Schedule 7 , (a **Dispute Owner**) and shall give Notice to the other Party of the name and contact details of its appointed Dispute Owner.

4.4 Each Party shall ensure that its appointed Dispute Owner is of an appropriate level and of sufficient authority within its organisation so as to enable it to progress towards resolving the Dispute.

4.5 The Dispute Owners shall be responsible to their respective appointing Parties for collating all relevant information relating to the Dispute and for co-ordinating the progression of the Dispute through the Dispute Resolution Procedure and for managing its appointing Party's obligations in respect of the Dispute until it is resolved.

5 Dispute Reports

5.1 Each Party shall require its Dispute Owner to provide a report on the Dispute (a **Dispute Report**) to a nominated representative of the other Party (or, if the other Party has not nominated a representative, the other Party's Dispute Owner) as soon as is reasonably practicable after service of a Dispute Notice. Each Dispute Report will include:

a) a unique serial number to be provided by the Authority and the date of the report;

b) the name, post, and phone number of each Party's Dispute Owner;

c) brief details of the issue(s) to be resolved;

d) brief details of the relief, remedy or recourse which the Referring Party seeks;

e) any dates by which the output or decision of the Dispute Resolution Procedure is required;

f) copies of all documents which the Referring Party considers to be important and to have a direct bearing upon the Dispute; and

g) any recommendation for the resolution of the Dispute which the Dispute Owner considers appropriate.

5.2 The Dispute Owners shall update and exchange their Dispute Reports on the conclusion of each Stage of the Dispute Resolution Procedure to reflect any partial resolution or clarification of any issues achieved.

5.3 The Parties agree that the Dispute Reports shall be prepared and exchanged on a without prejudice basis.

6 Ordinary Procedure

6.1 Except as expressly provided to the contrary in this Contract, all Ordinary Disputes shall proceed through the following stages:

a) if the Dispute has not been resolved by the Dispute Owners within fifteen (15) Business Days (or such other period as agreed by the Parties) after the date of the Dispute Notice, the Dispute shall be referred to the Operating Board for resolution. In referring the matter to the Operating Board, the Dispute Owners may recommend that, given the nature of the Dispute, it should be referred directly to the Directors;

b) if the Dispute has not been resolved by a duly quorate meeting of the Operating Board within fifteen (15) Business Days (or such other period as agreed by the Parties) after the date of referral of the Dispute pursuant to Paragraph 6.1 (a) or, if a recommendation from the Dispute Owners is made under Paragraph 6.1 (a) and the Operating Board concurs with such recommendation, the Parties shall refer the Dispute to (i) The Strategic Board or (ii) if the Operating Board so decides, the Chief Executives for resolution;

c) if the Dispute has not been resolved by the Strategic Board within fifteen (15) Business Days (or such other period as agreed by the Parties) after the date of referral of the Dispute to them pursuant to Paragraph 6.1(b), the Parties shall refer the Dispute to the Chief Executives for resolution;

d) if the Dispute has not been resolved by the Chief Executives within fifteen (15) Business Days (or such other period as agreed by the Parties) of the referral of the Dispute to them pursuant to Paragraph 6.1(b) or (c) (as the case may be), then Paragraph 9 (*Choice of Alternative Dispute Resolution)* shall apply.

7 Fast Track Procedure

7.1 The Fast Track Procedure will commence when the Referring Party gives the Responding Party a Dispute Notice requiring a Dispute to be resolved in accordance with the Fast Track Procedure (a **Fast Track Notice**).

7.2 Where a Dispute is designated as requiring resolution in accordance with the Fast Track Procedure, the Parties shall follow the provisions of Paragraphs 4.3 to 4.5 (*Giving Notice of a Dispute*) and 5 (*Dispute Reports*), save that the time periods set out in those Paragraphs shall be disregarded and the Parties shall be obliged to designate Dispute Owners and generate Dispute Reports within a total of five (5) Business Days after the date on which the Dispute Notice was served.

7.3 Except as expressly provided to the contrary in this Contract, Paragraph 6 (*Ordinary Procedure*) shall not apply to Fast Track Disputes. Instead, all Fast Track Disputes shall commence by referral to the Operating Board. If a duly quorate meeting of the Operating Board has not resolved the Dispute within ten (10) Business Days (or such other period as agreed by the Parties) after the date of the Delivery Notice, the Parties shall refer the Dispute to the Strategic Board. If the Dispute has not been resolved by the Strategic Board within ten (10) Business Days (or such other period as agreed by the Parties) of the referral of the Dispute to them pursuant to this Paragraph 7.3, then Paragraph 9 (*Choice of External Dispute Resolution*) shall apply.

8 Proceedings of Internal Dispute Resolution Bodies

8.1 Subject to Paragraph 8.2, each Internal Dispute Resolution Body shall, unless it unanimously agrees otherwise, follow the following procedure:

a) within five (5) Business Days (or such longer period as agreed by the Parties) of the relevant Dispute being referred to it, it shall obtain from the Dispute Owners a copy of the Dispute Reports, updated to reflect any partial resolution of clarification of any issue achieved by a previous Internal Dispute Resolution Body, or other summary of the points in issue from each Party;

b) no later than five (5) Business Days (or such longer period as agreed by the Parties) after the last day for obtaining copies of the Dispute Reports or summaries of the issues, it may convene a meeting with both Dispute Owners (having first given reasonable Notice to each Party of the meeting), at which it may discuss with the Dispute Owners (or such other representative(s) that a Party may submit as their alternates) any matters upon which it requires clarification or further information; and

c) no later than five (5) Business Days (or such longer period as agreed by the Parties) after the last day for obtaining copies of the Dispute Reports or summaries of the issues (or, if later, no later than five (5) Business Days after any meeting convened under Paragraph 8.1, the Internal Dispute Resolution Body shall meet and either (i) give its determination (which shall contain reasons) of the relevant Dispute or (ii) confirm its inability to resolve the relevant Dispute.

8.2 Where the Fast Track Procedure in Paragraph 7 (*Fast Track Procedure*) applies, the time periods referred to in Paragraph 8.1 shall be reduced to three (3) Business Days in each case.

8.3 Any valid determination of a Dispute by an Internal Dispute Resolution Body must be recorded in writing and signed by the chair of the relevant Internal Dispute Resolution Body or by all the members thereof and shall be final and binding upon the Parties.

8.4 The Parties shall procure that the Internal Dispute Resolution Bodies use their reasonable endeavours to negotiate in good faith to resolve the Dispute.

8.5 Anything said, done or produced under or in relation to a review by an Internal Dispute Resolution Body of that Dispute (other than a valid determination of a Dispute as envisaged in Paragraph 8.3) shall be treated as without prejudice to the Parties' rights and obligations unless the Parties expressly agree otherwise in writing.

9 Choice of Alternative Dispute Resolution

9.1 If the Strategic Board or the Chief Executives (as the case may be)] are unable, or fail, to resolve any Dispute within the time periods pursuant to Paragraph 6.1 (d) (*Ordinary Procedure*) or 7.3 (*Fast Track Procedure*), as appropriate (the **Escalation Date**), then:

a) the Strategic Board or the Chief Executives (as the case may be)] shall notify the Parties in writing of their inability or failure to reach a resolution in respect of the Dispute (and the reasons for such inability or failure);

b) in further attempting to resolve the Dispute the Strategic Board or the Chief Executives (as the case may be) shall be free to decide to refer to a method of alternative dispute resolution (which may include Adjudication or Arbitration), if it is considered that this would be the most likely way of resolving the Dispute; and

c) the Strategic Board or the Chief Executives (as the case may be) shall notify the Parties in writing of their chosen form of alternative dispute resolution.

9.2 In determining the appropriate form of alternative dispute resolution pursuant to Paragraph 9.1, the Strategic Board or the Chief Executives (as the case may be) shall have regard to whether the Dispute:

a) is of significant value (and in considering the significance or otherwise of the value, the Strategic Board or the Chief Executives (as the case may be) shall have regard to a threshold of five million pounds (£5M);

b) is of significant importance or complexity;

c) has given (or may give) rise to a Related Dispute; and/or,

d) concerns or could reasonably be anticipated to lead to a Contractor Default or default by the Authority.

9.3 If the Strategic Board or the Chief Executives (as the case may be) fail to notify the Parties in accordance with Paragraph **{** REF _Ref324865194 \r \h * MERGEFORMAT **},** they shall be deemed to have notified the Parties:

a) of their inability or failure to reach a valid determination in respect of the Dispute; and

b) that they have determined that the Dispute be referred to Arbitration.

9.4 Within five (5) Business Days of the Escalation Date, either Party may in accordance with determination of the Strategic Board or the Chief Executives (as the case may be) (whether deemed or actual) as to which (if any) form of alternative dispute resolution is to be employed, by Notice to the other Party (the **ADR Notice**) refer the Dispute to such form of alternative dispute resolution and the Parties shall agree the terms of reference for the alternative dispute resolution in relation to the following areas:

a) the identity of any persons or bodies to be appointed to resolve the Dispute (the Dispute Resolver);

b) the powers of such persons or bodies;

c) the timetable for resolution of the Dispute;

d) the location of the Dispute resolution;

e) any Related Disputes; and

f) whether the outcome of the Dispute resolution will be subject to appeal.

9.5 If (a) the Parties fail to reach agreement on each of the matters in Paragraph 9.4 within ten (10) Business Days of the ADR Notice being received; or, (b) the chosen form of alternative dispute resolution fails to resolve the Dispute, then the Dispute shall be referred to and finally resolved by Arbitration.

9.6 Any Arbitration under this Schedule 7 shall be conducted in accordance with the London Court of International Arbitration's Arbitration Rules from time to time in force (**the Rules**), which are expressly incorporated herein except that in the event of any conflict between the Rules and this Contract the provisions of this Contract shall prevail. The seat and place of the arbitration shall be London. The language of the arbitration shall be English. The number of arbitrators shall be three. Subject always to Paragraph 9.7(b)(ii) below, each Party shall nominate an arbitrator in the Request for Arbitration or Response as the case may be. The two party-nominated arbitrators shall nominate a third arbitrator to act as chairman within thirty (30) calendar days after confirmation of the second arbitrator's appointment. If any of the Parties fail to nominate an arbitrator or the two arbitrators already appointed fail to nominate the chairman, the appointments shall be made by the LCIA.

9.7 Where there is a Dispute and Related Dispute, then the following provisions shall apply:

a) where the Dispute and Related Dispute arise under this Contract only:

(i) if neither has been referred to alternative dispute resolution or Arbitration in accordance with this Schedule 7 *(Dispute Resolution Procedure)*, the Parties shall deal with both disputes together in accordance with this Schedule 7 *(Dispute Resolution Procedure)* and shall appoint the same Dispute Resolver(s) to resolve both; or

(ii) if either has been referred to alternative dispute resolution or Arbitration in accordance with this Schedule 7, the Parties shall refer the Dispute and the Related Dispute to the Dispute Resolver already appointed in relation to the Dispute or Related Dispute (as the case may be), unless that Dispute Resolver (aa) has a conflict of interest or is unwilling or unable to act as Dispute Resolver in relation to both or (bb) in his sole discretion considers that resolving the second (or subsequent) dispute referred to him will significantly delay the resolution of the first dispute referred to him, in which case the second dispute in time shall be resolved by a separate Dispute Resolver appointed in accordance with this Paragraph 9;

b) where the Dispute and Related Dispute arise under different contracts (namely, this Contract and a Related Agreement):

(i) if all parties agree (namely the Parties and the parties to the Related Agreement), both the Dispute and Related Dispute shall be referred to alternative dispute resolution by the same Dispute Resolver in accordance with this Schedule 7 *(Dispute Resolution Procedure)*;

(ii) if either the Dispute or Related Dispute (or both) has been referred to adjudication in accordance with the HGCRA, then any party to either dispute may apply to the first (or only) adjudicator to have been appointed for, and upon such application that adjudicator in his sole discretion may

make, a direction that the Dispute and Related Dispute be consolidated and resolved together by adjudication, and, if he so directs, all parties to the Dispute and Related Dispute agree that:

(A) the first (or only) adjudicator to have been appointed shall resolve both the Dispute and Related Dispute; and,

(B) the appointment of the second adjudicator (if any) to have been appointed shall end forthwith, and any submissions or evidence provided to him shall stand in the consolidated adjudication and be remitted to the first adjudicator;

(iii) if either the Dispute or Related Dispute (or both) has been referred to Arbitration in accordance with this Schedule 7 (*Dispute Resolution Procedure*), then any party to either dispute may apply to the LCIA Court for, and upon such application the LCIA Court in its sole discretion may make, a direction that the Dispute and Related Dispute be consolidated and resolved together by a single tribunal, and, if the LCIA Court so directs, all parties agree that:

(A) if a three-person tribunal has yet to be constituted for either the Dispute and Related Dispute, the LCIA Court shall appoint all members of the tribunal to resolve both;

(B) if a three-person tribunal has been constituted for one dispute but not the other, the tribunal so appointed shall resolve both the Dispute and Related Dispute;

(C) if a three-person tribunal has been constituted for both the Dispute and Related Dispute:

(D) the first tribunal to have been constituted shall resolve both the Dispute and Related Dispute;

(E) any subsequently constituted tribunal shall be deemed functus officio; and,

(F) any orders made by any subsequently constituted tribunal shall remain in force save as subsequently amended by the tribunal for the consolidated arbitration.

10 **Continuing Operations**

10.1 Unless this Contract has expired or been terminated and the relevant Party's obligations do not, under the terms of this Contract, survive such termination or expiry, the Parties shall continue to comply with, and perform, their obligations pursuant to this Contract notwithstanding that a Dispute has arisen or been referred for determination under any of the procedures described in this Contract, and regardless of the nature of the Dispute that has arisen.

11 **Failure of Party to Participate**

11.1 The Dispute Resolution Procedure set out in this Schedule 7 in relation to any Dispute shall continue notwithstanding any failure by a Party to take part in any way, including where a Party fails to make submissions or to issue a response or fail to attend any meetings within the required times (as applicable). Any Dispute Resolver shall be entitled to disregard any information received after the required time.

12 **Confidentiality**

12.1 Save as required by Law, the Parties shall and shall ensure that any person(s) appointed to resolve the Dispute in accordance with Paragraph 9 (*Choice of Alternative Dispute Resolution*) shall keep the fact that dispute resolution process is taking place, and its outcome, confidential.

12.2 Save as required by Law, the Parties shall ensure that all documentation, information, data, submissions and comments disclosed or delivered, whether in writing or otherwise by either Party to any person(s) either in connection with or in consequence of the appointment of the Dispute Resolver shall be regarded and treated as confidential and that such person(s) and the Parties shall not disclose any or all of the documentation, information, data, submissions

and comments including contents and copies of the same in any form except as required by Law in connection with any proceedings in any court pursuant to this Contract.

12.3 The Referring Party shall ensure that appropriate provisions are included in any contract or letter of engagement with any Dispute Resolver in order to fulfil its obligations in accordance with this Paragraph 12.

13 **Costs**

13.1 The fees and expenses of the Dispute Resolver, and those of any person employed or engaged by them shall be payable as directed by the Dispute Resolver having regard to the conduct of the Parties with respect to the Dispute in question.

14 **Not Used**

Schedule 8 – Intellectual Property Rights

1 **Foreground IP**

1.1 All Foreground IP shall vest in and be the property of the Authority and the Contractor assigns to the Authority absolutely with full title guarantee all its right, title to and all present and future rights and interest in the Foreground IP, including:

a) the absolute entitlement to any registrations granted pursuant to any of the applications comprised in the Foreground IP; and

b) the right to bring, make, oppose, defend, appeal proceedings, claims or actions and obtain relief (and to retain any damages recovered) in respect of any infringement, or any other cause of action arising from ownership, of any of the Foreground IP whether occurring before, on, or after the date of this Contract.

1.2 The Contractor shall take all reasonable measures to secure that vesting and on request, the Contractor shall demonstrate to the Authority's satisfaction that, where it has sub-contracted work under the Contract, it has secured that vesting in the work performed by its Sub-Contractors.

1.3 Where Foreground IP forms an Article or Contractor Deliverable, the Foreground IP shall be deemed to have vested in the Authority immediately upon creation of the relevant Foreground IP, notwithstanding that the relevant Article or Contractor Deliverable may vest in the Authority at a later date pursuant to Part 14 (*Vesting and Delivery*).

1.4 The Authority shall determine whether any of the Foreground IP, which vests in the Authority in accordance with this paragraph 1, should be protected by patent or like protection. The costs of patent or like protection shall be borne by the Authority. At the request of the Authority the Contractor shall assist in obtaining patent or like protection subject to being reimbursed their reasonable costs for providing such assistance.

1.5 The Contractor shall mark any copyright work which is Foreground IP, which vests in the Authority in accordance with this paragraph 1, with a legend "© Crown owned copyright [insert year of generation of the work]".

1.6 Where there is a need to provide Background IP to the Authority then the Contractor shall ensure that this is provided in a separately identifiable deliverable from the Foreground IP, unless:

a) to do so would render the Foreground IP unusable or the material or deliverable in which Intellectual Property subsists impractical or unsuitable to use; and

b) the parties have expressly agreed a deviation from the principle in this Paragraph 1.6.

1.7 To the extent that the Authority owns the Foreground IP, the Authority hereby grants to the Contractor for the term of this Contract a revocable, royalty free, non-exclusive, non-transferable, non-sub-licensable (subject to Paragraph 1.8), worldwide licence to use the Foreground IP solely for the purposes of performing the Services under this Contract.

1.8 The Contractor is entitled to provide the Foreground IP to Sub-Contractors and to grant a sub-license to such Sub-Contractors as may be reasonably required by Sub-Contractors for the performance of Services under this Contract, provided that:

a) such sub-licence is revocable, non-exclusive, non-transferrable, royalty free and non-sublicensable;

b) the sub-licence is solely for the purpose of performing the relevant Services under the Sub-Contract;

c) the Sub-Contractor in receipt of Foreground IP shall treat it in confidence on terms consistent with those in Clause 73 (*Confidentiality and Freedom of Information*);

d) such sub-licence will terminate on completion of the Sub-Contract and any materials in which Foreground IP subsists shall be returned to the Contractor;

e) no sub-licence will be granted in respect of any Foreground IP which is subject to export controls imposed by governments other than the United Kingdom

government except in accordance with the terms of any export licence applicable to such Foreground IP; and

f) no sub-licence will be granted where the Contractor is aware, or should reasonably be aware, that because of security constraints, release to a Sub-Contractor is precluded.

1.9 The existence of any confidentiality obligations shall not prevent or restrict the Authority from its entitlement to exercise unfettered rights in the Foreground IP. All information in which Foreground IP subsists which is developed by the Contractor, and which vests in the Authority in accordance with this Paragraph 1, shall be treated as Authority Confidential Information for the purposes of this Contract.

1.10 To the extent that the Authority owns the Foreground IP relating to Non-Nuclear Work then the Authority hereby grants the Contractor a perpetual, revocable, non-exclusive, royalty-free, worldwide licence to use the same for the purposes of carrying out work for, or to the order of, any department or representative of the United Kingdom Government. This licence is personal to the Contractor and may not (but without prejudice to Paragraph 1.11) be assigned or sub-licensed without the Authority's prior written consent.

1.11 Subject to the rights of third parties, the Authority hereby grants the Contractor a revocable, non-exclusive, perpetual, worldwide licence to exploit the Authority owned Foreground IP relating to Non-Nuclear Work for the Contractor's own commercial purposes. Such licence is personal to the Contractor and may not be assigned or sub-licensed without the Authority's prior written consent. The licence shall, be otherwise royalty free.

1.12 The Authority does not grant any right to the Contractor to use any third-party Intellectual Property for any purpose other than the performance of this Contract. If the Contractor wishes to use any third-party Intellectual Property other than in performance of this Contract then it will be for the Contractor to agree terms with the owner thereof.

2 **Background IP**

2.1 The Contractor hereby grants to the Authority a perpetual, irrevocable non-exclusive, worldwide, non-transferable, royalty-free licence, with the right to sub-license to use, copy, store, modify, enhance, adapt, translate, develop, maintain, support, or otherwise deal with the Background IP as required:

a) for the benefit of, or carrying out work for, or to the order of, the Authority or any other department or representative of the United Kingdom Government and to receive or use any services provided in substitution for, or in succession to, all or any part of the Services; and

b) (b) as necessary to enable the Authority to receive or use any services provided under any other contract entered into by the Authority in connection with FMSP and to receive or use any services provided in substitution for, or in succession to, all or any.

2.2 In addition to the rights granted under Paragraph 2.1 and subject to Paragraph 2.3, the Contractor shall in respect of any Background IP which is:

a) embedded in or which are an integral part of any Article or Contractor Deliverable that comprises Foreground IP;

b) required for:

(i) the continued use of the Foreground IP;

(ii) the continued use of the output of any Service; or

(iii) any purpose relating to the Services (or substantially equivalent services);

by the Authority or any other central government body for any purpose, (the "**Embedded Background IP**"), deliver upon request by the Authority a reasonable number of copies of such Embedded Background IP and the Contractor hereby grants the Authority a perpetual, irrevocable, non-exclusive, worldwide and royalty free licence to use, copy, store, modify, enhance, adapt, translate, develop, maintain, support, or otherwise deal with such

Embedded Background IP, with the right to sub-license, as required for the Authority to receive the benefit of, and fully enjoy, the Foreground IP.

2.3 In respect of Embedded Background IP owned by a third party ("**Third Party Background IP**"), the Contractor shall use all reasonable endeavours:

a) prior to utilising the Third Party Background IP, to secure on behalf of the Authority the same rights in such Third Party Background IP as are granted to the Authority under Paragraph 2.2, without additional cost to the Authority. If the Contractor is unable to obtain any such licence without additional cost to the Authority it shall notify the Authority Contract Manager in writing, referring to this Paragraph 2.3 (a) giving sufficient information about the Third Party Background IP to enable the Authority to understand the purpose, significance and substitutability of that Third Party Background IP . The Authority shall respond as soon as practicable and in any event within thirty (30) days notifying the Contractor either

(i) that it wishes the Contractor to obtain such licence at the Authority's cost, or

(ii) that the Contractor obtains such licence without obtaining the licence for the Authority; and

b) to deliver to the Authority upon request by the Authority a reasonable number of copies of such Third Party Background IP, subject where appropriate to the terms of any licence procured in accordance with this Paragraph 2.3.

2.4 Where as permitted by this Paragraph 2.3 the Authority discloses such material to a third party, the Authority shall ensure that the recipient is made subject to conditions of confidence on terms consistent with those in Clause 73 (*Confidentiality and Freedom of Information*) and is limited to using the said material solely in support of use of the Foreground IP as permitted under this Contract.

2.5 Where reasonably practicable, Notwithstanding Paragraph 2.1, where any Background IP includes third party commercial off the shelf (**COTS**) products, the Contractor shall notify the Authority prior to utilising the COTS product of: (i) the duration of the licence; (ii) any relevant terms applicable to the use of the COTS product and the use of such COTS product shall be subject to the Authority's prior approval. Where the Authority approves the use of the COTS product, the relevant terms shall apply in place of Paragraph 2.1. This notification is without prejudice to Authority's right to obtain its own licences and provide the COTS product to the Contractor as GFA.

2.6 Subject to paragraph 2.1 to the extent not already provided to the Authority in an Article or Contractor Deliverable, the Contractor shall deliver a copy of the Background IP to the Authority on request.

2.7 Where reasonably practicable, the Contractor shall mark any Background IP delivered to the Authority as such. The Contractor shall endeavour to indicate whether the Authority has previously secured rights in respect of the Background IP.

3 **Retention of Records**

3.1 During the continuance of this Contract and not for less than six (6) years after its Termination Date, the Contractor shall retain a copy of materials in its possession in which the Foreground IP subsists and any associated materials in which Background IP subsists (which shall be held together in a coherent format, herein referred to as the **Control Copy**).

3.2 The Authority shall have the right during that time, and thereafter as long as the Control Copy is retained, to require the Contractor from time to time to furnish to the Authority copies of any and all materials comprising the Control Copy in such form and detail as the Authority may prescribe. The Contractor may charge its appropriate, attributable and reasonable costs (plus VAT, if applicable) for this service, based on the marginal cost of providing such copies.

3.3 Without prejudice to its obligations under Paragraph 3.1, the Contractor shall not dispose of the Control Copy without first providing the Authority six (6) Months' notice of its intention to dispose of the Control Copy and if the Authority so requests deliver the Control Copy to the Authority.

4 Further Assurance

4.1 Each of the Authority and the Contractor will do any act or thing or execute any document that is necessary or desirable to give full effect to the provisions of this Schedule.

5 Third Party Intellectual Property – Rights and Restrictions

Notifications

5.1 As it becomes aware, the Contractor shall promptly notify the Authority of:

a) any invention or design the subject of patent or registered design rights (or application therefor) owned by a third party which appears to be relevant to the performance of this Contract or to use by the Authority of anything required to be done or delivered under this Contract;

b) any restriction as to disclosure or use, or obligation to make payments in respect of any other intellectual property (including technical information) required for the purposes of this Contract or subsequent use by the Authority of anything delivered under this Contract and, where appropriate, the notification shall include such information as is required by Section 2 of the Defence Contracts Act 1958; and

c) any allegation of infringement of intellectual property rights made against the Contractor and which pertains to the performance of this Contract or subsequent use by the Authority of anything required to be done or delivered under this Contract.

5.2 This Paragraph 5.1 does not apply in respect of Articles or Services normally available from the Contractor as a commercial off the shelf (**COTS**) item or service. If the information required under this Paragraph 5.2 has been notified previously, the Contractor may meet its obligations by giving details of the previous notification.

Patents and Registered Designs in the UK – COTS Articles or Services

5.3 Not used.

Patents and Registered Designs in the UK - All other Articles or Services

5.4 If a relevant invention or design has been notified to the Authority by the Contractor prior to the date of this Contract, then unless it has been otherwise agreed, under the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, the Contractor is hereby authorised to utilise that invention or design, notwithstanding the fact that it is the subject of a United Kingdom patent or United Kingdom registered design, for the purpose of performing this Contract.

5.5 If, under Paragraph 5.1, a relevant invention or design is notified to the Authority by the Contractor after the date of Contract, then:

a) if the owner (or its exclusive licensee) takes or threatens in writing to take any relevant action against the Contractor, the Authority shall issue to the Contractor a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, and

b) in any event, unless the Contractor and the Authority can agree an alternative course of action, the Authority shall not unreasonably delay the issue of a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949.

Patents, Utility Models and Registered Designs outside the UK

5.6 The Authority shall assume all liability and shall indemnify the Contractor, its officers, agents and employees against liability, including the Contractor's costs, as a result of infringement by the Contractor or its suppliers of any patent, utility model, registered design or like protection outside the United Kingdom in the performance of this Contract when such infringement arises from or is incurred by reason of the Contractor following any specification, statement of work or instruction in this Contract or using, keeping or disposing of any item given by the Authority for the purpose of this Contract in accordance with this Contract.

5.7 The Contractor shall assume all liability and shall indemnify the Authority, its officers, agents and employees against liability, including the Authority's costs, as a result of infringement by the Contractor or its suppliers of any patent, utility model, registered design or like protection outside the United Kingdom in the performance of this Contract when such infringement arises from or is incurred otherwise than by reason of the Contractor following any specification, statement of work or instruction in this Contract or using, keeping or disposing of any item given by the Authority for the purpose of this Contract in accordance with this Contract.

Royalties and Other Licence Fees

5.8 The Contractor shall not be entitled to any reimbursement of any royalty, licence fee or similar expense incurred in respect of anything to be done under this Contract, where:

a) a relevant discharge has been given under Section 2 of the Defence Contracts Act 1958, or relevant authorisation in accordance with Sections 55 or 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988 in respect of any Intellectual Property, or

b) any obligation to make payments for Intellectual Property has not been promptly notified to the Authority under Paragraph 5.1 of this Paragraph 5.

5.9 Where an authorisation is given by the Authority under Paragraph 5.4 or Paragraph 5.5, to the extent permitted by Section 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988, the Contractor shall also be:

a) released from payment whether by way of royalties, licence fees or similar expenses in respect of the Contractor's use of the relevant invention or design, or the use of any relevant model, document or information for the purpose of performing this Contract, and

b) authorised to use any model, document or information relating to any such invention or design which may be required for that purpose.

Copyright, Design Rights etc.

5.10 The Contractor shall assume all liability and indemnify the Authority and its officers, agents and employees against liability, including costs as a result of:

a) infringement or alleged infringement by the Contractor or its suppliers of any copyright, database right, design right or the like protection in any part of the world in respect of any item to be supplied under this Contract or otherwise in the performance of this Contract;

b) misuse of any confidential information, trade secret or the like by the Contractor in performing this Contract; and

c) provision to the Authority of any information or material which the Contractor does not have the right to provide for the purpose of this Contract.

5.11 The Authority shall assume all liability and indemnify the Contractor, its officers, agents and employees against liability, including costs as a result of:

a) infringement or alleged infringement by the Contractor or its suppliers of any copyright, database right, design right or the like protection in any part of the world in respect of any item provided by the Authority for the purpose of this Contract but only to the extent that the item is used for the purpose of this Contract; and

b) alleged misuse of any confidential information, trade secret or the like by the Contractor as a result of use of information provided by the Authority for the purposes of this Contract, but only to the extent that the Contractor's use of that information is for the purposes intended when it was disclosed by the Authority and excluding any use for the Contractor's own commercial purposes in accordance with Paragraph 1.1 (Foreground IP) of this Schedule 8 *(Intellectual Property Rights)*.

Authorisation and Indemnity – General

5.12 A party against whom a claim is made or action brought, shall promptly notify the other party in writing if such claim or action appears to relate to an infringement which is the subject of an indemnity or authorisation given under this Paragraph 5 by such other party. The notification shall include particulars of the demands, damages and liabilities claimed or made of which the notifying party has notice.

5.13 The party benefiting from the indemnity or authorisation shall allow the other party, at its own expense, to conduct any negotiations for the settlement of the same, and any litigation that may arise therefrom and shall provide such information as the other party may reasonably require.

5.14 Following a notification under sub-paragraph 5.18, the party notified shall advise the other party in writing within thirty (30) calendar days whether or not it is assuming conduct of the negotiations or litigation. In that case the party against whom a claim is made or action brought shall not make any statement which might be prejudicial to the settlement or defence of such a claim without the written consent of the other party.

5.15 The party conducting negotiations for the settlement of a claim or any related litigation shall, if requested, keep the other party fully informed of the conduct and progress of such negotiations.

5.16 If at any time a claim or allegation of actual or potential infringement arises in respect of any Intellectual Property rights (including copyright, database rights, design rights or breach of confidence) as a result of the provision of any Software, Software Documentation or any other Items or Contractor Deliverables (the “Infringing Material”) by the Contractor to the Authority, the Contractor shall, at the Authority’s sole option and the Contractor’s sole expense, either:

a) procure for the Authority the right to continue using, developing, modifying or maintaining the Infringing Material (or any part thereof) in accordance with the terms of this Contract;

b) modify the Infringing Material so that it ceases to be infringing; or

c) replace the Infringing Material with a non-infringing functional equivalent;

provided that if the Contractor modifies or replaces the Infringing Material, the modified or replacement Infringing Material must comply with all relevant requirements of this Contract.

5.17 The parties will co-operate with one another to mitigate any claim or damage which may arise from use of third-party intellectual property rights.

Sub-Contracts

5.18 The Contractor shall secure from any Sub-Contractor, the prompt notification to the Authority of the information required by Paragraph 5.1 of this Paragraph 5. On receipt of any such notification the Authority will issue a written authorisation to the Sub-Contractor in accordance with Paragraph 5.5 of this Paragraph 5. Any such authorisation will be subject always to Paragraphs 5.8 and 5.9 as though the Sub-Contractor was the Contractor. If any claim or action relevant to such authorisation arises, it shall be promptly notified to the Authority. The Contractor is not authorised to enter into any substantive correspondence in such matter nor in any way to act on behalf of the Authority in such claim or action. Any arrangement between the Contractor and Sub-Contractor to enable the Contractor to underwrite its indemnities to the Authority under this Paragraph 5 is a matter between the Contractor and the Sub-Contractor.

General

5.19 In this paragraph 5:

a) 'design right' has the meaning ascribed to it by Section 213 of the Copyright, Designs and Patents Act 1988; and

b) 'Crown Use' in relation to a patent means the doing of anything by virtue of Sections 55 to 57 of the Patents Act 1977 which otherwise would be an infringement of the

patent and in relation to a registered design has the meaning given in paragraph 2A(6) of the First Schedule to the Registered Designs Act 1949.

5.20 Nothing in Paragraph 5 shall be taken as an authorisation or promise of an authorisation under Section 240 of the Copyright, Designs and Patents Act 1988.

No effect on other Contracts

5.21 This Schedule 8 shall not act to extinguish or restrict any rights in respect of, or any entitlement to use, any Intellectual Property rights acquired by either Party under any other contract or agreement.

Schedule 9– Standards of Conduct and Required Consents

1 **Definitions**

1.1 In this Schedule 9, **"foreign"** and **"overseas"** shall be understood from the position of the Authority and be regarded as **"non-UK"**.

2 **Provisions relevant to Trade Control Regulations**

Items provided by the Authority

2.1 Where the Authority (or any agent or representative of the Authority) provides Items to the Contractor pursuant to this Contract and those Items are subject to Trade Control Regulations, the Authority may, or at the request of the Contractor, undertakes to give the Contractor a copy of every non-UK licence, agreement or other control of which it is aware that would affect the Contractor's ability to perform this Contract, such copy may be redacted to the extent required to comply with confidentiality restrictions but must include, to the extent applicable to the Contractor's performance of this Contract:

a) the exporting nation, including the export licence or agreement number (where known);

b) the Items affected;

c) the nature of the restriction or obligation;

d) the authorised end use and end users;

e) any specific restrictions on the end user or on access or use by third parties, or by individuals based upon their nationality, to the Items affected; and

f) any specific restrictions on re-transfer or re-export to third parties of the Items affected,

but this will not include Intellectual Property specific restrictions of the type referred to in Paragraphs 5.1 (b) and (c) (Third Party Intellectual Property – Rights and Restrictions) of Schedule 8 *(Intellectual Property Rights)*.

2.2 If the information required under Paragraph 2.1:

a) has been provided previously to the Contractor by the Authority, the Authority may satisfy the requirements of Paragraph 2.1 by giving details of the previous notification and confirming that it remains valid and satisfies the provisions of Paragraph 2.1; or

b) has been provided previously by the Contractor to the Authority, the Authority may satisfy the requirements of Paragraph 2.1 by referring to the Contractor's prior notification.

2.3 If the Authority becomes aware of any changes in the information notified previously under Paragraphs 2.1 or 2.2 that would affect the Contractor's ability to use, access disclose, re-transfer or re-export an Item or part of it as is referred to in those Paragraphs, the Authority shall notify the Contractor promptly of the change.

2.4 Without prejudice to the Contractor's other obligations under this Paragraph 2, the Contractor shall and shall procure that its Sub-Contractors shall (where such Sub-Contractor's access subject to these restrictions is also authorised) abide by the lawful restrictions so notified by the Authority. The Contractor shall notify the Authority immediately if it is unable for whatever reason to abide by any restriction advised by the Authority to the Contractor under Paragraph 2.1.

Contractor obligations to notify

2.5 The Contractor shall use reasonable endeavours to identify whether any Item or Service is subject to Trade Control Regulations. Except to the extent already notified by the Authority to the Contractor under Paragraph 2.1, the Contractor shall notify the Authority promptly if the Contractor becomes aware that all or part of any Item or Service to be delivered under this Contract is or will be subject to Trade Control Regulations. Such notification shall be no later than thirty (30) calendar days of knowledge of any affected Item or Service and in any event

such notification shall be not less than thirty (30) calendar days prior to delivery of the relevant Item or Service. For the purposes of this Paragraph 2.5, the Contractor's obligations do not include the Intellectual Property specific restrictions of the type referred to in Paragraphs 5.1 (b) and (c) (Third Party Intellectual Property – Rights and Restrictions) of Schedule 8 *(Intellectual Property Rights).*

2.6 The Contractor shall give the Authority:

a) a copy of every licence or agreement required in relation to any Item or Service referred to in Paragraph 2.5 to the extent that they place an obligation or restriction on the Authority with which the Authority must comply, such copy may be redacted to the extent required to comply with confidentiality restrictions but must include (to the extent applicable to such obligations or restrictions):

(i) the exporting nation, including the export licence or agreement number (where known);

(ii) the Item or Service affected;

(iii) the nature of the restriction or obligation;

(iv) the authorised end use and end users;

(v) any specific restrictions on access by third parties, or by individuals based upon their nationality, to the Items affected or to anything delivered or used in the performance of the Services; and

(vi) any specific restrictions on the end user or on re-transfer or re-export to third parties of the Items affected or of anything delivered or used in the performance of the Services; and

b) a list of pending licences and agreements required in relation to any Item or Service referred to in Paragraph 2.5 to the extent that such licence or agreement is expected to place an obligation or restriction on the Authority with which the Authority must comply, including (to the extent applicable to such obligations or restrictions) the information required under Paragraphs 2.6 (a)(i) to (vi) of which the Contractor is aware.

2.7 If the information required under Paragraph 2.5 or 2.6 has been provided previously to the Authority by the Contractor, the Contractor may satisfy the requirements of those Paragraphs by giving details of the previous notification and confirming that it remains valid and satisfies the provisions of Paragraphs 2.5 and/or 2.6.

2.8 If the Contractor becomes aware of any changes in the information notified previously under Paragraphs 2.5 or 2.6 that would affect the Authority's ability to use, access, disclose, re-transfer or re-export an Item or part of it as is referred to in those Paragraphs, the Contractor shall notify the Authority promptly of the change.

2.9 The Contractor shall notify the Authority promptly of any changes in the information notified previously under Paragraphs 2.5 or 2.6 that would affect the Authority's ability to use, access, disclose, re-transfer or re-export an Item or part of it as is referred to in those Paragraphs, the Contractor shall notify the Authority promptly of the change. This Paragraph shall survive termination or expiry of this Contract howsoever arising.

Items sourced by the Contractor

2.10 If in the performance of this Contract the Contractor (or any Sub-Contractor acting on the Contractor's behalf):

a) needs to export, import, handle or otherwise deal with an Item which is subject to Trade Control Regulations; and

b) such export, import, handling or dealing with the relevant Item cannot be done without a licence or other permission from a foreign government;

the responsibility for applying for and obtaining the licence, agreement or other permission shall rest with the Contractor. Until such time as the Contractor has procured such licence, agreement or permissions, it shall put in place a risk management plan for the Item(s) and

such plan shall be made available to the Authority to review and the Contractor shall be responsible for compliance with Trade Controls Regulations relating to such Item(s).

2.11 Without prejudice to United Kingdom Government's position on the validity of any claim by a foreign government to extra-territoriality, the Authority undertakes to provide the Contractor with all reasonable assistance to facilitate the granting of any licence or permission required by a foreign government pursuant to relevant Trade Control Regulations and which is required in respect of the Contractor's performance of this Contract.

Licences required but which have not been obtained

2.12 Without prejudice to Paragraph 2.9 when a licence, agreement or permission is required from a foreign government for the performance of this Contract (or any part of it) pursuant to Trade Control Regulations and neither Party has already procured it, the Contractor (or the Contractor's Sub-Contractor) shall promptly consult with the Authority to determine whether the Contractor or the Authority should apply for the licence, agreement or permission. In the event that the Parties cannot agree which is best placed to make a licence application pursuant to this Paragraph 2.12, the Authority shall have the right to make a final determination, acting reasonably.

2.13 Where the Contractor (or the Contractor's Sub-Contractor) is the applicant for such licence, agreement or permission, the Contractor shall, or procure that the Contractor's Sub-Contractor shall:

a) ensure that when end use or end user restrictions, or both, apply to all or part of any Item or Service to be delivered under this Contract that is or will be subject to Trade Control Regulations, the Contractor (or the Contractor's Sub-Contractor, as applicable), unless otherwise agreed with the Authority, identifies in the licence application:

(i) the end user as: Her Britannic Majesty's Government of the United Kingdom of Great Britain and Northern Ireland (HM Government), and

(ii) the end use as: For the purposes of HM Government; and

b) include in the submission for the licence, agreement or permission a statement that "information on the status of processing this licence application may be shared with the Ministry of Defence of the United Kingdom".

2.14 Where the Authority is the applicant for such licence, agreement or permission, the Authority shall:

a) ensure that each Contractor Group Member is identified as a permitted party, licensee, sub-licensee, consignee or intermediate consignee to all or part of any Item or Service to be delivered under this Contract that is or will be subject to Trade Control Regulations and, unless otherwise agreed with the Contractor, that the licence application identifies:

(i) each Contractor Group Member and (to the extent specified by the Contractor) any other appropriate Contractor legal entities;

(ii) the relevant Service Delivery Locations;

(iii) the relevant territories; and

(iv) all exemptions and/or exceptions permitted under the Trade Control Regulations and agreed to be applicable by the Parties; and

b) include in the submission for the licence, agreement or permission a statement that "information on the status of processing this licence application may be shared with the Contractor."

Variations to licences

2.15 During the term of the Contract and for a period of up to two (2) years from completion of the Contract, either Party may make a written request to the other Party to seek a variation to the conditions to a licence, agreement or permission procured by the other Party (or the other

Party's Sub-Contractor) pursuant to this Paragraph 2 to enable the requesting Party to re-export or re-transfer a licensed Item from the UK to a non-licensed third party.

2.16 The Party making a written request pursuant to Paragraph 2.15 shall consult with the other Party to determine which Party is best placed in all the circumstances to file the application to seek a variation. The Parties shall, and will procure that their Sub-Contractors shall, expeditiously consider whether or not there is any reason why it should object to making the variation request and, where it has no objection, file an application to seek a variation of the applicable licence or permission in accordance with the procedures of the licensing authority.

2.17 Where either Party has an objection during the consultation process set out at Paragraph 2.16, the Parties shall meet within five (5) Business Days to resolve the issue and should they fail the matter shall be escalated to an appropriate level within both Parties' organisations, to include their respective export licensing subject matter experts. In the event that the Parties cannot agree which is best placed to make a request, the Authority shall have the right to make a final determination, acting reasonably.

2.18 Each Party undertakes to provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the other Party in making the application for a variation requested pursuant to Paragraph 2.15.

2.19 Any variation to the Contract resulting from a request made pursuant to Paragraph 2.15 shall be implemented in accordance with the procedures set out in Schedule 30 (*Change Procedure*).

General provisions relevant to Trade Control Regulations

2.20 The Contractor shall not do, or omit to do, anything which would put the Authority in breach of any applicable Trade Control Regulations.

2.21 Where restrictions are advised by the Authority to the Contractor under Paragraph 2.1, 2.2 or 2.3, or by the Contractor to the Authority under Paragraph 2.6, 2.7 or 2.8, the Authority and the Contractor shall each act promptly to mitigate their impact and:

a) if these restrictions adversely affect performance of the Contract, the restrictions shall be regarded as a Change and handled under the Change Procedure; and

b) if the Contractor is unable to perform this Contract as a result of these restrictions then the Authority shall consult with the Contractor on alternative solutions requiring amendment of this Contract by way of a Change and may terminate the Contract if no alternative solution satisfying the essential terms of the Contract is agreed;

termination under these circumstances will be under the terms of Clause 60 (*Termination for Prolonged Force Majeure Events*) with the inability on the part of the Contractor to perform this Contract because of the existence of such restrictions being deemed for such purposes as constituting a Force Majeure Event.

2.22 Without prejudice to Schedule 14 *(Supply Chain and Sub-Contracting Strategy)*, where the Contractor sub-contracts work under this Contract which is likely to be subject to Trade Control Regulations, the Contractor shall use reasonable endeavours to incorporate in the relevant Sub-Contract equivalent obligations to those placed on the Contractor under this Contract to ensure that the Contractor is able to fulfil its obligations to the Authority under this Contract.

2.23 Where either Party becomes aware of:

a) a failure by an issuing authority to issue any licence or permission required pursuant to Trade Control Regulations in a timely manner (for reasons other than any act or omission of the Contractor or any of its Sub-Contractors); or

b) any change in applicable Trade Control Regulations,

it shall promptly consult with the other Party in respect of such occurrence. In such event, the Parties shall work together to minimise the impact of any such failure or change on the provision of the Services by the Contractor. Notwithstanding the foregoing and without limitation to any express rights under this Contract, to the extent that any failure or change referred to in Paragraph 2.23 (a) or 2.23 (b) prevents the Contractor from complying with any

of its obligations under this Contract, the Contractor shall be relieved from any action for failure to comply with such obligations.

2.24 A failure by the Authority to perform its obligations under this Schedule 9 either at all or in sufficient time so as to enable the Contractor to comply with its obligations under this Contract shall, if and to the extent resulting in the Contractor being unable to comply with its obligations under this Contract, be a Compensation Event for the purposes of (and subject to) Clause 53 (*Relief and Compensation Events*).

3 **Polaris Sales Agreement**

3.1 The Parties acknowledge that this Contract will involve access to United States information under the terms of the PSA. Accordingly and without prejudice to its obligations under Paragraph 2 (*Provisions relevant to Trade Control Regulations*) above, the Contractor shall comply with the special conditions specified in CSSE T2034 United Kingdom Strategic Weapon System for the protection and dissemination of any Items that are subject to the PSA regime.

4 **International Traffic in Arms Regulations (ITAR)**

4.1 The Parties acknowledge that this Contract will involve the handling of materiel subject to ITAR restriction. Accordingly, and without prejudice to its obligations under Paragraph 2 (*Provisions relevant to Trade Control Regulations*) above, the Contractor shall comply with ITAR.

5 **Controlled Information**

5.1 This Paragraph shall apply in addition to and notwithstanding any other confidentiality condition of this Contract.

5.2 The Contractor shall:

a) hold the Controlled Information and not use it other than for the purpose of discharging its obligations under this Contract;

b) not copy the Controlled Information except as strictly necessary for the purpose of discharging its obligations under this Contract;

c) not disclose the Controlled Information to any third party unless so authorised in writing beforehand by the Authority;

d) protect the Controlled Information diligently against unauthorised access and against loss; and,

e) act diligently to ensure that:

(i) Controlled Information is disclosed to its employees only to the extent necessary for the purpose of discharging its obligations under this Contract;

(ii) employees to whom Controlled Information is disclosed are made aware of and required to comply with the terms of this Paragraph 5;

f) comply with the terms of any export licence applicable to the Controlled Information to which it is a party; and

g) use its best endeavours to procure the compliance by each Contractor Group Member that is involved in the performance of the Services with the terms of any export licence to which such Contractor Group Member is a party to the extent that such licence applies to Controlled Information.

5.3 Where Controlled Information is provided to the Contractor, it shall:

a) compile a register of that Controlled Information, which shall include explicit description of the Controlled Information, a record of the number of copies made and a record of all access to the Controlled Information including access to any copies of the Controlled Information;

b) maintain this register for the duration of this Contract and for two (2) years following termination or expiry of this Contract;

c) make the register of access available to the Authority upon reasonable notice for inspection and audit for so long as it is required to be maintained under this Paragraph; and

d) notwithstanding any other obligation to maintain such Controlled Information under this Contract, at the termination or expiry of this Contract and where so requested by the Authority, return to the Authority all original and duplicate copies of the Controlled Information, or else at the Authority's option destroy these copies and provide a certificate of destruction to the Authority.

5.4 This provision shall survive the termination or expiry of this Contract. This Paragraph shall not diminish or extinguish any right of the Contractor to copy, use or disclose any other information to the extent that it can show:

a) that the information concerned was or has become published or publicly available for use without breach of any provision of this Contract or any other agreement between the Parties;

b) that the information was already known to it (without restrictions on disclosure or use) prior to receiving it under or in connection with this Contract;

c) that the information concerned was lawfully provided by a third party without restriction on use or further disclosure;

d) from its records, that the information was derived independently of the Controlled Information; or

e) that the Controlled Information was copied, used or disclosed in accordance with the terms of any export licence applicable to it,

but only to the extent that such copying, use or disclosure of this other information does not disclose its relationship to any Controlled Information.

Schedule 10 - Personnel and TUPE

Part 1 of Schedule 10 – Employee Transfer Arrangements on Entry

1 Definitions

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

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

Authority Employees means those employees of the Authority who are listed in the Final List

Costs means recruitment costs in respect of the provision of the Services, those costs of employing the employees of the Authority and/or any reasonable termination costs, including, without limitation, redundancy payments (but excluding costs arising from acts or omissions of the Contractor and/or Employing Sub-Contractor, and/or any payment which the Contractor and/or any Employing Sub-Contractor is not obliged to make by contract or statute and/or any compensation, payment, costs or awards (whether protective or otherwise) in connection with claims of unfair dismissal, discrimination and claims in respect of a protective award under the Trade Union and Labour Relations (Consolidation) Act 1992 (save where such claims are as a result of an act or omission of the Authority);

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

Employee List means the list of Expected Authority Transferees listed at Appendix A of this Part 1 plus the information listed at Part 1 of Appendix B of this Part 1 for those Expected Authority Transferees;

Employing Sub-Contractor means any sub-contractor of the Contractor providing any part of the Services who is, or is to be, the employer of an Authority Employee or an Unexpected Employee;

Expected Authority Transferee means an employee of the Authority whom the Authority considers is assigned or whose principal purpose is to provide the Services to be provided by the Contractor and/or an Employing Sub-Contractor prior to the Relevant Transfer Date and who the Authority expects to transfer to the Contractor or an Employing Sub-Contractor on the Relevant Transfer Date;

Former Authority Employee means at any time any person whose employment previously transferred to a contractor or its sub-contractor pursuant to the Transfer Regulations and who has, pursuant to this Contract and the Transfer Regulations, transferred to the Contractor or any Sub-Contractor *provided that* since such person was employed by the Authority (a) he has not ceased to be eligible for membership of the Schemes; and (b) any change in his employer has been effected pursuant to the Transfer Regulations;

Final List means the list of Expected Authority Transferees as at twenty-eight (28) calendar days prior to the Relevant Transfer Date, plus the information listed in Part 2 of Appendix B of this Schedule 10 in respect of those Expected Authority Transferees;

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;

New Services means any services outsourced by the Authority to the Contractor or any Sub-Contractor following discussion pursuant to Clause 55.4 (*Good faith discussion*) of the Contract.

Previous Contractor means Babcock Marine (Clyde) Ltd (BMCL);

Previous Contractor Employee means an employee of a Previous Contractor (including but not limited to Former Authority Employees) who immediately before the Relevant Transfer Date is assigned to carry out the services to be carried out by the Contractor or Sub-Contractor under this Contract and who has not been dismissed, resigned, been reassigned or objected to the Relevant Transfer;

Previous Contractor Employee List means the information listed at Part 1 of Appendix B of this Part 1 for those Previous Contractor Employees;

Relevant Transfer means a transfer to the Contractor or an Employing Sub-Contractor of an Authority Employee, or a previous Contractor Employee (as applicable) pursuant to this Contract and the Transfer Regulations;

Relevant Transfer Date means the date on which a Relevant Transfer is effected for Authority Employees, or Previous Contractor Employees (as applicable);

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 Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 (as amended from time to time), as appropriate;

Unexpected Employee means any employee of the Authority or former employee of the Authority who is not on the Final List provided in accordance with Paragraph 2.5.4 and who is or was assigned by the Authority to the Services or New Services (or part thereof, as applicable) provided by the Contractor and/or an Employing Sub-Contractor prior to the Relevant Transfer Date.

2 Incoming employees

2.1 It is the Parties' understanding that the commencement of the provision of the Services (or any part) under this Contract, will result in a transfer of Previous Contractor Employee to the Contractor under the Transfer Regulations on the Relevant Transfer Date.

2.2 The Parties also recognise that the commencement of the provision of New Services may result in a transfer of Authority Employees to the Contractor under the Transfer Regulations on a Relevant Transfer Date.

2.3 If at any time the Authority reasonably believes the Transfer Regulations will apply on the commencement of any provision of the Services (or any part), including any New Services (or any part) under this Contract, it shall notify the Contractor and the remaining terms in this Schedule 10, shall apply.

2.4 **Employee Information Previous Contractor Employees**

2.4.1 In the case of a Relevant Transfer involving Previous Contractor Employees, where reasonably practicable, no later than three (3) Months prior to the Relevant Transfer Date (and in any event by the Information Date the Authority shall provide to the Contractor the Previous Contractor Employee List to the extent that such information has been provided to the Authority by the Previous Contractor.

2.4.2 The Authority shall provide the Contractor with any update to the information provided under Paragraph 2.4.1 as soon as is reasonably practicable, to the extent that such information has been provided to the Authority by the Previous Contractor.

2.4.3 The Contractor shall provide any information provided to it by the Authority pursuant to Paragraph 2.4.1 to an Employing Sub-Contractor within seven (7) Business Days of receipt to the extent that such Previous Contractor Employees are to transfer to an Employing Sub-Contractor under a Relevant Transfer on the Relevant Transfer Date.

2.4.4 Paragraph 2.4.1 is subject to the Authority and any Previous Contractor's obligations in respect of the Data Protection Legislation and any data provided by the Authority in accordance with Paragraph 2.4.1 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 2.4.1 above, the Authority shall provide full data no later than twenty-eight (28) days prior to the Relevant Transfer.

2.4.5 The Authority does not warrant the accuracy of the information provided under Paragraph 2.4.1.

2.5 **Authority Employee Information / Total Contract Price Adjustment**

2.5.1 Three (3) Months prior to the Relevant Transfer Date the Authority shall provide to the Contractor:

(a) The Employee List; and

(b) Employee Liability Information in respect of the Expected Authority Transferees;

2.5.2 Up to twenty-eight (28) days prior to the Relevant Transfer Date the Authority shall inform the Contractor of, and provide any information related to, any changes to the information provided pursuant to Paragraph 2.5.1 as soon as reasonably practicable.

2.5.3 The Contractor's Representative shall provide any information provided to it by the Authority under Paragraph 2.5.1 and 2.5.2 to an Employing Sub-Contractor within seven (7) Business Days of receipt to the extent that such Expected Authority Transferees are to transfer to an Employing Sub-Contractor under a Relevant Transfer on the Relevant Transfer Date.

2.5.4 No later than twenty-eight (28) days prior to the Relevant Transfer Date the Authority shall provide to the Contractor the Final List.

2.5.5 Paragraph 2.5.1 is subject to the Authority's obligations in respect of the Data Protection Legislation and the Authority shall use its reasonable endeavours to obtain the consent of its employees to the extent necessary under the Data Protection Legislation or provide the data in anonymous form in order to enable disclosure of the information required under Paragraph 2.5.1. To the extent anonymous data has been provided by the Authority to the Contractor pursuant to its obligations under Paragraph 2.5.1 above, the Authority shall provide full data to the Contractor no later than twenty-eight (28) days prior to the Relevant Transfer.

2.5.6 Where any differences between the Employee List at Appendix A (which shows the employee information on which the Contractor based the employment costs used to calculate the [Total Contract Price], those employment costs being [£insert sum]]) and the Final List result in reasonable additional Costs to the Contractor and/or any Employing Sub-Contractor, the Contractor may propose a reasonable adjustment to the [Total Contract Price] to meet such reasonable additional Costs that the Contractor and/or any Employing Sub-Contractor incurs as a result of such a change provided that such a change is not as a result of an act or omission of the Contractor and/or any Employing Sub-Contractor. The Contractor shall produce such evidence of the reasonable additional Costs incurred as the Authority may reasonably require as soon as is reasonably practicable and in any event no later than twenty-eight (28) days following the receipt of such a written request prior to any adjustment being made. No adjustment to the [Total Contract Price] shall be made where there is a failure to produce such evidence within this timescale or where the Authority considers such information insufficient.

2.5.7 Where the Authority considers that any differences between the Employee List at Appendix A (which shows the employee information on which the Contractor based the employment costs used to calculate the Total Contract Price, those employment costs being [£insert sum]]) and the Final List result in a reduction of Costs to the Contractor and/or any Employing Sub-Contractor, the Authority shall propose a reasonable adjustment to the Total Contract Price to reflect any reasonable reduction in Costs to the Contractor and/or any Employing Sub-Contractor. The Authority and the Contractor shall produce such reasonable evidence as the other Party shall reasonably require as soon as is reasonably practicable and in any event no later than twenty-eight (28) days after a request is made in writing in order to establish such a reduction in Costs. A failure by the Contractor to produce such evidence shall preclude the Contractor from objecting to an adjustment to the Total Contract Price. A failure by the Authority to produce such evidence, save where such a failure is as a result of an act or omission of the Contractor or Employing Sub-Contractor, shall result in no adjustment to the Total Contract Price.

2.5.8 Where, following the Relevant Transfer Date, the Contractor and/or the Authority provides reasonable evidence to the other Party that any of the details in the Final List were inaccurate (other than details in respect of the number or identity of the Expected Authority Transferees which shall not be taken into account in respect of any Total Contract Price adjustment due to additional Costs) the [Total Contract Price] shall be adjusted to reflect the adjustment which would have been made under Paragraphs 2.5.6 and/or 2.5.7 (if any) had the Final List been accurate on the Relevant Transfer Date. The Authority and the Contractor shall produce such reasonable evidence of the inaccuracies and/or the additional Costs and/or reduction in Costs incurred as the other Party may reasonably require as soon as is reasonably practicable and in any event, no later than twenty-eight (28) Calendar Days following the receipt of such a request prior to any adjustments being made. Where there is a failure by the Contractor to produce such evidence within this timescale or where the

Authority reasonably considers such information insufficient, no adjustment to the [Total Contract Price] shall be made. A failure by the Authority to produce reasonable evidence to demonstrate inaccuracies and/or the reduction in Costs, save where such a failure is as a result of an act or omission of the Contractor or Employing Sub-Contractor, shall result in no adjustment to the [Total Contract Price].

2.5.9 No adjustments shall be made to the [Total Contract Price] in respect of inaccuracies raised under Paragraphs 2.5.6, 2.5.7 or 2.5.8 more than six (6) Months following the Relevant Transfer Date.

2.5.10 The Parties agree that any adjustments to the [Total Contract Price] under Paragraphs 2.5.6, 2.5.7 or 2.5.8 for each Relevant Transfer shall be made at the same time which shall be no earlier than six (6) Months after the Relevant Transfer Date.

2.5.11 If a claim or allegation is made by an Unexpected Employee that he has or should have transferred to the Contractor and/or any Sub-Contractor and/or (in the case of an Unexpected Employee whose employment terminated on or before the Relevant Transfer Date) that any liability relating to him has transferred to the Contractor and/or any Sub-Contractor by virtue of the Transfer Regulations and this Contract, the Party receiving the claim or allegation shall notify the other Party (or the Contractor shall notify the Authority on the Sub-Contractor's behalf) in writing as soon as reasonably practicable and no later than ten (10) Business Days after receiving notification of the Unexpected Employee's claim or allegation, whereupon:

(a) the Authority shall, as soon as reasonably practicable, offer and/or confirm continued employment to the Unexpected Employee or take such other steps so as to effect a written withdrawal of the claim or allegation; and

(b) if the Unexpected Employee's claim or allegation is not withdrawn or resolved the Authority shall notify the Contractor (who will notify any Sub-Contractor who is a party to such claim or allegation), and the Contractor or Sub-Contractor shall employ the Unexpected Employee or as soon as reasonably practicable (subject to compliance with its obligations at Paragraph 2.5.11(c)), serve notice to terminate the Unexpected Employee's employment in accordance with his contract of employment and/or (in the case of an Unexpected Employee whose employment terminated on or before the Relevant Transfer Date) shall resist any claim brought by the Unexpected Employee against the Contractor and/or any Sub-Contractor; and

(c) the Authority shall effect an adjustment to the [Total Contract Price] which has the effect of reimbursing the Contractor for any of the following liabilities incurred by the Contractor or Sub-Contractor in dealing with or disposing of the Unexpected Employee's claim or allegation:

(i) any additional Costs of employing the Unexpected Employee to provide the Services under this Contract up to the date of dismissal where the Unexpected Employee has been dismissed in accordance with Paragraph 2.5.11(b);

(ii) any liabilities acquired by virtue of the Transfer Regulations in relation to the Unexpected Employee;

(iii) any liabilities relating to the termination of the Unexpected Employee's employment provided the Contractor or Sub-Contractor has used reasonable endeavours to find alternative employment for the Unexpected Employee, but excluding such proportion or amount of any liability for unfair dismissal, breach of contract or discrimination attributable:

(A) to a failure by the Contractor or an Employing Sub-Contractor to act reasonably to mitigate the costs of dismissing such person);

(B) directly or indirectly to the procedure followed by the Contractor or an Employing Sub-Contractor in dismissing the Unexpected Transferee; or

(C) to the acts/omissions of the Contractor or an Employing Sub-Contractor not wholly connected to the dismissal of that person;

(iv) any liabilities incurred under a settlement of the Unexpected Employee's claim which was reached with the express permission of the Authority (not to be unreasonably withheld or delayed);

(v) reasonable administrative costs incurred by the Contractor or Sub-Contractor in dealing with the Unexpected Employee's claim or allegation, subject to a cap per Unexpected Employee of five thousand (£5,000); and

(vi) legal and other professional costs reasonably incurred; and

2.5.12 the Contractor shall be deemed to have waived its right to an adjustment as per Paragraph 2.5.11(c) if it fails without reasonable cause to take, or fails to procure any Sub-Contractor takes, any action in accordance with any of the timescales referred to in Paragraph 2.5.11.

2.6 **Obligations in Respect of Authority Employees**

2.6.1 The Contractor and the Authority acknowledge, and the Contractor shall procure that the Employing Sub-Contractors acknowledge, that the provision of the Services under this Contract will constitute one or more Relevant Transfers for the purposes of the Transfer Regulations.

2.6.2 The Contractor agrees and shall procure that the Employing Sub-Contractors agree that from the Relevant Transfer Date the contracts of employment of any Authority 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 Sub-Contractor and the Authority Employees (or the relevant trade union, as the case may be).

2.6.3 The Authority and the Contractor shall (and the Contractor shall procure that any Employing Sub-Contractors shall):

(a) before and in relation to the Relevant Transfer Date liaise with each other and shall co-operate with each other in order to implement effectively the smooth transfer of the Authority Employees to the Contractor or Employing Sub-Contractor; and

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

2.6.4 The Authority shall be responsible for all emoluments and outgoings in respect of an Authority Employee (including without limitation all wages, bonuses, commissions, payments in respect of holiday taken up to the Relevant Transfer Date, PAYE, national insurance contributions and contributions to retirement benefit schemes) in respect of the period prior to the Relevant Transfer Date and shall indemnify the Contractor in respect of the same.

2.6.5 The Contractor or Employing Sub-Contractor (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, PAYE, national insurance contributions and contributions to retirement benefit schemes) in relation to the Authority Employees with effect from and including the Relevant Transfer Date and the Contractor shall indemnify the Authority in respect of the same.

2.6.6 No later than three (3) Months after the Relevant Transfer Date the Contractor shall pay to the Authority a sum equal to the outstanding balance on the Relevant Transfer Date of any loan, advance or other indebtedness of any Authority Employee to the Authority which is outstanding immediately prior to the Relevant Transfer save to the extent that such sums are otherwise recovered by the Authority pursuant to Paragraph 2.5.8.

2.6.7 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 any claim or claims by any Authority Employee brought against the Contractor and/or any Employing Sub-Contractor at any time up to the Subsequent Transfer Date arising out of or in connection with any acts or omissions of the Authority which occurred prior to the Relevant Transfer Date for that Authority Employee provided that all reasonable costs (including reasonable legal costs), losses and expenses

and all damages, compensation, fines and liabilities arising out of or in connection with such claims are not the result of any act or omission of the Contractor and/or Employing Sub-Contractor.

2.6.8 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 any claim or claims by any Authority Employee or trade union representative or Authority Employee representative brought against the Contractor, whether before or after the Relevant Transfer Date, arising out of any failure by the Authority to comply with its obligations under Regulation 13 of the Transfer Regulations in respect of any Authority Employee or any other employee of the Authority affected by the Relevant Transfer effected by this Contract (as defined by Regulation 13 of the Transfer Regulations), except to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with such claims are the result of any act or omission of the Contractor and/or Employing Sub-Contractor.

2.6.9 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 claim or claims by any employee or trade union representative or employee representative brought against the Authority, whether before or after the Relevant Transfer Date, arising out of any failure by the Contractor or any Employing Sub-Contractor to comply with its or their obligations under Regulation 13 of the Transfer Regulations save to the extent that any reasonable costs (including reasonable legal costs), losses, and expenses and all damages, compensation, fines and liabilities arising out of such claims are the result of the act or omission of the Authority.

2.6.10 The Contractor shall indemnify the Authority 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 proposed or made by the Contractor or any Employing Sub-Contractor to the working conditions of all or any Authority Employees to the material detriment of such Authority Employees. For the purposes of this paragraph the expressions "substantial change" and "material detriment" shall have the same meaning as for the purposes of Regulation 4(9) of the Transfer Regulations.

2.6.11 The Contractor shall indemnify the Authority 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 any variations or proposed variations to any Authority Employee's terms and conditions of employment pursuant to regulations 4(5) and 4(5B) of the Transfer Regulations.

2.7 **Application of Paragraphs in this Schedule to employed Unexpected Employees**

2.7.1 Paragraph 2.5.2, 2.5.4 to 2.5.7 and 2.5.10 of this Part 1, Part 2 (*Employee Transfer arrangements on Exit*) and Part 4 (*Pensions*) of this Schedule 10 shall apply to any Unexpected Employee whom the Contractor and/or any Sub-Contractor has decided to employ in accordance with Paragraph 2.5.11 save that references to "the Relevant Transfer Date" in Paragraphs 2.5.2, 2.6.4 to 2.6.7 of this Part 1 shall be construed as being references to the date on which that Unexpected Employee took up employment with the Contractor or Sub-Contractor and any reference to an "Authority Employee" shall be construed as being a reference to the Unexpected Employee.

2.8 **Employee Liability Information**

2.8.1 The Parties consider that the provisions of this Contract (and in particular Paragraph 2.5.7 of this Schedule 10) provide sufficient protection and opportunity for compensation to the Contractor or Employing Sub-Contractors in the event of any breach by the Authority of its obligations under Regulation 11 of the Transfer Regulations and that as anticipated by Regulation 12(5) of the Transfer Regulations it is just and equitable that the Tribunal make no award for compensation under Regulation 12(3)(b) and, in the alternative, if the Tribunal determines that it is just and equitable for an award of compensation to be made then the Contractor for itself and on behalf of any Employing Sub-Contractor agrees that such award should be no more than five hundred pounds (£500) for the relevant employee.

2.9 **Obligations in respect of Previous Contractor Employees**

2.9.1 The Contractor and the Authority acknowledge (and the Contractor shall procure that the Employing Sub-Contractor acknowledges) that the provision of the Services under this Contract will constitute a Relevant Transfer of Previous Contractor Employees on commencement.

2.9.2 The Contractor agrees (and will procure that the Employing Sub-Contractor agrees) that from the Relevant Transfer Date the contracts of employment of any Authority Employees, or Previous Contractor Employees (in each case as applicable) 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) will take effect as if originally made between the Contractor or an Employing Sub-Contractor and the Authority Employees, or Previous Contractor Employees (or the relevant trade union, as the case may be) (in each case as applicable) subject to any variations to such contracts of employment made pursuant to Regulation 9 of the Transfer Regulations, where applicable.

2.9.3 Save for any liabilities in respect of Previous Contractor Employees under a Relevant Statutory Scheme or Schemes, the Contractor or Employing Sub-Contractor (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 Authority Employees, or Previous Contractor Employees (in each case as applicable) with effect from and including the Relevant Transfer Date and shall indemnify the Authority and the Previous Contractor in respect of the same.

3 Indemnities

3.1.1 The Contractor shall indemnify and hold harmless the Authority 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 arising out of or in connection with:

(a) any breach by the Contractor and/or any Employing Sub-Contractor of their obligations under Regulation 13 of the Transfer Regulations;

(b) any act or proposal by the Contractor or any Employing Sub-Contractor 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 Authority 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 Authority Employee Relevant Transfer Date (in each case as applicable).

(d) any variations or proposed variations to any Authority Employee’s terms and conditions of employment pursuant to regulations 4(5) and 4(5B) of the Transfer Regulations.

4 General provisions applicable to previous contractor Employees and contractor personnel

4.1 Contractor Indemnity

4.1.1 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 Sub-Contractor of any person (including any Authority Employees) engaged in connection with the provision of the Services during the term of this Contract.

4.2 Post Transfer Reporting

4.2.1 The Contractor shall upon request by the Authority provide (or shall procure that an Employing Sub-Contractor 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.

Appendix A to Part 1 – List of Former Authority Employees

Appendix B to Part 1 – Personnel Information to be released pursuant to this Contract

1 Part 1 - Employment Particulars

1.1 Pursuant to Paragraph 2.5.1 of Part 1 of this Schedule 10, 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:

1.1.1 Personal, Employment and Career:

(a) Age;

(b) Security Vetting Clearance, level, reference number and expiry date;

(c) Job title;

(d) Work location;

(e) Conditioned hours of work;

(f) Employment Status;

(g) If in a probationary period following appointment – the probation end date

(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 (2) years;

(m) Information of any legal proceedings between employees and their employer within the previous two (2) 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;

(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.

1.1.2 Superannuation and Pay:

(a) Maternity leave or other long-term leave of absence (meaning more than four (4) weeks) planned or taken within the last two (2) 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 (12) Month period;

(e) Allowances and bonuses for the preceding twelve (12) Month period indicating if these are permanent and continuing, or have an end date, or temporary – paid when eligible occurrences happen;

(f) Payments of statutory holiday pay in the preceding twelve (12) Month period;

(g) Details of outstanding loan, advances on salary or debts;

(h) Civil Service Pension Scheme Membership (Opt-out of Civil Service Pension Scheme, Classic, Classic Plus, Premium, Defined Contribution) or, where relevant Contractor Scheme or other Contractor/Sub-Contractor pension scheme membership;

(i) For pension purposes, the notional reckonable service date;

(j) Percentage of any pay currently contributed under additional voluntary contribution arrangements; and

(k) Percentage of pay currently contributed under any added years arrangements.

1.1.3 Medical:

(a) Details of any period of sickness absence of three (3) months or more in the preceding period of twelve (12) months; and

1.1.4 Further information:

(a) Information about specific adjustments that have been made for an individual under the Equality Act 2010;

(b) Short term variations to attendance hours to accommodate a domestic situation;

(c) Individuals that are members of the Reserve Forces, staff that have been granted special leave for purposes including Local Authority Councillor (or similar), Magistrate, or School Governor; and

(d) Information about any maternity or other statutory leave or other absence from work.

2 Part 2

2.1.1 Information to be provided twenty-eight (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.

2.1.2 Medical:

(a) Details of any active restoring efficiency case for health purposes.

2.1.3 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 ongoing.

3 Part 3

3.1 Information to be provided within fourteen (14) days following a Relevant Transfer Date:

3.1.1 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;

(where such information is relevant for contractual employment terms or collective agreement (including any link to payments), or in the case of the training plan, indicates identification of attendance at or date for courses required to meet statutory or regulatory compliance.)

3.1.2 Superannuation and Pay

(a) Cumulative pay for tax and pension purposes;

(b) Cumulative tax paid;

(c) National Insurance Number;

(d) National Insurance contribution rate;

(e) Other payments or deductions being made for statutory reasons; and

(f) Any other voluntary deductions from pay.

Part 2 of Schedule 10 – Employee Transfer Arrangements on Exit

1 Definitions

1.1 In this Part 2, save where otherwise provided, words and terms defined in Schedule 1 (*Definitions*) or Part 1 (Employee Transfer Arrangements on Entry) of this shall have the meaning ascribed to them in Schedule1 (*Definitions*) or Part 1 (Employee Transfer Arrangements on Entry) of this Schedule 10.

1.2 Without prejudice to Schedule 1 (*Definitions*) or Part 1 (Employee Transfer Arrangements on Entry) of this Schedule 10, in this Part 2 unless the context otherwise requires:

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

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

Final List has the meaning given to it in Paragraph 2.1.3;

Former Authority Employee means at any time any person whose employment previously transferred to a contractor or its sub-contractor pursuant to the Transfer Regulations and who has, pursuant to this Contract and the Transfer Regulations, transferred to the Contractor or any Sub-Contractor *provided that* since such person was employed by the Authority (a) he has not ceased to be eligible for membership of the Schemes; and (b) any change in his employer has been effected pursuant to the Transfer Regulations;

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

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 Sub-Contractor to a New Provider; and

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 On receipt of a written request by the Authority, at any time, the Contractor shall (and shall procure that any Employing Sub-Contractor 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 A to this Part 2 of Schedule 10 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, separately identifying those former employees of the Authority whose employment previously transferred to the Contractor and/or Employing Sub-Contractor and who continue to be eligible under New Fair Deal (as defined and set out in Part 3 (Pension Matters) of this Schedule);

(c) provide the information promptly and in any event not later than two (2) 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 (3) 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 1 of Appendix B of this Schedule 10 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 twenty eight (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 of Part 2 of this Schedule 10 relating to the Subsequent Transferring Employees ("Final List"). 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 Within fourteen (14) days following the relevant Subsequent Transfer Date the Contractor shall provide to the Authority and/or any New Provider the information set out in Part 3 of Appendix B of this Schedule 10 in respect of Subsequent Transferring Employees.

2.1.5 Paragraphs 2.1.1 and 2.1.2 of this Schedule 10 are subject to the Contractor's obligations in respect of the Data Protection Legislation and the Contractor shall use its best endeavours to obtain the consent of its employees (and shall procure that its Sub-Contractors use their reasonable endeavours to obtain the consent of their employees) to the extent necessary under the Data Protection Legislation 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. To the extent 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 twenty eight (28) days prior to the Subsequent Transfer Date.

2.1.6 On notification to the Contractor by the Authority of a New Provider or within the period of six (6) 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 Sub-Contractor 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, 2.1.4 or 2.1.6 of this Schedule 10.

2.1.7 The Authority may at any time prior to the period set out in Paragraph 2.1.5 of this Schedule 10 request from the Contractor any of the information in sections 1(a) to (d) of Appendix A and the Contractor shall and shall procure any Sub-Contractor will provide the information requested within twenty eight (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 Sub-Contractor 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 Sub-Contractor who is not named on the Final List (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 Sub-Contractor'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 (10) 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 Sub-Contractor 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 affect 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 Paragraph 2.3.1 (c)(iii)), 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:

(d) 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);

(e) any liabilities acquired by virtue of the Transfer Regulations in relation to the Unexpected Subsequent Transferring Employee;

(f) 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:

(i) to a failure by the Authority or a New Provider to act reasonably to mitigate the costs of dismissing such person);

(ii) directly or indirectly to the procedure followed by the Authority or a New Provider in dismissing the Unexpected Transferee; or

(iii) to the acts/omissions of the Authority or a New Provider not wholly connected to the dismissal of that person;

(g) 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);

(h) 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

(i) legal and other professional costs reasonably incurred;

the Authority shall be deemed to have waived its right to an indemnity under Paragraph (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 Sub-Contractor 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 Sub-Contractor 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 Sub-Contractor.

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 Paragraphs 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 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.

Appendix A to Part 2 – Contractor Personnel-Related Information to be Released upon re-tendering where the Transfer Regulations Applies

1 Provided Information

1.1 Pursuant to Paragraph 2.1.1 (b) of this Part 2, the following information will be provided:

(a) The total number of individual employees (including any employees of Sub-Contractors) 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 Sub-Contractors 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 twelve (12) Months total pay costs – (Pay, benefits employee/employer ERNIC and Overtime);

(d) Total redundancy liability including any enhanced contractual payments;

1.2 In respect of those employees included in the total at 1.1(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 (including for Former Authority Employees or other former Civil Servants who are current members of the Civil Service Pension Schemes (PCSPS/alpha));

(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);

1.3 The information to be provided under this Appendix A should not identify an individual employee by name or other unique personal identifier unless such information is being provided twenty-eight (28) days prior to the Subsequent Transfer Date.

1.4 The Contractor will provide (and will procure that the Sub-Contractors provide) the Authority/tenderers with access to the Contractor's and Sub-Contractor’s general employment terms and conditions applicable to those employees identified at Paragraph 1.1(a) of this Appendix A.

Appendix B to Part 2 – Personnel Information to be released pursuant to this Contract

2 Part 1

2.1 Pursuant to Paragraph 2.1.2 of this Part 2 to Schedule 10, 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:

2.1.1 Personal, Employment and Career

(a) Age;

(b) Security Vetting Clearance; level, reference number and expiry date;

(c) Job title;

(d) Work location;

(e) Conditioned hours of work;

(f) Employment Status;

(g) If in a probationary period following appointment – the probation end date;

(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.

2.1.2 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 (12) Month period;

(e) Allowances and bonuses for the preceding twelve (12) Month period indicating if these are permanent and continuing or have an end date, or Temporary – paid when eligible occurrences happen;

(f) Payments of statutory holiday pay in the preceding twelve (12) Month period;

(g) Details of outstanding loan, advances on salary or debts;

(h) Civil Service Pension Scheme Membership (Opt-out of Civil Service Pension Scheme, Classic, Classic Plus, Premium, Defined Contribution) or, where relevant Contractor Scheme or other Contractor/Sub-Contractor pension scheme membership;

(i) For pension purposes, the notional reckonable service date;

(j) Percentage of any pay currently contributed under additional voluntary contribution arrangements; and

(k) Percentage of pay currently contributed under any added years arrangements.

2.1.3 Medical

(a) Details of any period of sickness absence of three (3) Months or more in the preceding period of twelve (12) Months; and

2.1.4 Further information

(a) Information about specific adjustments that have been made for an individual under the Equality Act 2010;

(b) Short term variations to attendance hours to accommodate a domestic situation;

(c) Individuals that are members of the Reserve Forces, staff have been granted special leave for purposes including Local Authority Councillor (or similar), Magistrate, or School Governor; and

(d) Information about any maternity or other statutory leave or other absence from work.

3 Part 2

3.1.1 Information to be provided twenty-eight (28) days prior to the Relevant Transfer Date:

f) Employee's full name;

g) Date of Birth

h) Home address;

i) Bank/building society account details for payroll purposes Tax Code.

3.1.2 Medical

(a) Details of any active restoring efficiency case for health purposes.

3.1.3 Disciplinary

(a) a) Details of any active restoring efficiency case for reasons of performance; and

(b) b) Details of any active disciplinary cases where corrective action is ongoing.

4 Part 3

4.1 Information to be provided within fourteen (14) days following a Relevant Transfer Date:

4.1.1 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;

(where such information is relevant for contractual employment terms or collective agreement (including any link to payments), or in the case of the training plan, indicates identification of attendance at or date for courses required to meet statutory or regulatory compliance.)

4.1.2 Superannuation and Pay

(a) Cumulative pay for tax and pension purposes;

(b) Cumulative tax paid;

(c) National Insurance Number;

(d) National Insurance contribution rate;

(e) Other payments or deductions being made for statutory reasons;

(f) Any other voluntary deductions from pay;

Part 3 of Schedule 10 - Not Used

Part 4 of Schedule 10 – Pensions

1 Definitions

1.1 In this Part 4, save where otherwise provided, words and terms defined in Schedule 1 (*Definitions*), or Part 1 (*Employee Transfer Arrangements on Entry*) or Part 2 (*Employee Transfer Arrangements on Exit*) of this Schedule 10 shall have the meaning ascribed to them in Schedule 1 (*Definitions*) Part 1 (*Employee Transfer Arrangements on Entry*) or Part 2 (*Employee Transfer Arrangements on Exit*) of this Schedule 10.

1.2 Without prejudice to Schedule 1 (*Definitions*) or Part 1 (*Employee Transfer Arrangements on Entry*) or Part 2 (*Employee Transfer Arrangements on Exit*) of this Schedule 10 (*Personnel*), in this Part 4 unless the context otherwise requires:

Active Member means an individual who has been admitted to and remains in active membership of any of the Schemes.

Admission Agreement means in relation to the Contractor or a Sub-contractor an agreement made (or to be made) between (1) The Minister for the Cabinet Office (2) the Contractor or the Sub-Contractor, as the case may be, and (3) the Authority relating to the participation of the Contractor or the Sub-contractor, as applicable, in the Schemes for the benefit of those of the Former Authority Employees who are for the time being employed by the Contractor or the Sub-contractor, as applicable, and which is substantively in the form set out in Annex A to this Schedule.

ALPHA means the public service pension scheme for civil servants established under the Public Service Pensions Act 2013 introduced with effect on and from 1 April 2015 (and includes, unless the context otherwise requires, any successor scheme).

Employer Contributions means the sums which are payable to the Pension Schemes in accordance with paragraph 7.1.5, 7.1.7 and 7.2 of the Admission Agreement in respect of the Former Authority Employees, whether by the Contractor, Sub-contractor or Sub-sub-contractor. For the avoidance of doubt, the employee redundancy compensation payment amount which is taken into account under paragraph 7.2 of the Admission Agreement is not included as part of the pass-through under Paragraph 2.2.

Former Authority Employee means at any time any person whose employment previously transferred to a contractor or its sub-contractor pursuant to the Transfer Regulations and who has, pursuant to this Contract and the Transfer Regulations, transferred to the Contractor or any Sub-contractor *provided that* since such person was employed by the Authority (a) he has not ceased to be eligible for membership of the Schemes; and (b) any change in his employer has been effected pursuant to the Transfer Regulations;

New Fair Deal means the revised Fair Deal policy set out in HM Treasury's guidance "Fair Deal for staff pensions: staff transfers from central government" issued in October 2013.

PCSPS means the Principal Civil Service Pension Scheme established under The Superannuation Act 1972.

Pension Schemes means ALPHA and/or the PCSPS whichever is or are relevant in the context (and includes, unless the context otherwise requires, the respective managers from time to time of such scheme or schemes).

Relevant Benefits means any benefit payable on retirement, on death, on reaching a particular age, on the onset of serious ill-health or incapacity or in similar circumstances (including the provision of medical, dental or similar benefits).

Relevant Transfer Date means the date on which a transfer to the Contractor or a Sub-contractor is effected pursuant to this Contract and the Transfer Regulations.

Schemes means the PCSPS, the Partnership Pension Account and its (i) Ill-health Benefits Scheme and (ii) Death Benefits Scheme, the Civil Service Additional Voluntary Contribution Scheme, and ALPHA each as amended or replaced from time to time, or such one of them as is or are relevant in context. Any reference to the Schemes includes, unless the context otherwise requires, a reference to the respective managers from time to time of the Schemes.

Transfer Regulations means the 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 Pensions

2.1 The Contractor shall:

(a) comply with the Admission Agreement to which it is a party and shall not terminate the Admission Agreement while the Contractor is providing any of the Services;

(b) ensure that on each occasion (including, but without limitation, on the termination of a contract between the Contractor and a Sub-contractor) any Former Authority Employee becomes an employee of the Contractor pursuant to the Transfer Regulations (and the date upon which he becomes such an employee is called the Employment Date) the Former Authority Employee if not already an Active Member of the Pension Schemes becomes such an Active Member with effect as on and from the Employment Date provided that this is permitted under the terms of the Pension Schemes and the Admission Agreement as applicable; and

(c) ensure that in relation to each Former Authority Employee who immediately prior to the Employment Date is an Active Member or who becomes an Active Member with effect from that date and for so long as the Former Authority Employee is employed by the Contractor and is assigned to or otherwise engaged at least to the minimum extent specified in the Admission Agreement in the provision of the Services or any of them:

(i) it is an express term of the contract of employment of the Former Authority Employee with the Contractor that the Contractor shall ensure that (subject to the terms from time to time of the Schemes and the Admission Agreement) the Former Authority Employee may be and may continue to be an Active Member; and

(ii) each such Former Authority Employee is able to be and remain such an Active Member;

if it is in arrears in respect of any contributions due to the Schemes in respect of any Former Authority Employee, agree (which agreement the Contractor hereby irrevocably gives) that the Authority may deduct an amount equal to that which is overdue from any monies due to the Contractor and pay that amount to the relevant Scheme.

2.2 The Contractor agrees that the Employer Contributions shall be priced on a pass-through basis.

2.3 The Contractor shall ensure that no Sub-contractor by whom any of the Former Authority Employees become employed pursuant to the Transfer Regulations is appointed unless the contract under which the Sub-contractor is to provide any of the Services (the Contract) contains terms which provide for the following:

(a) a condition precedent (which may not be waived) to such contract becoming effective is that there is in force an Admission Agreement between (1) The Minister for the Cabinet Office (2) the Sub-contractor, and (3) the Authority;

(b) the Sub-contractor must at all material times comply with the Admission Agreement and will not terminate the Admission Agreement while the Sub-contractor is providing any of the Services;

(c) a breach of the Admission Agreement which is not capable of remedy or which if it is capable of remedy is not remedied within ten (10) Business Days of the Sub-contractor being given notice of such breach by the Schemes, the Minister for the Cabinet Office (in respect of the Admission Agreement) or the Authority is an event of default by the Sub-contractor enabling the other party to the Contract to terminate the Contract or the Contractor to terminate the Sub-contract (which the Contractor undertakes to the authority to do if directed to do so by the Authority) immediately on the giving of notice and no notice to waive the event of default or which states

that termination is not immediate and reserves a future right to terminate may be given without the consent in writing of the Authority;

(d) on each occasion (including, but without limitation, the termination of any contract pursuant to which the Sub-contractor sub-subcontracts the provisions of any of the Services) any Former Authority Employee becomes an employee of the Sub-contractor pursuant to the Transfer Regulations the Former Authority Employee shall if he is not already an Active Member of the Pension Schemes become such an Active Member with effect as on and from the date upon which he becomes such an employee provided that this is permitted under the terms of the Pension Schemes and the Admission Agreement;

(e) on each such occasion the Sub-contractor must make it a term of the contract of employment of each Former Authority Employee employed by the Sub-contractor that the Sub-contractor must ensure that the Former Authority Employee may be an Active Member at all times he is assigned to or otherwise engaged at least to the minimum extent specified in the Admission Agreement in the provision of any of the Services (subject to the terms of the Schemes from time to time and the Admission Agreement);

(f) any contract pursuant to which the Sub-contractor sub-contracts to another person (the "Sub-sub-contractor") and which results in any Former Authority Employer becoming an employee of the Sub-sub-contractor pursuant to the Transfer Regulations must contain the same terms as must be included in the Sub-contractor's contract in accordance with this Paragraph 2.3 and such contract shall not take effect unless and until there is in force an Admission Agreement to which the Sub-sub-contractor is a party; and

(g) the Sub-contractor must use its best endeavours to enforce the terms of his contract with the Sub-sub-contractor which must be included in that contract in accordance with this Paragraph 2.3.

2.4 The Contractor shall indemnify the Authority and at all times keep the Authority indemnified in respect of any Claim in connection with any failure or alleged failure by the Contractor, the Sub-contractor or Sub-sub-contractor as the case may be, to comply with the Schemes or the Admission Agreement to which the Contractor, the Sub-contractor or the Sub-sub-contractor as the case may be, is a party or to comply with (in the case of the Contractor) the provisions of this Paragraph 2.4 or (in the case of a Sub-contractor or Sub-sub-contractor) the provisions to be included in the Contract pursuant to Paragraph 2.3.

2.5 If the Sub-contractor or Sub-sub-contractor fails to pay by the due date any amount payable to any of the Schemes the Authority may deduct an amount equal to that which has not been paid from any money otherwise payable by the Authority to the Contractor and pay that amount to the Schemes.

2.6 Save with the approval of the Authority the Contractor shall not and shall procure any Sub-contractor and/or Sub-sub contractor as applicable shall not on or after the earliest of:

(a) the date which is eighteen (18) Months before the Expiry Date;

(b) the Authority giving the Contractor a Termination Notice terminating the whole of this Contract or any part of the Services;

(c) the Contractor giving notice under Clause 60 (*Termination for Prolonged Force Majeure Events*) and such notice is accepted by the Authority;

(d) on notification to the Contractor by the Authority of a replacement contractor; and

(e) on receipt by the Contractor of a written request by the Authority,

allow (other than as required by law or an amendment to the Schemes) the grant or variation of any new or existing Relevant Benefits for or in respect of any employee of the Contractor to be made, announced or proposed.

2.7 The Contractor shall not and shall procure that the Sub-contractor and/or Sub-sub contractor shall not issue any announcements to Former Authority Employees prior to the Relevant Transfer Date concerning the matters in this Paragraph 2 without the consent in writing of the

Authority (such consent not to be unreasonably withheld or delayed) and the Authority shall not issue any such announcement without the consent of the Contractor (such consent not to be unreasonably withheld or delayed).

2.8 The Contractor shall procure and shall ensure that any Sub-contractor or Sub-sub-contractor shall procure, that any information to be provided to the Authority pursuant to the Admission Agreement is sent to: The Authority's Representative Commercial as defined in DEFFORM 111.

2.9 The Contractor shall not recover any costs and/or other payments in relation to New Fair Deal where such costs and/or payments are recoverable or have already been recovered by the Contractor elsewhere in this Contract or otherwise. If the Contractor does recover costs and/or other payments as set out in this Paragraph 2.9 the Authority may deduct an amount equal to the amount of such costs and/or other payments from any money otherwise payable by the Authority to the Contractor.

2.10 The Contractor shall provide and shall procure each Sub-contractor or Sub-sub-contractor as appropriate provides all such co-operation and assistance as the Schemes and a replacement contractor or sub-contractor of a replacement contractor and/or the Authority may reasonably require to enable the replacement contractor or sub-contractor of a replacement contractor to participate in the Schemes in respect of any Former Authority Employee and to give effect to any transfer of accrued rights required as part of the participation under New Fair Deal.

2.11 The Contractor undertakes to the Authority to indemnify and keep indemnified the Authority on demand against any liability out of or attributable to or in any way connected with the transmission of information supplied to it by the Contractor, Sub-contractor or Sub-sub-contractor as in connection with a re-tendering or proposed re-tendering of all or any of the Services.

Annex A to Part 4 – Admission Agreement

[Insert form of Admission Agreement]

Schedule 11– List of Leased and Licensed Areas

Draft License

This Schedule 11 shall constitute a non-exclusive License

1 Definitions and interpretation

1.1 In this Schedule 11, the following terms shall have the following meanings:

1.1.1 **Date of Entry** means Effective Date;

1.1.2 **Date of Termination** means the Termination Date or a date as determined by paragraph 3 of this Schedule 11;

1.1.3 **Environmental Performance** means all or any of the following:

(a) the consumption of energy and associated generation of greenhouse gas emissions;

(b) the consumption of water;

(c) waste generation and management; and

(d) any other environmental impact arising from the use or operation of the Licensed Area or the Estate;

1.1.4 **Estate** means HM Naval Base Clyde except for any Excluded Areas;

1.1.5 **Excluded Areas** means any area or areas shown on the Excluded Areas Plan set out in Part 1 of the Annex as such areas may be adjusted from time to time by the Authority in respect of provision of the Services;

1.1.6 **Interest** means interest on the sum in question at 3% per annum above the base rate from time to time of [NAME OF BANK] from the date that such sum is due for payment or, if there is no such date specified, the date of demand for such sum until such sum is paid;

1.1.7 **Licence** means this Licence to occupy;

1.1.8 **Licensed Area** means those land and buildings designated by the Authority from time to time for the Permitted Use initial designated area being the whole Estate;

1.1.9 **Outgoings** means all existing and future rates, taxes, duties, charges, and financial impositions charged on the Licenced Area;

1.1.10 **Permitted Use** means for the provision of the Services;

1.1.11 **Planning Acts** means any applicable Law relating to the use, development, design, control and occupation of land and buildings;

1.1.12 **Planning Permission** means any permission, consent or approval given under the Planning Acts;

1.1.13 **Supplies** means those utilities defined as GFA and listed in paragraph 2.15 of Schedule 15 (*Government Furnished Assets*);

1.1.14 **Supply Costs** means the costs of Supplies including procurement costs, meter rents and standing charges;

1.2 In the Licence, unless otherwise specified or the context otherwise requires:

1.2.1 any reference to one gender includes all other genders;

1.2.2 words in the singular only include the plural and vice versa;

1.2.3 any reference to the whole is to be treated as including reference to any part of the whole;

1.2.4 any reference to a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and words importing individuals include corporations and vice versa;

1.2.5 any reference to a statute or statutory provision includes any subordinate legislation which is in force from time to time under that statute or statutory provision;

1.2.6 any reference to any statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time taking account of any amendment or re-enactment;

1.2.7 any phrase introduced by the words "including", "include", "in particular" or any similar expression is to be construed as illustrative only and is not to be construed as limiting the generality of any preceding words.

1.3 The headings in the Licence are included for convenience only and are to be ignored in construing the Licence.

2 Licence

2.1 Subject to due compliance by the Contractor with its obligations under the Licence and the Contract, the Authority will permit the Contractor to occupy and use the Licensed Area for the Permitted Use with all necessary non-exclusive rights of access to and egress from the Licensed Area from/to the public highway subject to all title conditions and rights of whatever nature affecting it.

2.2 The Contractor will occupy the Licensed Area as a mere licensee only and acknowledges that possession of the Licensed Area is retained by the Authority subject to the rights created by the Licence.

2.3 The Parties agree that the Licence is not a lease and does not confer any tenancy rights on the Contractor.

3 Duration

3.1 The Licence will commence on the Date of Entry and will terminate:-

3.1.1 on one month's notice by either party to the other;

3.1.2 in the event of termination or expiry of the Contract or termination or expiry of all Services;

3.1.3 on a notice of termination being issued pursuant to clauses 57 (*Contractor Default*), 58 (*Voluntary Termination by the Authority*), 59 (*Termination by the Contractor),* 60 (*Termination for Prolonged Force Majeure Events*), or 62 (*Corrupt gifts and payments*) of the Contract;

3.1.4 in the event of any breach by the Contractor of its obligations under the Licence or the Contract;

3.1.5 where any sums due under the Licence or any part of them are not paid on the due dates.

then, in each case, the Authority may, terminate the Licence with effect from the date specified in the notice but reserving to the Authority its right of action in respect of any antecedent breach of the Contractor's obligations.

3.2 At the Date of Termination, the Contractor will:

3.2.1 subject to clause 63 (*Exit Strategy*) of the Contract remove from the Licensed Area with its whole equipment and other items, without the need for any notice from the Authority, and

3.2.2 leave the Licensed Area in a condition consistent with full compliance with its obligations under the Licence.

4 Payments

4.1 No licence fee is payable by the Contractor to the Authority for the grant of the Licence or its occupation and use of the Licensed Area.

4.2 The Contractor will pay for the duration of the Licence all costs incurred by the Authority in procuring the remedy of any breach of any obligation of the Contractor under the Licence.

4.3 All sums payable under the Licence, are exclusive of Value Added Tax, which, if payable, is payable in addition in return for a valid Value Added Tax invoice.

4.4 If any sums due by the Contractor are not paid within ten (10) Business Days after the due date then the Contractor will pay to the Authority Interest on the outstanding money.

5 Use

5.1 The Contractor will use the Licensed Area for the Permitted Use and for no other purpose.

5.2 The Authority gives no warranty that:

5.2.1 the Licensed Area is suitable for the Permitted Use; or

5.2.2 the Permitted Use is or will remain the permitted use of the Licensed Area within the provisions of the planning or other relevant legislation from time to time.

5.3 The Contractor will not do or permit to be done upon or in connection with the Licensed Area anything which would be a legal nuisance or cause of damage to the Authority or the other occupiers of the Estate and any neighbouring premises.

5.4 The Contractor will comply with:

5.4.1 all applicable Law and Regulation affecting the Licensed Area or the Contractor's use of the Licensed Area;

5.4.2 all obligations, restrictions, reservations and other conditions in the titles of the Licensed Area; and

5.4.3 all regulations which may be issued from time to time by the Authority or its agents in relation to the Licensed Area or the Estate, including in respect of management of the Estate, health and safety, risk management and security.

6 Indemnity and insurance

6.1 The Contractor will comply with its insurance obligations in Clause 41 *(Liabilities, Indemnities, Insurance and Conduct of Claims)* and Schedule 12 *(Liabilities, Indemnities, Insurance and Conduct of Claims)* of the Contract in respect of the Licensed Area.

6.2 The Authority will comply with its insurance obligations in Clause 41 (*Liabilities, Indemnities, Insurance and Conduct of Claims*) and Schedule 12 (*Liabilities, Indemnities, Insurance and Conduct of Claims*) of the Contract in respect of the Licensed Area.

7 Alienation

7.1 The Licence is personal to the Contractor and the Contractor will not (either wholly or partially) assign, sub-let, part with or share occupation or otherwise deal in any way with its interest in the Licence.

7.2 The Authority will be entitled to assign its interest under the Licence.

8 Condition

8.1 The Contractor accepts the Licensed Area in its present condition as being fit in all respects for the Permitted Use.

8.2 The Contractor will:

8.2.1 repair any damage to the Licensed Area caused an act or omission of the Contractor;

8.2.2 keep the Licenced Area clean and tidy in accordance with its obligations in Output CWD 2.12 of Part 2 to Schedule 2 (*Requirements*); and

8.2.3 leave the Licensed Area in such condition at the Date of Termination;

all to the satisfaction of the Authority.

8.3 If the Contractor fails to carry out any works to the Licensed Area for which it is responsible in terms of the Licence after a written demand has been made by the Authority, the Authority may carry out such works (without prejudice to its other rights including its rights to terminate the Licence) and the Contractor will pay to the Authority on demand the whole proper costs incurred by the Authority in so doing, together with Interest.

9 Alterations

9.1 The Contractor will not carry out any alterations or additions to the Licensed Area except in accordance with the Contract and this paragraph 9 of this Schedule 11.

9.1.1 The Contractor may not make any external or structural alterations, works or installations to the Licensed Area except with Authority's consent, in its absolute discretion.

9.1.2 The Contractor may not make any internal non-structural works, works or installations to the Licensed Area except with Authority's consent such consent not to be unreasonably withheld or delayed.

9.1.3 Unless contrary to any term of the Contract, the Contractor may install, alter and remove tenant's fixtures and internal demountable partitioning that are required in connection with providing the Services and will not have an adverse impact on the Environmental Performance of the Licensed Area without the Authority's consent, but the Contractor must provide a detailed record of works in terms satisfactory to the Authority and notify the Authority promptly after completing those works.

9.1.4 The Contractor will pay all costs arising out of or in connection with all alterations or additions to the Licensed Area (including Planning Permissions), executed in breach of this paragraph 9 of this Schedule 11, whether imposed on the Authority or the Contractor and must indemnify the Authority from all liability in relation to such costs.

9.1.5 Where the Authority's consent is expressly required under this paragraph 9 of this Schedule 11, the Authority may impose requirements on the Contractor when giving its consent.

9.2 To the extent requested by the Authority, the Contractor will remove any alterations and additions carried out by it and reinstate the Licensed Area at the Date of Termination to the condition they were in before such alterations and/or additions were made.

10 Supplies

10.1 The Authority will provide or procure the provision of such Supplies to the Licensed Area in accordance with the Contract.

10.2 The Authority gives no warranty as to the availability suitability quality or quantity of any Supplies which may be supplied to the Licensed Area and is not be liable for any failure or diminution in the supply pressure quality or quantity of any such Supplies.

10.3 The Contractor will comply with all laws and any requirements of the relevant suppliers of the Supplies.

10.4 The Contractor will use the Supplies for the Permitted Use only and for no other purpose whatsoever.

10.5 The Contractor will use the Supplies in a reasonable and responsible manner having regard to the Environmental Performance of the Licensed Area.

10.6 The Contractor must pay on demand any element of the Supply Costs for the Licensed Area which the Authority in its reasonable opinion deems to be excessive.

11 Outgoings

The Authority must pay or procure payment of all Outgoings.

12 Notices

Any notice to be given under this Licence must be in writing and sent and addressed in accordance with the provisions of Clause 82 (*Notices*) of the Contract.

13 No Liability

Subject to Paragraph 2.2.2 (*Authority's Liability*) of Schedule 12 (*Liabilities, Indemnities, Insurance and Conduct of Claims*) of the Contract, the Authority is not liable to the Contractor for any loss, injury or damage which the Contractor may sustain from a deficiency in any part of the Estate or Licensed Area or the death of or injury to any person or for damage to any Licensed Area or for any losses, claims, demands, actions, proceedings, damages, costs or expenses or other liability incurred by the Contractor in the exercise or purported exercise of the rights conferred on the Contractor under the Licence.

14 General

14.1 The Licence represents the entire agreement between the Parties relating to the licence of the Licensed Area and supersedes any previous agreements between the Parties relating to it. Neither of the Parties has been induced to enter into the Licence on account of any prior warranties or representations made which are not embodied in the Licence and no representation, warranty or undertaking of any description in respect of the Licensed Area, whether in relation to title, state of repair, compliance with statutes or other matters, the existence of local authority or other proposals or orders, or otherwise, is given in the Licence except insofar (if at all) as expressly stated in the Licence.

14.2 The Licence does not create any rights in favour of third parties under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce or otherwise invoke any provision of the Licence.

Annex A – Excluded Areas Plan

Schedule 12 – Liabilities, Indemnities, Insurance and Conduct of Claims

1 Definitions

1.1 In this Schedule, the following terms shall have the following meanings:

Authority Contractor means any contractor of the Authority other than the Contractor.

Default means any breach of the obligations (including abandonment of this Contract in breach of its terms, repudiatory breach or breach of a fundamental term) or negligence of the relevant Party, whether arising by reason of default, act, omission, negligence, statement or by any other cause whatsoever including:

(a) in the case of the Authority,

(b) of its Representatives; and

(c) subject to the terms of Paragraph 2.2.2, an Authority Contractor or its employees, servants and agents;

or

(d) in the case of the Contractor,

(e) of any Contractor Personnel or

(f) any Sub-Contractor or Affiliate of the Contractor or their respective employees, servants and agents.

Required Insurances means the insurances as set out in Annex 2 (*Required Insurances*) to this Schedule and any insurances required by Law.

2 Liability Limits

2.1 **Contractor's Liability**

2.1.1 Subject to Paragraph 2.3 (*Unlimited Liability*), Paragraph 2.4 (*Irrecoverable Loss*) and Paragraph 3.4 (*Claims relating to Government Establishments*):

(a) the Contractor's aggregate liability in respect of Losses relating to Government Establishments or Third Party Contractor Property, that are caused by Defaults of the Contractor occurring in each and any Contract Year, including its liability in respect of the indemnity in Clause 25.1 (*Damage to Government Property*), shall in no event exceed £** provided that such cap shall not apply to the extent that the Contractor is able to recover further Losses pursuant to the Required Insurances;

(b) the Contractor's aggregate liability in respect of all Performance Deductions shall be determined in accordance with paragraph 3 to Part 3 of Schedule 5 *(Performance Management and Measurement)* and

(c) the Contractor's aggregate liability in respect of all other Losses incurred by the Authority whether arising under contract, negligence, misrepresentation or otherwise under or in connection with this Contract as a result of Defaults by the Contractor shall in no event exceed:

(i) in relation to Defaults occurring in the first Contract Year (which, for the purposes of this Clause, incudes any Mobilisation Period), an amount equal to £** for that first Contract Year;

(ii) in relation to Defaults occurring during any subsequent Contract Year, an amount equal to £** in the Contract Year immediately preceding the occurrence of the Default; and

(iii) in relation to Defaults occurring after the end of the Contract Period, an amount equal to one hundred and fifty percent (150%) of the aggregate Monthly Net Payments, as defined in paragraph 6.1 to Part 4 of Schedule 4, for the twelve (12) Month period immediately prior to the last day of the Contract Period.

2.1.2 Performance Deductions from Monthly Service Charges shall not be taken into consideration when calculating the Contractor's liability under Paragraph 2.1.1 (c).

2.1.3 Any liability under this paragraph 2.1 and any payment of money in respect of such liability shall be borne by the Contractor and shall not be recovered through Schedule 4 *(Pricing and Payment)* or any other payment made to Contractor under this Contract.

2.2 **Authority's liability**

2.2.1 Subject to paragraphs 2.2.2, 2.3 (*Unlimited Liability*) and paragraph 2.4 (*Irrecoverable Loss*) the Authority's aggregate liability under or in connection with this Contract, whether arising from contract, negligence, misrepresentation or otherwise and without prejudice to the Authority's obligation to pay any amounts pursuant to Schedule 4 *(Pricing and Payment)* :

(a) for Losses incurred by the Contractor as a result of early termination of this Contract, shall not exceed the amount provided for in Clause 58 (*Voluntary Termination by the Authority*); and

(b) for any other liability or Default, shall not exceed fifty percent (50%) of the Aggregate Total Contract Price.

2.2.2 The Authority shall not have any liability to the Contractor in respect of any Default of an Authority Contractor unless:

(a) it results in the Authority breaching an obligation in this Contract; and

(b) the relevant Authority Contractor is not an Affiliate of a Contractor Group Member.

2.3 **Unlimited Liability**

2.3.1 Neither Party shall limit its liability in respect of the following:

(a) death or personal injury;

(b) fraud, fraudulent misrepresentation or corruption including, in respect of the Contractor, any Contractor Personnel or Sub-Contractors;

(c) wilful default, gross negligence or abandonment; and

(d) a breach of the [Consumer Rights Act 2015] or the Supply of Goods and Services Act 1982;

2.3.2 The Contractor's liability in relation to the following shall be unlimited:

(a) any costs or expenses which the Contractor is obliged to or does expend in carrying out its obligations under this Contract;

(b) any liability of the Contractor to the Authority arising as a result of or in connection with the Authority's right to require the Contractor to correct non-conforming Services in accordance with this Contract;

(c) any Losses incurred by or Claims made against the Authority due to breach of statutory duty which arose out of or in consequence of any contravention by the Contractor of this Contract;

(d) any Losses recoverable by the Contractor under any insurance policy (including amounts for which the Contractor is liable pursuant to Paragraph 5.4 (Deductibles);

(e) any breach of or liability under:

(i) Clause 31 (*Staff Arrangements*);

(ii) Clause 36 (*Environmental Provisions*);

(iii) Clause 46 (*Intellectual Property Rights*);

(iv) Clause 73 (*Confidentiality and Freedom of Information*); [and/or]

(v) Clause 75 (*Data Protection*).

(vi) Paragraph 3.6 of this Schedule 12 (subject to any limits specified in that Paragraph

(f) the Authority's right to apply for an order for injunctive relief or specific performance or seek damages in respect thereof;

(g) the Contractor's liability to pay any taxes as expressly provided by this Contract; or

(h) any interest payable under this Contract.

2.3.3 The Authority's liability in relation to any breach of the following shall be unlimited:

(a) Clause 26 (*Ammunition and Explosives*);

(b) Clause 31 (*Staff Arrangements*) which is not expressed as a capped liability;

(c) Clause 36 (*Environmental Provisions*);

(d) Clause 46 (*Intellectual Property Rights*);

(e) Clause 25.2 (*Nuclear Indemnity*)

2.4 **Irrecoverable Loss**

2.4.1 Subject to Paragraphs 2.3 and 2.4.2 and save where expressly permitted under the terms of this Contract, neither Party may recover from the other Party or any of its officers, agents, or employees any Irrecoverable Loss.

2.4.2 Notwithstanding Paragraph 2.4.1 but subject to Paragraph 2.1, the Contractor acknowledges that the Authority may, amongst other things, recover from the Contractor the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Contractor:

(a) any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;

(b) any wasted expenditure or charges;

(c) the additional cost of procuring replacement Services for the remainder of the Contract Period and/or replacement Contractor Deliverables, which shall include any incremental costs associated with such replacement Services and/or replacement Contractor Deliverables above those which would have been payable under this Contract;

(d) any compensation or interest paid to a third party by the Authority;

(e) any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty; and

(f) any anticipated savings.

3 Additional liability provisions

3.1 General

3.1.1 Where the Authority or the Contractor is indemnified by, as appropriate, the Contractor or the Authority under this Contract, the Authority or the Contractor (as the case may be) shall mitigate any Losses for which it is seeking indemnification.

3.1.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Contract.

3.1.3 Neither Party to this Contract shall be entitled to recover (by way of indemnity or otherwise) more than once in respect of the same Loss suffered by that Party under this Contract.

3.1.4 The provisions in this Schedule 12 shall survive, and remain in full force and effect, notwithstanding the expiration or other termination of this Contract.

3.2 **Contractor responsible for Authority offence**

Where a Default of the Contractor or any Contractor Personnel causes the Authority to commit an offence, then the Contractor shall immediately take any measure necessary to ensure that that act, omission or default no longer causes the Authority to commit that offence.

3.3 **No impact on other Authority rights or remedies**

3.3.1 The Contractor's liability to the Authority arising under any indemnity in this Contract shall be without prejudice to any other right or remedy available to the Authority and in particular shall not prejudice in any way the ability of the Authority to enforce any bond, guarantee or other security given pursuant to this Contract at any time and in any manner whatsoever.

3.3.2 The Parties acknowledge that any event, act or omission which results in a performance failure under Schedule 5 (*Performance Management and Measurement*) may also give rise to a separate remedy or cause of action against the Contractor. Accordingly the application of Schedule 5 (*Performance Management and Measurement*) in respect of the Contractor's failure of performance is without prejudice to any other Authority remedy or cause of action under, or in relation to, this Contract which arises from the same event, act or omission.

3.4 **Claims relating to Government Establishments**

For the purposes of Clause 25.1 (*Liability in Respect of Damage to Government Property*) and Paragraph 2.1.1 (a):

(a) a Government Establishment shall not include Entitled Vessels; and

(b) without prejudice to the Contractor's obligations to insure as contained in this Schedule there shall be no limit on the number of occurrences, or series of related occurrences arising out of the same cause or same event (in each case without any intervening cause), in respect of which the Contractor may incur liability under Clause 25.1 (*Liability in Respect of Damage to Government Property*).

3.5 **Authority discretion to reinstate property**

3.5.1 The Authority shall not be obliged to reinstate or replace any building, other structure, plant, machinery, equipment or furnishings comprised in the Leased and Licensed Areas which may be destroyed or damaged or to make any replacement or alternative provision available to the Contractor in the event of any such damage or destruction.

3.5.2 If the Authority elects not to reinstate in accordance with Paragraph 3.5.1, and as a consequence the Contractor is unable to provide any of the Services in accordance with the requirements of this Contract without incurring additional costs which cannot reasonably be mitigated by the Contractor, the provisions of Clause 53 (*Relief and Compensation Events*) will apply.

3.5.3 All monies (including professional fees, demolition, removing debris, making safe and shoring up) payable under any Required Insurance (or by Contractor due to a failure to comply with its insurance obligations) in each case in respect of damage to or destruction of any part of the Leased and Licensed Areas shall be paid to the Authority for its own use and benefit.

3.5.4 Any monies received by the Authority pursuant to Paragraph 3.5.3 may, in the sole discretion of the Authority, be applied by the Authority in:

(a) the reinstatement of the Leased and Licensed Areas; or

(b) constructing such building or buildings or installations fixtures and fittings as the Authority may consider necessary, appropriate or desirable to construct.

3.5.5 If the Authority elects to construct new buildings, installations, fixtures or fittings, then if the Parties consider it to be necessary or appropriate, the Parties shall amend the terms of the Leases and the Licences to the extent to which the Authority allows the Contractor to occupy the same.

3.6 **Rectification of damage to Entitled Vessels**

3.6.1 The Authority shall not be obliged to reinstate, replace or repair Entitled Vessels which may be destroyed or damaged or to make any replacement or alternative provision to the Contractor in the event of such damage or destruction.

3.6.2 If and to the extent that the Contractor is liable for any damage occurring to any Entitled Vessel then the Contractor shall, to the extent required by the Authority, rectify the damage

and cover the cost of rectifying such damage, and shall not claim the cost of such rectification work from the Authority.

3.6.3 If and to the extent that the Contractor would be liable in respect of any damage occurring to any Entitled Vessel would be liable but for the Contractor's liability cap under Paragraph 2.1.1 (a) then the Authority shall be entitled to require the Contractor to rectify such damage and the Parties shall agree any appropriate, attributable and reasonable costs thereof.

4 Indemnities

4.1 **Indemnities under this Contract**

4.1.1 The indemnities listed in Paragraph 1 of Annex 1 (Indemnities) to this Schedule are given by the Contractor to the Authority pursuant to this Contract.

4.1.2 The indemnities listed in Paragraphs 2 and 3 of Annex 1 (Indemnities) to this Schedule are given by the Authority to the Contractor pursuant to this Contract.

4.1.3 Annex 1 to this Schedule provides a list of key indemnities identified under this Contract. Indemnities contained elsewhere in this Contract but not expressly included in Annex 1 shall continue to be effective and shall not be affected by their absence from Annex 1.

4.1.4 The indemnities set out in this Contract shall be subject to Paragraph 2 (*Liability Limits*) of this Schedule 12.

4.2 Indemnified Claims

4.2.1 Subject to Paragraph 4.2.8, if either Party's Contract Manager becomes aware of any Claim made or threatened by a third party against the Party of which the individual is the Contract Manager (Party One), (a Third Party Claim) which the relevant Contract Manager considers:

(a) would not have arisen other than as a result of the breach or negligent performance by the other Party (**Party Two**) of its obligations under this Contract; or

(b) is in respect of any other matter that Party One may wish to rely on any provision of this Contract in order to seek recovery from the other Party in relation to any Losses arising from such claim or action,

the Contract Manager of Party One will promptly notify the Contract Manager of Party Two, providing particulars of the demands, damages and liabilities claimed or made by the third party, (a **Claims Notice**).

4.2.2 Party Two shall be entitled to serve a notice on Party One within fifteen (15) Business Days of receipt of the Claims Notice that it wishes to dispute the Third-Party Claim and take control of the defence against the third party (an Adoption Notice).

4.2.3 Subject to Paragraph 4.2.6, where an Adoption Notice has been served, Party One shall not settle any Third Party Claim without the prior written consent (not to be unreasonably withheld or delayed) of Party Two.

4.2.4 Party Two shall (subject to providing Party One with an indemnity to its reasonable satisfaction against all costs and expenses, including any damages or other award subsequently granted in favour of the third party, that it may incur by reason of such action) be entitled to dispute the Third Party Claim in the name of Party One at Party Two's own expense and take conduct of any defence, dispute, compromise or appeal of the Third Party Claim and any incidental negotiations. In these circumstances, Party One shall give Party Two all reasonable co-operation, access and assistance for the purpose of considering and resisting such Third-Party Claim.

4.2.5 With respect to any Third-Party Claim conducted by Party Two pursuant to Paragraph 4.2.3:

(a) Party Two shall keep Party One fully informed and consult with it about material elements of the conduct of the Third-Party Claim and the progress of any negotiation and proceedings;

(b) Party Two shall not bring the name of Party One into disrepute; and

(c) Party Two shall not pay or settle such Third-Party Claim without the prior consent of Party One, such consent not to be unreasonably withheld or delayed.

4.2.6 Where:

(a) Party One has granted conduct of settlement or any litigation in its name under Paragraph 4.2.3 to Party Two and Party Two is acting unreasonably either in the conduct of any negotiations or legal proceedings or is otherwise in breach of its obligations under Paragraph 4.2.5; or

(b) Party Two does not exercise its entitlement under Paragraph 4.2.3 to dispute the Third Party Claim in the name of Party One within a reasonable time of being required so to do by Party One,

Party One shall have the right to intervene or re-assume responsibility for the conduct of such proceedings or any settlement of the Third-Party Claim at any time.

4.2.7 If Party One becomes aware of a Third-Party Claim which he considers may have arisen as a result of the acts or omissions of both Party One and Party Two then both Parties shall discuss in good faith the best way of conducting the defence of such Claim in such a way as to minimise the losses incurred by both Parties.

4.2.8 The above provisions of Paragraph 4.2 to 4.2.7 (inclusive) shall not apply in relation to any indemnity given under Schedule 8 (*Intellectual Property Rights*).

5 Insurance

5.1 Obligation on the Contractor to take out insurance

5.1.1 Without prejudice to its obligations to indemnify or otherwise be liable to the Authority under this Contract, the Contractor shall, from the Commencement Date, take out and maintain, or procure the taking out and maintenance of the Required Insurances in accordance with the provisions of Annex 2 (Required Insurances) of this Schedule throughout the Contract Period and for such other periods as set out in Annex 2 (Required Insurances) of this Schedule. The Contractor shall ensure that the Required Insurances are effective in each case not later than the date on which the relevant risk commences.

5.1.2 Any change to this Paragraph 5 or the insurance requirements set out in Annex 2 (*Required Insurances*) of this Schedule shall be effected in accordance with Clause 68 (*Change Procedure*).

5.2 Contractor insurance obligations

5.2.1 The Required Insurances referred to in Paragraph 5.1 shall be taken out and maintained with insurers who are of good financial standing, appropriately regulated and of good repute in the international insurance market.

5.2.2 Where specified in Annex 2 (*Required Insurances*) of this Schedule the Contractor shall ensure the policy shall contain an indemnity to principals clause, under which the Authority shall be indemnified in respect of claims made against the Authority arising from death or bodily injury or third party property damage, and for which the Contractor is legally liable in respect of this Contract.

5.2.3 The Contractor shall, upon the date of this Contract and within fifteen (15) days after the renewal of any of the Required Insurances, provide the Authority with evidence (in a form satisfactory to the Authority acting reasonably):

(a) that the Required Insurances are being maintained in accordance with Paragraph 5.1.1 and are in full force and effect and meet the requirements of Paragraph 5.1.1 and Annex 2 (Required Insurances) of this Schedule; and

(b) that the premiums payable under them have been paid or are in the process of being paid to insurers.

5.2.4 The supply to the Authority of any evidence of insurance cover in compliance with the requirements of Paragraph 5.2.3 above shall not imply nor constitute acceptance by the Authority that the extent of insurance cover is sufficient or that the terms and conditions thereof are satisfactory, in either case, for the purposes of this Contract nor be a waiver of the Contractor's liability under this Contract.

5.2.5 The Contractor shall notify the Authority at least ten (10) days prior to the cancellation, suspension, termination or non-renewal of any of the Required Insurances. The Contractor's obligation under this Paragraph 5.2.5 shall not apply where termination of any Required Insurance 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 Annex 2 (Required Insurances) of this Schedule.

5.2.6 If the Contractor receives notification from an insurer under any relevant Required Insurance of any actual cancellation, suspension or termination of such Required Insurance, or notice of its intention to take any such step, the Contractor shall, without prejudice to its obligation to maintain the Required Insurances, promptly notify the Authority in writing of receipt of such intended or actual cancellation, suspension, or termination.

5.2.7 Prior to any renewal of any Required Insurance, the Contractor shall notify the Authority of any proposed changes to the relevant policy. In such instances the Parties shall discuss and seek to agree any proposed changes. Where the Parties agree the Contractor shall effect the renewal on the terms of such agreement. To the extent that the Parties are unable to agree, the Contractor shall renew the relevant Required Insurance with effect from the relevant renewal date, without any such changes or, if that is not possible through the same insurers or on the same terms, renew or replace the same on terms as similar as can reasonably be achieved in the international insurance market.

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

5.2.9 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 the Services or this Contract, the Contractor shall co-operate with the Authority and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.

5.2.10 Except where the Authority is the claimant party, the Contractor shall notify the Authority immediately (such notification to be accompanied by reasonable particulars of the incident or circumstances giving rise to such incident) after any:

(a) occurrence or circumstances which may give rise to a claim amounting to or in excess of one hundred thousand pounds (£100,000) in connection with this Contract and the Required Insurances of which the Contractor is or becomes aware; and

(b) If the occurrence or circumstances may give rise to any claim in connecting with this Contract which may be in excess of the limits of Required Insurances in Annex 2 (Required Insurances) of this Schedule,

and shall notify the Authority Contract Manager within ten (10) Business Days of making the relevant claim under any policy for the Required Insurances.

5.2.11 The Contractor shall maintain a written register of all losses or occurrences which result in a claim under the Required Insurances in connection with this Contract and shall allow the Authority to review such register at any time.

5.2.12 Where any Required Insurance requires payment of a premium, the Contractor shall be responsible for payment of, and shall pay, such premium.

5.2.13 The Contractor shall:

(a) without limiting any specific requirements in this Contract, take or procure the taking of all reasonable risk management and risk control measures in relation to this Contract as it would be reasonable to expect of a contractor, acting in accordance with Good Industry Practice, including but not limited to the investigation and reporting of relevant claims to insurers;

(b) where relevant, 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 and taking the actions needed to protect the Authority's separate interests;

(c) use reasonable endeavours to procure that all insurance brokers through whom any Required Insurances to be effected by the Authority are effected or maintained shall maintain intact their files (including all documents disclosed and correspondence in connection with the placement of those Required Insurances and the payment of premiums and claims under such Required Insurances) until the date specified in Annex 2 (Required Insurances) of this Schedule.

5.3 **Consequences of failure by the Contractor to comply with Paragraphs { REF _Ref529907583 \r \h * MERGEFORMAT } and { REF _Ref529907585 \r \h * MERGEFORMAT }**

If the Contractor is in breach of Paragraph 5, the Authority may elect, but shall not be obliged, to purchase any insurance or pay any insurance premiums which the Contractor is required to maintain pursuant to this Contract but has failed to maintain in full force and effect, or itself procure, provide or arrange such insurance, and in either case the Authority shall be entitled to recover from the Contractor the cost of such premiums, insurance premium tax and other reasonable costs incurred in connection therewith as a debt due to the Authority from the Contractor.

5.4 **Deductibles**

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 which would otherwise be insured but for the excess or deductible. The Contractor shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Required Insurances whether under the terms of this Contract or otherwise.

Annex 1 to Schedule 12 – Indemnities

1 Indemnities from Contractor

1.1 This Annex 1 provides a list of key indemnities identified under this Contract. Indemnities contained elsewhere in this Contract but not expressly included in this Annex shall continue to be effective and shall not be affected by their absence from this Annex.

Indemnity cross-reference
Required Consents (breach of consents obligations) in accordance with Clause 13.3
Damage to Government Property in accordance with 25.1
Environmental Provisions (Contamination) in accordance with Clause 36
Removal of Property (on termination) in accordance with Clause 63.13
Assignment or novation in accordance with Clause 63.14.5
IPR (Breach/infringement) in accordance with Clause 46
Employment (Various)
Authority Personnel and Secondees
Lease/Licence indemnities in accordance with Schedule 11 (*List of Leased and Licenced Areas)*

2 Indemnities from the Authority

Indemnity cross-reference
Ammunition and Explosives in accordance with Clause 26.2
Measures in a Crisis (Contractor costs in this scenario) in accordance with Clause 55
Voluntary Termination (Breakage fees/costs) in accordance with Clause 58
IPR (Infringement/breach) in accordance with Clause 46
Employment (various)
Nuclear in accordance with Clause 25

Annex 2 to Schedule 12 – Required Insurances

1 Third Party Public and Products Liability Insurance

1.1 Insured

Contractor

1.2 Interest

To indemnify the Insured (as set out in paragraph 1.1 above) in respect of all sums that the Insured (as set out in paragraph 1.1 above) may become legally liable (whether under contract, tort or otherwise) to pay as damages (including claimants' costs and expenses) in respect of accidental:

(a) death or bodily injury to, or sickness, or illness or disease contracted by any person

(b) loss of or damage to property

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

1.3 Limit of indemnity

Not less than ***** (£******) in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period, but ***** pounds (£******) any one occurrence and in the aggregate per annum in respect of products and pollution liability (to the extent insured by the relevant policy).

1.4 Territorial limits

As determined by the requirements of this Contract.

1.5 Period of insurance

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

1.6 Cover features and extensions

1.6.1 Legal costs in addition to the limit of indemnity.

1.6.2 Contingent motor vehicle liability insurance.

1.6.3 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 Agreement.

1.7 Principal exclusions

1.7.1 War and related perils exclusion.

1.7.2 Nuclear and/or radioactive risks exclusion.

1.7.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insured (as set out in paragraph 1.1 above) 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 this Agreement.

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 pollution and contamination unless caused by a sudden, unintended, unexpected and accidental occurrence.

1.7.9 Cyber liability exclusion.

1.7.10 Liability in respect of loss or damage to property in the care, custody and control of the Insured (as set out in paragraph 1.1 above) but this exclusion is not to apply to the Authority buildings machinery plant and equipment which are in the care, custody and control of the Insured (as set out in paragraph 1.1 above).

2 Compulsory Insurances (Employers Liability Insurance and Motor Third Party Liability Insurance)

2.1 The Contractor is required to meet United Kingdom and other territory statutory insurance obligations in full. Insurances required to comply with all statutory requirements relating to the Agreement including, but not limited to, United Kingdom employers' liability and motor third party liability insurances.

2.2 As appropriate the Employers Liability Insurance shall extend to include any relevant offshore work in connection with this Agreement.

2.3 Compulsory insurances shall contain an indemnity to principals clause or additional insured equivalent.

Schedule 13 – Transition Arrangements

Definitions

In this Schedule 13, the following terms shall have the following meanings:

Full Operating Capability or FOC means all capabilities required under IOC plus full implementation of all governance and reporting requirements as detailed in Schedule 6 (*Governance*) and Schedule 22 (*Reports*).

Initial Operating Capability or IOC means the capability to deliver all required Services in accordance with the Requirements.

Milestone means each milestone identified in the Transition Plan and set out in Annex C to this Schedule 13.

Milestone Achievement Criteria means all tasks and acceptance criteria agreed and identified in the Transition Plan and set out in Annex C to this Schedule 13 or which are required to be satisfied to successfully achieve a Milestone.

Milestone Achievement Certificate means a certificate issued pursuant to paragraph 10.6 or paragraph 10.10 to this Schedule 13 in respect of the satisfaction of a Milestone.

Milestone Completion Date means the date for the achievement of a Milestone.

Milestone Deliverables means all deliverables agreed and identified in the Transition Plan as set out in Annex C to this Schedule 13 or which are otherwise agreed.

Stabilisation Period means the period between the Services Delivery Date and the Transition Complete Date.

Transition Complete Date means the date of completion of the Transition Period.

Transition Meetings means the meetings to be held between the Contractor and the Authority during the Mobilisation Period as specified in section 6 of this Schedule 13.

Transition Plan means the agreed plan to allow the Services to transition to the Contractor.

Transition Progress Reports means the reports to be delivered by the Contractor as specified in section 6 of this Schedule 13.

Transition Project Manager means the manager appointed by the Contractor pursuant to section 8 of this Schedule 13.

Transition Period means the period from the Effective Date to the Transition Complete Date, during which the Transition Plan activities are to be implemented. The Transition Period covers the Mobilisation Period and Stabilisation Period.

1 **Introduction**

1.1 This Schedule:

a) outlines the main activities and responsibilities of the Contractor in respect of and during the Transition Period.

b) outlines the process for development, updating and implementation of the Transition Plan;

c) identifies the Milestones (and associated Milestone Deliverables) in respect of the Transition Period; and

d) sets out the tests and/or acceptance criteria to be met in respect of each Milestone.

1.2 The purpose of the Mobilisation Period is to enable the Contractor to be ready to deliver the Services from the Planned Service Delivery Date.

1.3 The purpose of the Stabilisation Period is to allow the Contractor to demonstrate that they are delivering the Services in accordance with this Contract.

2 **Objectives**

2.1 The Contractor shall:

a) during the Transition Period, coordinate with the Authority and the Outgoing Contractor, to ensure a smooth transition and delivery of services without disruption to the required operational outputs.

b) commence provision of the Services by the Service Delivery Date and in doing so provide the required Initial Operating Capability (IOC); and

c) ensure that at Transition Completion Date, the Contractor delivers all Services and supporting governance and reporting and in doing so provides the Full Operating Capability;

3 Timeline and Milestones

3.1 The timeline and Milestones for the Mobilisation Period as at the Commencement Date are set out, respectively, in Annex B and Annex C to this Schedule 13.

3.2 Any changes to such dates and Milestones will require the Authority's prior written approval to this Schedule 13.

4 General pursuant

4.1 The Contractor shall carry out its obligations during the Mobilisation Period in accordance with the Transition Plan and all associated Milestones to ensure that it is able to deliver the Services at the planned Service Delivery Date.

4.2 The Authority may, at its sole discretion, provide assistance to the Contractor during the Mobilisation Period.

4.3 The Contractor shall capture lessons learned during the Transition Period, share them with the Authority as part of the final Transition Progress Report, and assist the Contractor in the preparation of the Contractor's Exit Plan.

5 Transition Plan

5.1 The Service Delivery Plan submitted as an initial Transition Plan shall be the Transition Plan at Annex A to this Schedule 13 until updated in accordance with paragraph 5.3 to this Schedule 13.

5.2 During the Transition Period, some coordinated activities will be required across the Naval Base and the Contractor shall collaborate with the Authority and Third Party Contractors. to ensure that The Transition Plan at Annex A to this Schedule 13 includes that coordination.

5.3 The Contractor shall submit an update to the Transition Plan detailed at paragraph 5.1 to this Schedule 13 for approval in accordance with the procedure set out in paragraphs 5.5 to 5.10 within ten (10) Business Days of the Commencement Date which, upon being approved, shall update the Transition Plan at Annex A to this Schedule 13.

5.4 The Contractor shall ensure that the Transition Plan:

a) includes all matters as notified to the Contractor which the Authority reasonably requires to be included;

b) any coordination requirements required under paragraph 5.2 to this Schedule 13;

c) incorporates all Milestones and Milestone Dates;

d) clearly identifies all steps and criteria required to achieve the Milestones and to provide the Services by the planned Service Delivery Date;

e) clearly outlines the roles and responsibilities of the Contractor during the Transition Period, including staffing requirements, Site access and deliverables; and

f) is produced using a software tool as specified or agreed by the Authority (acting reasonably).

Transition Plan Approval

5.5 The Contractor acknowledges and confirms that the Authority's approval of the Transition Plan shall not relieve the Contractor of its responsibility for complying with the terms of the Transition Plan and ensuring that the Services are provided by the planned Service Delivery Date and to the standards required by this Contract.

5.6 Prior to the formal submission of any update to the Transition Plan by the Contractor, the Authority is entitled to:

a) review any documentation produced by the Contractor in relation to the development of the updates to the Transition Plan, including:

(i) details of the Contractor's intended approach to the changes to the Transition Plan and its development;

(ii) copies of any drafts of the updated Transition Plan produced by the Contractor; and

(iii) any other work in progress in relation to the updated Transition Plan; and

b) require the Contractor to include any reasonable Authority changes or provisions in the updated Transition Plan.

5.7 Following receipt of an updated Transition Plan from the Contractor, the Authority shall:

a) review and comment on the updated Transition Plan as soon as reasonably practicable; and

b) notify the Contractor in writing that it approves or rejects the updated Transition Plan no later than ten (10) Business Days after the date on which the updated Transition Plan is first delivered to the Authority.

5.8 The Authority may be entitled to reject the updated Transition Plan if:

a) the Contractor's ability to perform its obligations under this Contract would (on the balance of probabilities) be adversely affected by the implementation of the updated Transition Plan;

b) the updated Transition Plan would (on the balance of probabilities) adversely affect any right or obligation of the Authority under this Contract or any Third Party Contractor, or its ability to enforce any such right or comply with any such obligation; or

c) any aspect of the updated Transition Plan would be:

(i) inconsistent with any Law, statutory duty, legal requirements or Regulations;

(ii) inconsistent with the Requirements, Method Statements and Service Delivery Plans;

(iii) inconsistent with any other provision of this Contract;

(iv) not in accordance with Good Industry Practice; or

(v) in the Authority's sole opinion, it is not practicable.

5.9 If the Authority rejects the updated Transition Plan:

a) the Authority shall inform the Contractor in writing of its reasons for its rejection; and

b) the Contractor shall then revise the Transition Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised Transition Plan to the Authority for the Authority's approval within ten (10) Business Days of the date of the Authority's notice of rejection. The provisions of paragraphs 5.4 to 5.7 of this Schedule 13 shall apply to any resubmitted Transition Plan. Either Party may refer any disputed matters for resolution to the Dispute Resolution Procedure.

5.10 If the Authority approves the updates to the Transition Plan, it shall replace the previous version of the Transition Plan from the date of the Authority's notice of approval. All versions of the Transition Plan shall be clearly identifiable, noted and recorded.

Transition Plan Changes.

5.11 Following the approval of the Transition Plan by the Authority:

a) the Contractor shall submit a revised Transition Plan to the Authority each time it wishes to amend or update the activities, deliverables, or dates set out in the Transition Plan;

b) the Authority is entitled to request a revised Transition Plan at any time by giving written notice to the Contractor of the revision required and the Contractor shall submit such draft revised Transition Plan to the Authority within ten (10) Business Days of receiving such request (or such longer period as the Parties may agree);

c) any such revised Transition Plan is to be submitted by the Contractor for approval in accordance with the procedure set out in paragraphs 5.4 to 5.8 of this Schedule 13; and

d) the Contractor's performance against the Transition Plan will be monitored at Transition Meetings.

5.12 Save for any amendments which are of a type identified and notified by the Authority (or the Authority's discretion) to the Contractor, the Contractor shall not make any amendments to the Transition Plan.

5.13 Any amendments to the Transition Plan shall not become effective until and unless they have been approved in writing by the Authority, which upon being approved, shall update the Transition Plan at Annex A to this Schedule 13.

6 Transition Period Meetings and Reports

Transition Meetings

6.1 The Authority and the Contractor shall hold Transition Meetings to fully review and discuss Transition activities, the first of which shall be the Contract initiation meeting.

6.2 In preparation for Transition Meetings, the current Transition Plan shall be provided by the Contractor to the Authority not less than five (5) Business Days in advance of each Transition Meeting

6.3 Such Transition Meetings shall:

a) be held at least [Frequency to be agreed]

b) be held at [Location to be agreed]

c) be attended by the Transition Project Manager and any other personnel reasonably specified by the Authority;

d) discuss and identify progress as against the Transition Plan and Milestones; and

e) monitor the achievement the objectives set out in the Transition Plan.

6.4 The frequency of the Transition Meetings may vary depending on progress made by the Contractor during the Mobilisation Period as required by the Transition Plan and Milestones.

6.5 The Contractor shall maintain minutes of the Transition Meetings and issue copies of such minutes, containing agreed actions, to the Authority as soon as reasonably practicable after the Transition Meetings.

6.6 A Transition Meeting will be held no later than ten (10) Business Days prior to the Service Delivery Date and will review in full the ability of the Contractor to provide the Services and implement and perform in accordance with the terms of this Contract as at the Service Delivery Date. The Contractor will provide the Authority with such information and reports as the Authority may reasonably require in advance of such meeting. This meeting will determine if the Service Delivery Date can be met. Where the Transition Meeting determines that the Contractor is not ready to meet the Service Delivery Date a new date will be planned, and a new meeting convened in accordance with this paragraph.

6.7 A Transition Meeting will be held no later than ten (10) Business Days prior to the Transition Complete Date and will review in full the delivery of the Services, governance and reporting in accordance with the terms of this Contract since the Service Delivery Date. The Contractor will provide the Authority with such information and reports as the Authority may reasonably require in advance of this meeting. This meeting will determine if the Transition Complete Date can be met. Where the Transition Meeting determines that the Contractor is not ready to meet the Transition Complete Date a new date will be planned, and a new meeting convened in accordance with this paragraph.

Transition Reports

6.8 The Contractor shall submit weekly Transition Progress Reports to the Authority to demonstrate progress in accordance with the Transition Plan as detailed within Schedule 22 (*Reports*). The Contractor shall notify the Authority of any actions, issues or concerns which, in its reasonable opinion, are required to be carried out or attended to before the Milestones can be achieved in accordance with the Transition Plan at the Contractor's earliest opportunity

6.9 The Contractor shall include the following in the Transition Progress Reports:

a) the progress of and outlook for the Contractor's activities in relation to the Transition Plan;

b) key items for discussion with the Authority, including any actions or decisions required by the Authority;

c) an assessment of overall progress against each Milestone and shown as either:

(i) red – the Milestone is unlikely to be achieved, or the Milestone has not been achieved; or

(ii) amber – the Milestone is at risk of not being achieved; or

(iii) green – the Milestone is on target to be achieved; or

(iv) blue – the Milestone has been achieved; and

(d) such other matters as the Authority may reasonably require.

7 Delay

7.1 If the Contractor becomes aware that there is, or there is reasonably likely to be, a delay to any matters specified in the Transition Plan and/or Milestones or if it appears to the Authority that there may be any such delay, the Contractor shall:

a) at their earliest opportunity notify the Authority with full details of the relevant delay, including the causes and implications;

b) comply with any reasonably requirements of the Authority in order to address the impact of the delay or anticipated delay; and

c) use all reasonable endeavours to eliminate or mitigate the consequences of any delay or anticipated delay.

7.2 If appropriate, the Contractor shall submit an updated Transition Plan in accordance with Section 5 of this Schedule 13 to reflect any identified or anticipated delay.

8 Personnel

8.1 The Contractor shall appoint a Transition Project Manager/Team in order to manage the effective implementation of the Transition Plan.

8.2 The Contractor shall confirm details in accordance with paragraph 8.3 of this Schedule 13 (including contact details) of the Transition Project Manager/Team to the Authority prior to the Commencement Date. The Contractor shall not remove or replace such Transition Project Manager/Team without the prior written consent of the Authority, not to be unreasonably withheld.

8.3 The Contractor shall provide the Authority with:

a) job descriptions setting out roles and responsibilities;

b) CVs;

8.4 The Contractor shall provide the Authority with an organisational chart for the personnel referred to in this paragraph 8.

9 Payment

9.1 The Contractor shall be entitled to receive a milestone payment for completion of all Milestones required to reach Service Delivery Date following the issue of the certificate of readiness in accordance with Clause 3.2(b) *(Conditions Precedent to Service Delivery Date)*.

9.2 The Contractor shall be entitled to receive (as part of the Monthly Service Charge) payment of the balance of the Transition Payment following issue of the Milestone Achievement Certificate indicating completion of all Transition Milestones and achievement of the Transition Complete Date.

10 Milestone Achievement

10.1 The Contractor shall ensure that:

a) each Milestone is achieved by the agreed Milestone Completion Date; and

b) all elements of the Service will be fully implemented and performed in accordance with the terms of this Contract by the Service Delivery Date.

10.2 The Contractor shall inform the Authority within ten (10) Business Days' from the date upon which the Contractor considers that a Milestone has been achieved.

10.3 Following notification pursuant to paragraph 10.2 of this Schedule 13, the Authority shall be entitled to:

a) carry out such inspections and/or tests, and

b) ask for such reports, records, statements or other information

as it may consider appropriate or necessary to be satisfied that the Milestone has been achieved.

10.4 NOT USED.

10.5 NOT USED.

10.6 The Authority shall issue a Milestone Achievement Certificate in respect of a given Milestone as soon as reasonably practicable following:

a) the receipt of all relevant Milestone Deliverables;

b) the successful testing of and demonstration to the Authority of the achievement or satisfaction of all Milestone Achievement acceptance criteria in accordance with paragraph 10.3 of this Schedule 13; and

c) performance by the Contractor, to the reasonable satisfaction of the Authority of any other tasks and/or tests identified in the Transition Plan as associated with that Milestone or as may otherwise be required (which may include the submission of deliverables, documents and/or information).

10.7 The grant of a Milestone Achievement Certificate shall not:

a) operate to transfer any risk that the Milestone has been achieved or completed, or

b) affect the Authority's right subsequently to reject any Milestone Deliverables or any Milestone to which a Milestone Achievement Certificate relates.

10.8 Notwithstanding the issue of a Milestone Achievement Certificate, the Contractor shall remain responsible for delivering the Services in accordance with the terms of this Contract.

10.9 If a Milestone is not achieved in accordance with the Transition Plan at Annex A to this Schedule 13, the Contractor shall immediately issue a report to the Authority setting out the reasons for the relevant Milestone not being achieved.

10.10 Subject to Paragraphs 10.7 and 10.8 of this Schedule 13, the Authority will issue the certificate of readiness as required by Clause 3.2b to this Contract when the Contractor has demonstrated (to the satisfaction of the Authority) that all elements of the Service will be fully implemented and performed in accordance with the terms of this Contract on and from the planned Service Delivery Date.

11 Spanning Contracts

11.1 The Parties acknowledge that there may be contracts which the Outgoing Contractor or the Authority have entered into with third parties, before the Commencement Date and which expire after the Commencement Date, and which may be relevant to the Services (Spanning Contracts).

11.2 As part of the smooth transition of services, it is agreed that it may be beneficial for the Contractor to continue with such Spanning Contracts after the Service Delivery Date. Accordingly, the Authority will:

a) identify all Spanning Contracts as soon as reasonably practicable (and to the extent not identified before the Commencement Date);

b) provide details of all Spanning Contracts to the Contractor, including copies of such Spanning Contracts; and

c) inform the Contractor of the terms on which it proposes that such Spanning Contracts should be continued by the Contractor (including any terms for payment, duration, and transfer).

11.3 As soon as reasonably practicable after notification of the Spanning Contracts pursuant to Paragraph 11.2, the Parties shall meet to discuss and agree (acting reasonably) the terms on which the Spanning Contracts should be continued by the Contractor.

11.4 Following agreement pursuant to Paragraph 11.3, the Parties will enter into such documents as may be required to enable the Contractor to continue the Spanning Contracts.

Annex A – Transition Plan

]

The Contractor's Solution (Service Delivery Plan 01 - Transition Plan) set out in Appendix 7 to Annex 1 of Schedule 2 (Requirements) shall apply.

Annex B to Schedule 13 – Contractor's Transition Timeline

The Contractor's Transition Timeline set out in the Contractor's Solution (Service Delivery Plan 01 - Transition Plan) in Appendix 7 to Annex 1 of Schedule 2 (Requirements) shall apply.

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Annex C – Milestones

#	Milestone	Milestone Detail	Milestone Deliverables	Milestone Achievement Criteria	Milestone Completion Date
1.1	M1 Transition Plan Sign Off		Plans available and Authority endorsed	BMCL Commercial arrangements concluded Endorsed plans and contracts signed	31-Mar-21
1.2	M2 Service Delivery Date (IOC)		SPOC, W&D services available, – GFA Register for services completed – Staff transfers undertaken – Information Services embedded and enabled – Babcock maintenance arrangements in place – Hard FM, White & Yellow Fleet Maintenance arrangements agreed Services integrated to Clyde Management Arrangements. – Milestone Completion Assessment.	Milestone Readiness Certificate issued by Authority	07-Jun-21
1.3	M3 Full Operational Capability (FOC)		Compliance with Governance – Performance reporting – KPI Reports submitted – Finalised Org structures in place – Updated GFA audit (Clause 37) issued to Authority.	KPI Adherence Performance metrics supplied and reviewed via governance forums Authority endorsement of stabilisation completion	13-Aug-21

Annex D – Milestone Achievement Certificate

To: Babcock Marine (Clyde) Limited

From: The Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland

Date: INSERT

Dear NAME

MILESTONE ACHIEVEMENT CERTIFICATE

We refer to the Contract (the "**Contract**") relating to the provision of the Service between The Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland (the **"Authority"**) and [name of Contractor] (the **"Contractor"**).

Capitalised terms used in this certificate have the meaning given to them in Schedule 1 (*Definitions)* of the Contract.

We confirm that for Milestone [number]:

all the Milestone Deliverables have been tested and/or successfully delivered; and

we are satisfied that all Milestone Achievement Criteria have been met or satisfied in accordance with the Transition Plan, the terms of Schedule 13 (*Transition Arrangements*) of the Contract and other provisions of the Contract.

This Milestone Achievement Certificate is granted pursuant to Paragraph 10.6 of Schedule 13 (*Transition Arrangements*) of the Contract.

[You may now issue an invoice in respect of the Milestone Payment associated with this Milestone in accordance with the provisions of paragraph 9 of Schedule 13 (*Transition Arrangements*) of the Contract].

Yours faithfully

NAME

POSITION

acting on behalf of The Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland

Schedule 14 – Supply Chain and Sub-Contracting

Part 1 of Schedule 14 - Interpretation and Definitions

1 **Definitions**

1.1 In this Schedule, the following terms shall have the following meanings:

Behavioural Principles means the requirements and principles set out in Paragraph 2.1 of Part 2 of this Schedule 14.

Defence Contracts Online means Defence Contracts Online accessible at https://www.contracts.mod.uk/ or any replacement thereof for the government procurement opportunities in the defence sector.

Regulations means the Defence and Security Public Contracts Regulations (SI 2011/1848) as amended, extended, re-enacted or replaced from time to time and 'Regulation' means any one of them or (as the case may be) any specified provision of the Regulations.

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

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

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

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

VCSE means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives.

Total Contract Price shall have the meaning given to it in Schedule 4 *(Pricing and Payment)*.

2 **Interpretation**

2.1 In this Schedule 14 the following interpretation shall apply:

Reference to the **value** of a sub-contract means the total of the price and other remuneration paid or reasonably expected to be paid under that sub-contract during its entire duration.

Part 2 of Schedule 14 - Supply Chain Management

1 Policies and Procedures

1.1 When considering how to perform the Services the Contractor shall give due consideration to:

a) the use of sub-contracting as a means to promote the Commercial Purpose; and

b) the Authority's view that competition in the supply chain is the preferred means of delivering value for money particularly in relation to prime contracting arrangements.

1.2 Where the Contractor places a Sub-Contract, they shall:

a) establish, maintain, and implement, policies and procedures to promote compliance with Paragraph 1.1 of Part 2 of this Schedule 14; and

b) from time to time, and at least once each year:

(i) assess its compliance with Paragraph 1.1 of Part 2 of this Schedule 14, and the extent to which the Behavioural Principles at paragraph 2 to this Part 2 have been given effect; and

(ii) make any changes to the policies and procedures referred to in Paragraph 1.2(a) of this Part 2 that are reasonably necessary to promote compliance with Paragraph 1.1 of this Part 2,

1.3 The Authority may from time to time, but in each case no more frequently than once per Contract Year request the Contractor to:

a) provide the Authority with access to and copies of the assessments, policies and procedures referred to in Paragraph 1.2 of this Part 2;

b) consult with the Authority regarding such assessments, policies and procedures.

1.4 The Contractor shall comply with any request by the Authority made in accordance with Paragraph 1.3 of this Part 2.

1.5 If the Contractor proposes to make a Sub-Contract which will involve the disclosure of Secret Matter to the Sub-Contractor, the Contractor shall:

a) submit for approval of the Authority the name of the proposed Sub-Contractor, a statement of the work to be carried out and any other details known to the Contractor which the Authority shall reasonably require;

b) incorporate into the Sub-Contract the terms of Annex B to Schedule 14 (*Supply Chain and Sub-Contracting*) and such secrecy and security obligations as the Authority shall direct;

c) inform the Authority immediately when he becomes aware of any breach by the Sub-Contractor of any secrecy or security obligation and, if requested to do so by the Authority, terminate the Sub-Contract.

2 Behavioural Principles

2.1 In managing its supply chain in relation to this Contract, the Contractor shall seek improvement of the quality, effectiveness and efficiency of supply chain relationships through good practice:

a) use supply chain management policies and procedures that encourage innovation, cost reduction and continuous improvement;

b) strive to maintain:

(i) healthy and robust competition (wherever possible); and

(ii) enduring supplier agreements within its supply chain in delivery of this Contract;

c) strive to deliver value to the Authority and to improve competitiveness (where there is competition) in line with recognised benchmarks of best practice;

d) implement effective risk identification and reduction processes at all stages of the supplier acquisition process, throughout the supply chain;

e) use appropriate risk-sharing arrangements;

f) ensure that the Authority is kept informed of the development and continued implementation of its obligations under this Schedule 14 (*Supply Chain and Sub Contracting);*

g) adopt strategies which encourage engagement of small and medium-sized enterprises; and

h) give consideration, as far as possible, to placing work with Sub-Contractors that are Supported Businesses.

2.2 The Contractor shall in its dealings with Sub-Contractors and potential Sub-Contractors:

a) develop and use, where appropriate, in supply chain relationships of:

(i) team working;

(ii) openness; and

(iii) common goals;

b) elimination of duplication and waste.

c) be fair, efficient, firm and courteous;

d) maintain the highest standards of honesty, integrity, impartiality and objectivity;

e) use sustainable procurement practices;

f) use reasonable endeavours to maximise value for money;

g) use fair competition within the supply chain where it is appropriate and reasonable to do so;

h) strive for the highest professional standards in the management of Sub Contracts;

i) respond promptly to suggestions, enquiries and complaints, seeking an open exchange of information on all technical and commercial issues based on mutual trust; and

j) establish and implement an effective system of identifying and handling actual and potential complaints by and disputes with suppliers, with the objective of resolving such complaints and disputes quickly by negotiation at the lowest level of delegation appropriate to the nature of the issue, and its effect on the parties, or otherwise escalating the matter within each party's management structure, before resorting to arbitration or other forms of dispute resolution.

3 **Industry Supply Chain**

3.1 If required by the Authority, the Contractor shall participate in any relevant consultation group (as agreed with the Contractor from time to time) involving the Authority and other industrial parties, the purpose of which is to review the shared activities in the maritime contractual landscape.

4 **Advertising Subcontracts**

4.1 Where the Contractor, after the Commencement Date, elects to advertise any element of the requirement with the view to;

a) appointing one or more Sub-Contractors, it shall (unless the Authority otherwise agrees in writing):

(i) promptly notify the Authority, if the Contractor intends to award a Sub-Contract;

(ii) publish an advertisement on (and provide all information required by) Defence Contracts Online in respect of each and any Sub-Contract opportunity;

(iii) within thirty (30) calendar days after the date on which such Sub-Contract shall have been awarded update the relevant advertisement on Defence Contracts Online in respect of such Sub-Contract identifying the name and registered office address details of the Sub-Contractor so appointed under such Sub-Contract and providing a description of the subject matter and the value (excluding VAT) of such Sub-Contract; and

(iv) provide reports to the Commercial Officer, if so requested, on the number, type and value of Sub-Contract opportunities placed on Defence Contracts Online and awarded in its supply chain during the Contract Period; and

(v) promote Defence Contracts Online to all Sub-Contractors and encourage those operators to register on it.

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

5 **SME Spend Data Collection**

5.1 The Contractor shall by 30 June (or such alternative date agreed between the parties (acting reasonably) in writing having regard for the end date of the Contractor's financial year)) of each year during the Contract Period at (subject to the operation of Paragraph 5.4 of Part 2 to this Schedule 14) no additional cost, charge and expense to the Authority provide to the Authority the information identified in DEFFORM 139 (as amended by the Authority from time to time and with each such amended version taking effect in accordance with Paragraph 5.4 of Part 2 to this Schedule 14), including:

a) the total Revenue on and prior to the Reporting Date in respect of the relevant financial year immediately prior to the Reporting Date;

b) the total value of Sub-Contract Revenue paid under the Contract in respect of the relevant financial year immediately prior to the Reporting Date; and

c) the total value of Sub-Contract Revenue paid to SMEs and VCSEs in respect of the relevant financial year immediately prior to the Reporting Date.

5.2 The Authority may issue from time to time issue guidance to the Contractor in relation to the completion of DEFFORM 139 (and the Contractor shall not unreasonably refuse to comply with any such guidance so issued when completing such DEFFORM and complying with this Condition).

5.3 The Authority may at any time during the Contract Period change the reporting template in DEFFORM 139, provided that the Authority shall have given a minimum of thirty (30) calendar days advance notice in writing of the scope and nature of such change or changes. The changes may include the data required or format of the report or both. The parties agree that no such change shall constitute a formal amendment of the Contract.

5.4 Where the Contractor is reasonably likely to incur additional costs arising from any change to the reporting template in DEFFORM 139 notified by the Authority to the Contractor pursuant to Paragraph 5.3 of Part 2 to this Schedule 14, the Contractor may notify the Authority to such effect providing at the same time a Contractor Change Proposal as defined in Schedule 30 (*Change Procedure*) including the information identified in the said Schedule. On and from the date on which the Authority receives such notification and proposal the parties shall operate, and comply with their respective obligations under Schedule 30 (*Change Procedure*) in relation to such change and for the purposes of this Condition all references to "Contractor Proposal" shall be construed as references to the "Contractor Change Proposal" and "Authority Notice of Change" shall be construed as references to the Authority's notice issued pursuant to Paragraph 5.3 of Part 2 to this Schedule 14.

5.5 The Contractor shall retain the information identified in Paragraph 5.1 of Part 2 to this Schedule and supporting records for a period of twenty-four (24) Months commencing on the date of their provision pursuant to Paragraph 5.1 of Part 2 to this Schedule 14.

Part 3 – Sub-Contracting Obligations

1 **Entry into and amendment of Sub-Contracts**

1.1 The Contractor may sub-contract its obligations under this Contract, subject to the requirements of this Schedule 14.

1.2 The Contractor shall remain responsible and liable to the Authority at all times for the performance of its obligations under this Contract and for the acts and omissions of its Sub-Contractors and suppliers of any tier in respect thereof, notwithstanding the terms of this Schedule 14 or any consent to or approval of the appointment of any Sub-Contractor or supplier, or the terms or amendment of any Sub-Contract.

1.3 The Contractor shall, as between itself and the Authority, be responsible for selecting all Sub-Contractors and for the pricing of, and payment under, each Sub-Contract save as expressly provided otherwise.

1.4 Where the Contractor chooses to enter into a Sub-Contract the Contractor must abide by the paragraph 2 to this Part 3.

1.5 The Contractor shall maintain and implement supply chain management and procurement policies and procedures that ensure that procurement is conducted in accordance with the following principles:

a) equal treatment of tenderers without undue discrimination;

b) transparency; and

c) proportionality.

2 **Supply Chain Payment Terms**

2.1 The Contractor shall ensure that all First Tier Sub-Contracts contain provisions that:

a) require that any amount that is required by that Sub-Contract to be paid by one party to it (the Paying Party) to another other party to it, such amount shall be paid by the Paying Party on or before the date (the Due Date) falling thirty (30) calendar days after the date of receipt by the paying party of:

(i) in the case of payments of contract price, an invoice; and

(ii) In the case of any other amount, a demand in writing from the other party.

b) require that the Paying Party shall only withhold payment of any amount invoiced in respect of contract price beyond the Due Date if and for so long as such amount is disputed in good faith for bona fide reasons (the Disputed Amount);

c) require that where an amount invoiced in respect of contract price is in part a Disputed Amount and in part not, the undisputed part shall be paid by the Due Date;

d) require that any party thereto (the **Sub-Contract Defaulting Party**) shall pay interest (after as well as before judgment, calculated on the basis of the actual number of days elapsed at the rate of statutory interest (as that term is defined in the Late Payment of Commercial Debts (Interest) Act 1998)), to the other party on any amount due from the Sub-Contract Defaulting Party to such other party which is not paid on the Due Date, for the period commencing on the first day after the Due Date and ending on (and including) the date of actual payment in full;

e) require that any invoices submitted by a Sub-Contractor:

(i) shall be considered and verified by the Contractor as soon as reasonably possible; and

(ii) deemed to be valid and undisputed to the extent the Contractor has not notified the Sub-Contractor that the invoiced amount is disputed within a reasonable time; and

f) conferring a right on the Contractor to permit the Authority to publish details of the Sub-Contractor's compliance or non-compliance with its obligation to pay undisputed invoices within the specified payment period.

2.2 The Contractor shall use all reasonable endeavours to ensure that each Lower Tier Sub-Contract contains provisions that have the same effect between the parties thereto (subject to necessary changes) as those provided for in Paragraph 3.1 of Part 3 to this Schedule 14.

3 **Supply Chain Flow Down**

3.1 Without prejudice to the express provisions elsewhere in this Contract requiring the Contractor to impose any contractual obligation on a Sub-Contractor, the Contractor shall ensure that each Sub-Contract contains provisions that impose on the Sub-Contractor obligations that are equivalent (subject to necessary changes) to the obligations of the Contractor in this Contract under the following Clauses:

a) Clause 12 (*Observance of Law and Regulations*);

b) Clause 58 (*Voluntary Termination by the Authority*);

c) Clause 60 (*Termination for Prolonged Force Majeure*);

d) Clause 62 (*Corrupt Gifts and Expenses*);

e) Part 22 (*Change*);

f) Clause 73 (*Transparency*); and

g) Clause 74 (*Data Protection*).

3.2 Where under any provision of this Contract the Contractor is required to include a provision in a Sub-Contract that confers or purports to confer a right on the Authority, the Contractor shall ensure that such Sub-Contract shall also include a provision that expressly refers to that right and permits the Authority to enforce the same pursuant to the Contracts (Rights of Third Parties) Act 1999.

3.3 The Sub-Contractor shall:

a) consider and verify any invoices submitted to it by a Sub-Contractor as soon as reasonably possible; and

b) pay any amount of contract price that is required to be paid by it to a Sub-Contractor under a Sub-Contract on or before the date falling thirty (30) calendar days after the date of receipt by it of an invoice for such amount.

3.4 The Sub-Contractor shall:

a) provide information about the extent to which it has complied with Paragraph 3.3 of Part 3 to this Schedule 14 (invoice by invoice, and broken down by quarter and Sub-Contractor); and

b) permit the Authority to audit its compliance with Paragraph 3.3 of Part 3 to this Schedule 14.

3.5 Notwithstanding any provisions of Clause 69 (*Confidentiality and Freedom of Information*) if the Sub-Contractor notifies the Authority that the Sub-Contractor has failed to pay an undisputed Sub-Contractor's invoice within thirty (30) calendar days of receipt, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late payment or non-payment (including on Government websites and in the press).

Annex A to Schedule 14 – Not used

Annex B to Schedule 14 - Security Measures Provisions to be included in Relevant Sub-Contracts

1 Definition

1.1 In this Annex B to Schedule 14, the following terms shall have the following meanings:

Employee shall include any person who is an employee or director of the Sub-Contractor or who occupies the position of a director of the Sub-Contractor, by whatever title given.

Secret Matter means any matter connected with the Contract, or its performance which the Contractor informs the Sub-Contractor in writing has been designated by the Authority as 'TOP SECRET' or 'SECRET', and shall include any information concerning the content of such matter and anything which contains or may reveal that matter.

Security Policy Framework means the HMG Security Policy Framework relating to the Government Security Classification policy as published by the Cabinet Office.

2 The Official Secrets Acts

2.1 The Sub-Contractor shall:

a) take all reasonable steps to ensure that all Employees engaged on any work in connection with the Contract have notice that the Official Secrets Acts 1911-1989 apply to them and will continue so to apply after the completion or termination of the Contract; and

b) if directed by the Contractor or the Authority, ensure that any Employee shall sign a statement acknowledging that, both during the term of the Contract and after its completion or termination, he is bound by the Official Secrets Acts 1911-1989 (and where applicable any other legislation).

3 Security Measures

3.1 Unless he has the written authorisation of the Authority to do otherwise, neither the Sub-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) who does not hold the appropriate authority for access to the protected matter;

c) in respect of whom the Authority has notified the Sub-Contractor in writing that the Secret Matter shall not be disclosed to or acquired by that person;

d) who is not an Employee of the Sub-Contractor;

e) who is an Employee of the Sub-Contractor and has no need to know the information for the proper performance of the Contract.

3.2 Unless he has the written permission of the Authority to do otherwise, the Sub-Contractor and his Employees shall, both before and after the completion or termination of the Contract, take all reasonable steps to ensure that:

a) no photograph of, or pertaining to, any Secret Matter shall be taken and no copy of or extract from any Secret Matter shall be made except to the extent necessary for the proper performance of the Contract;

b) any Secret Matter is at all times strictly safeguarded in accordance with the Security Policy Framework (as amended from time to time) and upon request, is delivered up to the Authority who shall be entitled to retain it.

3.3 A decision of the Authority on the question of whether the Sub-Contractor has taken or is taking reasonable steps as required by this Paragraph, shall be final and conclusive.

3.4 The Sub-Contractor shall:

a) provide to the Contractor:

(i) upon request, such records giving particulars of those Employees who have had at any time, access to any Secret Matter that is required to be kept in accordance with sub-clause 4(b);

(ii) upon request, such information as the Authority may from time to time require so as to be satisfied that the Sub-Contractor and his Employees are complying with his obligations under this Condition, including the measures taken or proposed by the Sub-Contractor so as to comply with his obligations and to prevent any breach of them;

(iii) full particulars of any failure by the Sub-Contractor and his Employees to comply with any obligations relating to Secret Matter arising under this Condition immediately upon such failure becoming apparent;

b) ensure that, for the purpose of checking the Sub-Contractor's compliance with the obligation in sub-clause 4(b), a representative of the Contractor or the Authority shall be entitled at any time to enter and inspect any premises used by the Sub-Contractor which are in any way connected with the Contract and inspect any document or thing in any such premises, which is being used or made for the purposes of the Contract. Such representative shall be entitled to all such information as he may reasonably require.

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

4 **Sub-Contracts**

4.1 If the Sub-Contractor proposes to make a Sub-Contract which will involve the disclosure of Secret Matter to the sub-contractor, the Sub-Contractor shall:

a) submit for approval of the Authority the name of the proposed Sub-Contractor, a statement of the work to be carried out and any other details known to the Sub-Contractor which the Authority shall reasonably require;

b) incorporate into the Sub-Contract the terms of this Condition and such secrecy and security obligations as the Authority shall direct;

c) inform the Authority immediately he becomes aware of any breach by the Sub-Contractor of any secrecy or security obligation and, if requested to do so by the Authority, terminate the Contract.

5 **Termination**

5.1 The Contractor shall be entitled to terminate the Contract immediately if:

a) the Sub-Contractor is in breach of any obligation under this Condition;

b) the Sub-Contractor is in breach of any secrecy or security obligation imposed by any other contract with the Crown; or

c) where the Authority consider the circumstances of the breach jeopardise the secrecy or security of the Secret Matter and notifies its contractor accordingly.

Schedule 15 – Government Furnished Assets (GFA)

Part 1 of Schedule 15- Definitions

1 **Interpretation**

1.1 In this Schedule, the following terms shall have the following meanings:

Authority Managed Material means NATO Stock Numbers (NSNs) that are procured by the MOD Project/Delivery Teams.

Customer Liaison Service means MOD Personnel in HMNB Clyde who receive, vet, approve and input stores and fuel demands from the FLEET (HM Ships & RFA's) Royal Navy and Royal Marine establishments, Army, RAF and OGD (Other Government Departments) ensuring they are processed within Supply Chain Pipeline Times (SCPT)/local timescales.

Defence Mail Centre or **DMC** means the provision of an internal mail distribution service.

EU means the European Union

Fuel, Oil & Lubricants means fuels, oils and lubricants for the propulsion and lubrication of the White and Yellow Fleet vehicles.

Functional Machinery means any machinery used in connection with the provision of the Services and normally contained within or outside the Leased and Licensed Areas and are identified in accordance with Paragraph 2 of this Schedule 15 and accessories, tools, fittings and other equipment having a value equal to or greater than £5,000.

Government Furnished Equipment (GFE) means equipment that is furnished by the Authority.

Government Furnished Facilities (GFF) means hard infrastructure, such as buildings or test sites or facilities.

Government Furnished Information (GFI) means information that is furnished by the Authority.

Grey Fleet means Authority owned and maintained trailers located at the Service Delivery Location.

Issued Property means items of materiel provided by MOD to a contractor, for a particular purpose and specified period under a specific GFE scheme, with or without charge, which, unless embodied in another asset, are normally subject to physical return to MOD in the same condition as issued, fair wear and tear excepted. The items can be fixed, capital spare or consumable in nature and can either be embodied in other assets or remain in a singular state throughout the period of the contract.

Non-Scheduled Plant means all accessories, tools, fittings and other equipment having a value not greater than £5,000 which is provided by the Authority for the provision of the Services and are identified in accordance with this Schedule 15.

Planned Work means Design Services and Programme Management (DSPM) Work about which there is sufficient certainty as regards its timing, scope, cost and the priority given to carrying it out in a given DSPM Year to enable the Parties to include in the DSPM Annual Plan.

Yellow Fleet means vehicles provided under the Authority's various Yellow Fleet contracts and generally refers to vehicles classified as "plant".

Part 2 of Schedule 15 - GFA Provision

1 **Provision of Assets**

1.1 The Authority shall provide to the Contractor the following information, material and services (collectively referred to as GFA) to support the Contractor in the delivery of the Services. All other information, material and services required by the Contractor for the performance of its obligations under this Contract and which is not expressly referred to as GFA shall be for the Contractor to provide.

1.2 All GFA shall remain the property of the Authority. It shall be used in the execution of the Contract and for no other purpose, without the prior approval in writing of the Authority. GFA consists of the following:

a) GFE;

b) GFF;

c) GFI; and

d) other services as specified in paragraph 2 of Part 2 of this Schedule 15.

1.3 The following assets shall constitute GFE for the purposes of this Contract:

a) all assets, listed on the Asset Register at annex A to this Schedule 15;

b) items as provided by the Authority to the Contractor on or before the Service Delivery Date or as may be provided subsequently from time to time, such as:

(i) telecoms – fixed (land line) telephone handsets;

(ii) hardware for the purpose of accessing the logistics information systems;

(iii) Fuel, Oil & Lubricants;

(iv) defence accommodation stores;

(v) to the extent not included on the Asset Register, Special Jigs, Tooling and Test Equipment;

(vi) to the extent not recorded on the Asset Register, Functional Machinery;

(vii) to the extent not included on the Asset Register, Personal Protective Equipment (PPE), Non-Scheduled Plant and consumables available from naval stores;

(viii) such items to be added to the Asset Register where they are to be utilised during the Contract Period.

1.4 The provision of GFF is as determined in Schedule 11 *(List of Leased and Licensed Areas)* of this Contract.

1.5 The provision of GFI is as determined in Schedule 19 *(Referenced Documents)* of this Contract.

2 **Provision of Services**

2.1 The services determined at paragraph 2 to this Part 2 to this Schedule shall be provided by the Authority at the Authority's cost and shall constitute GFA. Unless otherwise stated, services are to be provided at all Service Delivery Locations.

Vehicles

2.2 In regard to vehicle assets provided to the Contractor, the Authority shall provide the following services:

a) For the White Fleet, Yellow Fleet and Grey Fleet vehicles appropriate to the task, the Authority shall ensure that vehicles are serviceable in compliance with current Law and Regulations for the purpose of performing the Services.

b) information that the Contractor requires to meet its obligations as a licensed transport operator;

c) fuelling point on base for use in vehicles supplied by the Authority operated by the Contractor for the purposes of delivering the Services under this Contract.

d) the interface between the Contractor and the White Fleet, Yellow Fleet and Grey Fleet providers on matters of day to day business shall be through the Authority Representative.

Mail Service

2.3 The Authority shall provide an internal mail distribution service. The Authority shall be responsible for the provision of the Defence Mail Centre (DMC). The DMC is the receipt point for incoming Authority mail. The DMC will continue to sort and deliver incoming Authority mail and collect outgoing Authority mail to and from recognised drop off points within the Leased and Licensed Areas in accordance with the level of service that applies at Commencement Date unless the DMC, the Authority and the Contractor together agree otherwise**.**

IT and IS Services including Logistics IS

2.4 Where the Contractor is granted access to any Authority information systems, the Contractor shall sign the relevant Security Operating Procedures (SyOps) agreement and shall agree to have appropriate Contractor Personnel briefed on the operation of the relevant system.

2.5 The Authority shall provide (either in full or by extract) those information systems listed in Annex B to Schedule 15 The Authority shall provide the following IT services for those systems where necessary to enable the Contractor to discharge its obligations under this Contract:

a) maintenance, support and publication of all current and future Authority information systems;

b) software user licences to allow the Contractor to utilise the Authority's information systems.

c) access (including IDs and passwords) where appropriate and agreed between the Parties to Authority supported systems as described in (a) above; and

d) provide all necessary training reasonably required by the Contractor personnel to become users and operators of Authority information systems;

2.6 The Authority will provide the appropriate number of terminals and lines in support of the systems set out in Annex B to this Schedule 15 to enable the Contractor to perform the Services. Where it can be demonstrated by the Contractor that there is a need to provide further terminals, the Authority, acting reasonably, will consider any request for such further terminals.

2.7 The Authority will maintain its IT infrastructure to ensure that an appropriate level of redundancy and availability is maintained on all routes required by the Contractor.

2.8 The Authority will provide, on request by the Contractor, data from the Log IS (as defined in Schedule 2 *(Requirements)*) in support of Schedule 5 *(Performance Management and Measurement)* to the Contractor where this is generated centrally by the Authority for its own purposes.

2.9 The Authority will provide telecommunications support and network access to the Leased and Licensed Areas.

2.10 The Authority will provide consumables for warehouse Log IS and IT assets that are GFA. This will be provided by the Authority at no cost to the Contractor.

Customer Liaison Service and Single Point of Contact

2.11 The Authority shall:

a) be responsible for providing the local Customer Liaison Service (CLS). In so doing, the Authority will:

(i) notify the Contractor of high and low priority customer demands and any changes to such priorities; and

(ii) co-ordinate and agree visits and training opportunities by external authorities; and procure items designated as local supply items;

b) provide a Single Point Of Contact (SPOC) whereby the Contractor can request access to services that are included as an Authority Responsibility in the Requirements Table within Part 2 to Schedule 2 *(Requirements)*.

2.12 For the avoidance of doubt, the Contractor is required to provide a point of contact, in accordance with Requirement CWD 2.18 at part 2 to Schedule 2 *(Requirements)*, to be available to respond to calls and / or requests from the CLS or the SPOC.

Materiel Accounting Services

2.13 For all Authority Managed Materiel in respect to which the Contractor is required to provide Services:

a) following the completion of actions required by all relevant regulations and directions of the Authority, authorise write-off and write-down of material lost, damaged or otherwise not properly accounted for;

b) for the sole purpose of disposing of Authority Managed Materiel under this Contract, be responsible for procuring the services provided by third party contractors which it already procures as at the Commencement Date; and

c) the Authority will co-ordinate the Annual Report of Materiel Accounts (ARMA) drawing upon performance data provided by the Contractor.

Freight Forwarding Service

2.14 The Authority shall for the sole purpose of delivering the Services:

a) make available to the Contractor

(i) access to the Authority's Freight Distribution Service (FDS) operated by the Defence Support Chain Operations and Movements (DSCOM)

(ii) access to the Authority's National Freight Distribution Service (NFD) operated by Team Leidos; and/or

b) arrange for freight distribution be provided by commercial freight contractors;

c) provide the following material:

(i) NATO standard pallets;

(ii) Packaging labels; and

(iii) other packaging material as required by Schedule 2 *(Requirements)*;

Utilities

2.15 The Authority shall provide, as required, the following utility services:

a) water supply;

b) mains electricity supply;

c) mains natural gas supply;

d) sewerage services;

e) oil fuel;

Other Services

2.16 The Authority shall provide office cleaning and waste collection services, and maintenance of the buildings provided as GFF.

Annex A to Schedule 15 - Asset Register

Asset Register

The asset Register is provided as an Excel Workbook as an attachment to this Contract.

{ EMBED Excel.Sheet.12 **}**

Annex B to Schedule 15 - IT systems

AFED - Available Force Element Day data
BODMS - Base Ordnance Depot Management System
CLASP - Comprehensive Logistics Automated Support Programme
CRISP - Comprehensive RNSTS Inventory Systems Project
CSIS - Codification Support Information System
DEFREP - Defect Reports
DStan - Defence Standards
ELMS - EList Management System
Griffin Database - Combat System equipment interface database.
INDEPOL - Information Defence & Police (historical records of CRISP)
IWS - Invar Warehousing System
MATDEM - Material Demand
MJDI - Management of the Joint Deployed Inventory
MIS - Management Information System
MOSS - Microsoft Office SharePoint Services
Navy Stores Catalogue (BR.320)
ODMS - Operational Defect Management System
OSP - Optimised Support Programme - dashboard of equipment availability metrics
PIE - Datum Pack Master
POEMS - Platform Orientated Management Systems
POSMS - Platform Orientated Safety Management System
RCM - Reliability Centred Maintenance Toolkit
RIDELS - RN Invoicing and Delivery System
SDD - Submarine Definition Database
SIO - Software Issuing Organisation Database – Database of authorised ship software changes
SOP - Ships Operating Procedure
SDD - Submarine Definition Database
SSDD - Surface Ship Definition Database Information System
SSEDR - Surface Ship Engineering Data Record tool
SSMG – OpDocs - Submarine Operating Documentation
SSMG - SDD - Submarine Definition Database
SSMG - SEDR - Submarine Equipment Data Records
SSMG - (Submarine Support Management Group) Applications
SSMP - Submarine Support Management Plan
SS3 - Stores System 3
Submarine Support Enterprise Workflow
TDOL - Technical Documentation Online
TLMP - Through Life Management Plan
Unicorn/Trafalgar Gate Display Screens - Screens and associated software used at Unicorn/Trafalgar Gates
VITAL - Visibility in Transit and Asset Logging
WITS - Warehouse IT System
WMS - Warehouse Management System

Schedule 16 – Collaboration

Part 1 – Behaviours and Principles

1 **General**

1.1 Collaboration is the process of two or more people or organisations working together to complete a task or achieve a goal. It is a sense of shared purpose and direction; a cooperative 'best for enterprise' approach including collaboration with the Authority and other suppliers.

1.2 The Parties have created a set of Collaboration Principles to: (i) inform Service delivery; (ii) govern the interaction between the Authority and the Contractor; (iii) ensure that at all times there is a best for the Maritime Support Enterprise approach including in relation to the Contractor's interaction with the Service Delivery Location Suppliers; and (iv) deliver the FMSP Strategic Benefits.

2 **Collaboration Principles**

2.1 The Parties shall*:*

a) work as one team regardless of employer;

b) be flexible in approach;

c) operate in the best interests of the Maritime Support Enterprise;

d) seek opportunities to continuously improve;

e) work together to ensure there is a sense of equitable 'give and take';

f) support their personnel, and each other, to ensure delivery of the best performance at the most affordable price;

g) enable and empower their personnel to facilitate decision making at the right level;

h) be open, honest and transparent with Third Party FMSP Contactors and the Authority, including sharing all relevant information;

i) work in a collaborative, principled and proactive way to resolve issues and problems at the lowest level before seeking to escalate;

j) demonstrate a commitment for the work they are engaged in;

k) fostering a positive relationship between the Parties; and

l) ensure that, at all times, they have personnel readily available with the correct qualifications and experience to perform their obligations through training and succession planning.

collectively the "**Collaboration Principles**".

3 **Collaboration Behaviours**

In order to adhere to the Collaboration Principles the Parties shall demonstrate the undernoted behaviours:

a) ensure that their personnel are fully aware of the Collaboration Principles and adhere to them in everything they do;

b) ensure that their sub-contractors comply with the Collaboration Principles by including them in their agreements;

c) proactively engage and participate in all Naval Base coordinated planning and delivery activity, by highlighting potential issues that may affect delivery of the Service or the services of the Service Delivery Location Suppliers;

d) consider operational improvements that are "best for Maritime Support Enterprise" and raise them at the appropriate forum; and

e) ensure that their personnel wear identifying items (lanyards etc.) provided by the Authority that display the naval base common brand to build and sustain a 'one team' ethos.

collectively the “**Collaboration Behaviours**”.

Part 2 – Integration

1 **Interface and Integration**

1.1 The Parties agree and acknowledge that there will be multiple suppliers and contractors working at the Naval Base and that interdependencies exist among them.

1.2 The Contractor confirms that it is aware of the interdependencies in relation to its Service provision and identified in the Touchpoint Matrix attached as Appendix 1 to this Schedule 16 *(Collaboration)*.

1.3 In the event of any conflict between the provisions of this Part 2 of Schedule 16 (*Integration*) and Schedules 2 (*Requirements*) and 3 (*Lot Specific Conditions)* the provisions of Schedules 2 and 3 shall take precedence.

1.4 The Contractor undertakes to collaborate and work with the other contractors and suppliers to ensure that it does not have a negative impact on the delivery of their services.

1.5 The Contractor shall ensure attendance of appropriately qualified and empowered representative(s) at all mandated Naval Base governance meetings including (but not limited to) those listed in Schedule 6 *(Governance)* of this document.

1.6 The Contractor shall proactively engage and participate in all Naval Base coordinated planning and delivery activity, highlighting potential issues that may affect delivery of the Services or the services of Service Delivery Location Suppliers.

1.7 The Contractor undertakes to deliver the Integration Plan.

Part 3 of Schedule 16 – FMSP Incentive Fee

1 Definitions[5]

1.1 In addition to those definitions contained in Schedule 1 (*Definitions*) the following words and expressions shall have the meanings set respectively against them:

FMSP Incentive Fee means the payment made to the Contractor for achieving the performance level required under each of the Incentive Fee Measures.

Incentive Fee Measures means the measures identified at paragraph 2.2 below, and being:

(a) the Relationship Measures, detailed at Appendix 2,

(b) delivery of the Service Delivery Plan SDP02 - Integration Plan, detailed at Appendix 3; and

(c) management of cross Lot risks, detailed at Appendix 4.

Lot means each Lot listed in the definition of FMSP Contract.

2 General

2.1 The Authority shall evaluate the Contractor's performance against the Incentive Fee Measures for a full Contract Year in order to determine whether the Incentive Fee Measures have been met and the FMSP Incentive Fee shall be paid. The Contractor must score a Pass on all three of the Incentive Fee Measures to be eligible for the FMSP Incentive Fee.

2.2 The scoring methodology for each Incentive Fee Measure is:

Incentive Fee Measure	Scoring methodology to achieve a Pass
1. Relationship Measurement Matrix	Four categories scored 'Green' including mandatory measure (5) and no Reds
2. Delivery of the Service Delivery Plan SDP02 - Integration Plan	All milestones, commitments and obligations met for the relevant Contract Year in accordance with the Contractor's Integration Plan
3. Management of cross Lot risks	Contractor has demonstrated effective identification, reporting and management of risk at Contractor level and at a cross Lot level where a risk impacts on another party/ other parties.

2.3 Immediately following the Lot Delivery Board that is held in each quarter of the Contract Year, the Authority will provide the Contractor with comments on the Contractor's performance against each of the Incentive Fee Measures for that period. This is intended to assist the Contractor in complying with such Incentive Fee Measures and identifying any area(s) where there may be concerns over performance. No scores will be awarded at such quarterly meetings.

2.4 The Contractor and the Authority shall meet during the first [10] Business Days of the first month of each Contract Year (other than the first Contract Year) (the **Integration and Collaboration Annual Review**). At such meeting, the Authority shall:

a) inform the Contractor of the scores it has awarded for each Incentive Fee Measure for the immediately preceding Contract Year;

b) provide the Contractor with a copy of the scoring template (in the form set out in Table 2 in Appendix 2); and

c) discuss the Contractor's compliance with the terms of this Schedule 16.

[5] Definitions to be added to front end of Schedule 16.

2.5 In advance of the Integration and Collaboration Annual Review, the Authority shall (with reference to the scoring template and reports from the quarterly Lot Deliver Board meetings) propose, to the Naval Base Commander, the Incentive Fee Measure scores for the Contractor for the immediately preceding Contract Year. The Naval Base Commander shall then either accept such proposed scores or, at his absolute discretion, adjust the scores in determining whether the Incentive Fee Measures have been met and the Contractor has been awarded a Pass (or otherwise) for each Incentive Fee Measure.

2.6 Where the Contractor has been awarded a Pass for each Incentive Fee Measure, the Authority shall make payment of the FMSP Incentive Fee in the Monthly Service Charge immediately following such award.

2.7 This Part 3 of Schedule 16 is intended to incentivise collaborative behaviours and integration. Nothing in Part 3 of Schedule 16 shall relieve or excuse the Contractor from performance of its obligations under any part of the Contract.

2.8 This Part 3 of Schedule 16 is not subject to the Dispute Resolution Procedure and all matters are to be determined in the absolute discretion of the Authority.

Appendix 1 to Schedule 16 – Interface Matrix

1 **Customer Touchpoints**

1.1 The table below illustrates the various customer touchpoints for the respective W&D outputs. For avoidance of doubt it only shows the touchpoints / interfaces with the other FMSP Lots at HMNB Clyde and is provided for information in support of this Schedule 16.

1.2 Where an Output does not have a direct customer touchpoint it is excluded from the table.

Schedule 2 Reference	Output from Schedule 2 to this Contract	Clyde Soft FM (Lot 6)	Clyde Hard FM (Lot 4)	Clyde Ships Eng (Lot 2)	Clyde Subs Eng (Lot 3)	Comments
CWD 1.1	The Contractor shall conduct investigations into discrepancies and non-conformances			x	x	You may require the assistance of Ships Eng if you have any discrepancies requiring SME knowledge of an item.
CWD 1.2	The Contractor may be called upon to support services in relation to management, planning and administration support as requested by the Authority.					See Governance Schedule for touchpoints across the Naval Base.
CWD 1.3	Act in accordance with all relevant laws and regulations and Site Policies.					
CWD 1.4	The Contractor must respond to safety notices and put the appropriate corrective measures in place in order to bring themselves back into compliant operations.	x	x	x	x	Safety notices can only come through the Naval Base Commander, but may require cross lot cooperation to implement.
CWD 1.5	The Contractor shall keep all GFA issued to them in a serviceable condition.	x	x			You will need to collaborate with Hard FM for repair and maintenance of GFF and Soft FM for White Fleet and Yellow Fleet
CWD 1.6	Provide Exit Services at the end of this contract					
CWD 2.1	The Contractor shall provide a service for the receiving of materiel. (Goods In).	x	x	x	x	You may receive items from other lots for onward distribution.
CWD 2.2	Receipts to Stock					
CWD 2.3	Picking for Distribution and OPDEFS					
CWD 2.4	Cross Docking					

Schedule 2 Reference	Output from Schedule 2 to this Contract	Clyde Soft FM (Lot 6)	Clyde Hard FM (Lot 4)	Clyde Ships Eng (Lot 2)	Clyde Subs Eng (Lot 3)	Comments
CWD 2.5	Consignment Packing Service					
CWD 2.6	The Contractor shall provide an HMNB Clyde freight distribution service.	x	x	x	x	Direct customer touchpoint, but not limited to the other Lots
CWD 2.7	Off Base Freight Distribution - Collection and Scheduling					
CWD 2.8	Consignment Loading and Transfer					
CWD 2.9	The Contractor shall provide a receiving service for Items returned from Authorised Users (Returns Service) for Authority-owned materiel.			x	x	Items can be returned from any Customer on the Naval Base
CWD 2.10	Packing and Packaging Service					
CWD 2.11	The Contractor shall liaise with the Authority for the delivery of consignments to On Base, including direct delivery to On Base, but outside of the L2 Complex.			x	x	Some coordination may be required to facilitate the delivery.
CWD 2.12	The Contractor shall ensure that all warehousing Mechanical Handling Equipment (MHE) and storage media is appropriate with the volumes, requirements and standards for storage of materiel held	x	x			You will need to collaborate with Hard FM for repair and maintenance of GFF and Soft FM for Yellow Fleet
CWD 2.13	Materiel Accounting					
CWD 2.14	Stored items management					
CWD 2.15	Obsolete Stock Management (Disposal Preparation)					
CWD 2.16	Use of Log IS					
CWD 2.17	On Site Technical Services					
CWD 2.18	The Contractor shall provide an integration point for the reception of Service Requests through the SPOC.	x	x	x	x	Service request can come from or to any of the other lots.

Schedule 2 Reference	Output from Schedule 2 to this Contract	Clyde Soft FM (Lot 6)	Clyde Hard FM (Lot 4)	Clyde Ships Eng (Lot 2)	Clyde Subs Eng (Lot 3)	Comments
CWD 2.19	Capacity Planning					
CWD 4.1	The Contractor shall work with the Authority to ensure any Authority planned IT updates or upgrades can be implemented with minimum disruption to the Contractor's Service.		x			May involve collaborating and working with other Lots
CWD 4.2	The Contractor shall work with the Authority to support the optimisation of the number of storage buildings utilised by the Service.	x	x	x	x	May involve collaborating and working with other Lots
CWD 4.3	The Contractor shall work with the Authority to reconfigure the managed facilities to support the intake planning, receipt, storage and distribution of additional or different line items or the removal of existing line items whether permanent or based on operational requirements.	x	x	x	x	May involve collaborating and working with other Lots

Appendix 2 to Schedule 16 - Relationship Measurement Matrix

1. The Authority will measure the Contractor's behavioural and collaborative performance using the Relationship Measurement Matrix as set out in Table 1 below.

2. The level of performance shall be assessed using a Red, Amber, Green (RAG) methodology.

3. The Contractor will be assessed, by the Authority, using six behavioural categories –

   a) Decision Making.

   b) Communication.

   c) Leadership & Management.

   d) External Interfaces.

   e) Commercial Behaviours & Alignment.

   f) Flexibility.

4. The scoring criteria is divided into three categories:

   a) 'Help Needed' - which scores 'Red'

   b) 'Good/Satisfactory' - which scores 'Amber' and

   c) 'Very Good/Excellent' which scores - 'Green'; on the RAG Status.

5. A score of 'Very Good/Excellent' is representative of the Contractor achieving the standard of collaboration and behavioural performance the Authority requires at the Naval Base.

6. The Contractor must achieve a minimum of four categories as "Green" RAG status with no "Red" scores and which must include the single mandatory measure (5 - Commercial Behaviours & Alignment) in order to "pass" this FMSP Incentive Measure.

Relationship Measures	**Help Needed** Team need support from senior management	**Good/Satisfactory Performance** is good/satisfactory but could be improved	**Very Good/Excellent** Teams to specify best practice to be shared.
1) Decision Making; Consider the approach to decision making and the way in which the Contractor achieves resolution.	Contractor takes decisions in a silo or fails to make decisions. No communication involved.	Issues are spotted early and explored with relevant parties. Decisions are reached based on a deep understanding of other contractors and the objectives of the FMSP Programme.	Strategic decisions are made with relevant parties with long term mutual benefit in mind; and demonstrate a commitment for the work they are engaged in; and fostering a positive relationship between the Parties; and work together to ensure there is a sense of equitable 'give and take'; and operate in the best interests of the Maritime Support Enterprise ; and support their personnel, and each other, to ensure delivery of the best performance at the most affordable price; enable and empower their personnel to facilitate timely decision making at the right level; and which has made a positive contribution to the enterprise to reduce cross lot risk , Naval Base Outcomes and Strategic objectives.
2) Communication; Consider what communication channels are used, is feedback received and acted on? Is communication open and consistent?	Contractor communication is limited and infrequent with little engagement or awareness of its purpose. Communication is largely limited to formal meetings. Core messages are unclear, inconsistent and there are often surprises.	Formal and informal communication ensures wide engagement. Common communication channels are used and elicit feedback.	Communications are clear and concise messages, use all appropriate channels, receive and act on feedback. There is a culture of open, honest and transparent with other contractors and the Authority, including sharing all relevant information; and which has made a positive contribution to the enterprise to reduce cross lot risk, Naval Base Outcomes and Strategic objectives.

Relationship Measures	**Help Needed** Team need support from senior management	**Good/Satisfactory Performance** is good/satisfactory but could be improved	**Very Good/Excellent** Teams to specify best practice to be shared.
3) Leadership and Management; Consider leaders approach to change and their method towards delivering significant benefits. Consider deployment of skills and resources	Leaders focus little or no effort on challenging collective/joint performance. Resource issues are not addressed. No evidence of empowerment.	Leaders are working effectively across boundaries and are responsive to the needs of the project. Leaders consistently model desired behaviours and communicate them to their teams. Resources deployed to reasonable effect Joint working is evident in a number of areas	Leaders provide vision and motivation and drive the team to deliver success outcomes, including challenging policy and procedures. The team are working jointly and making the best use of resources across boundaries. The Contractor ensures its teams are empowered ;and ensure that, at all times, they have personnel readily available with the correct qualifications and experience to perform their obligations through training and succession planning; and work in a collaborative, principled and proactive way to resolve issues and problems at the lowest level before seeking to escalate; and which has made a positive contribution to the enterprise to reduce cross lot risk , Naval Base Outcomes and Strategic objectives.
4) External Interfaces; Consider the relationship outside of the joint team with respect to suppliers, stakeholders and portfolio management teams	Little/no evidence of supply chain control. Key suppliers are rarely engaged at the optimum time. Limited visibility of supply chain issues. Supply chain has no/limited understanding of overall requirement. Little awareness of identity, role and impact of stakeholders. Stakeholders rarely engaged.	Relevant suppliers driven to appreciate the needs of the customer. Good visibility of supply chain issues. Clear processes in place for supplier development. Regular engagement with most stakeholders allowing proactive action on requirements.	All key suppliers have full understanding of customer's needs. Excellent visibility down the supply chain. Supplier strategies in place and being implemented. Key suppliers/stakeholders are always engaged at the optimum time; Full awareness of stakeholders needs and full buy in to achieve goal; and which has made a positive contribution to the enterprise to reduce cross lot risk, Naval Base Outcomes and Strategic objectives.

Relationship Measures	**Help Needed** Team need support from senior management	**Good/Satisfactory Performance** is good/satisfactory but could be improved	**Very Good/Excellent** Teams to specify best practice to be shared.
5) Commercial Behaviours & Alignment; Consider whether all parties have an understanding of each other's business drivers, the proposed/resultant contract, and that appropriate 'commercial tools' are used effectively to optimise delivery.	Relationship is adversarial and breaks down under pressure. Commercial staff have no relationship with the Project Team. No delegated powers to deliver requirements of contract. Project work is compartmentalised and inward looking. Commercial staff are Rarely available when required and usually engage late.	Shared values and ways of working are being developed. Relationship improvement activities planned/underway. Joint goals agreed between Commercial and Project staff. Delegated powers match requirements of project. Good understanding of the contract and business drivers. Commercial staff are usually available and usually engage early to maximum effect.	Shared values and ways of working are embedded. Relationship improvement activities are well established and successful. All stakeholders have a full understanding of the contract/business drivers. Future changes in the business/operating environments are well planned and managed. Commercial staff are available, and engage in an optimum way; and demonstrate a commitment for the work they are engaged in; and fostering a positive relationship between the Parties; and work together to ensure there is a sense of equitable 'give and take' and operate in the best interests of the Maritime Support Enterprise ; and support their personnel, and each other, to ensure delivery of the best performance at the most affordable price; enable and empower their personnel to facilitate timely decision making at the right level; and which has made a positive contribution to the enterprise to reduce cross lot risk , Naval Base Outcomes and Strategic objectives.

Relationship Measures	**Help Needed** Team need support from senior management	**Good/Satisfactory Performance** is good/satisfactory but could be improved	**Very Good/Excellent** Teams to specify best practice to be shared.
6) Flexibility Consider the ability to assess and react effectively to changes in the business/operating environment with agility and innovation	Rarely demonstrates evidence and/or unwilling to consider flexibility in the business or operating environment. Is prepared to show some flexibility but only when challenged. Lack of willingness to introduce innovation. Innovation rarely considered unless at a cost. New or improvement opportunities are sometimes considered. some creativity demonstrated but with limitations. Value added at a cost.	Is proactive in showing a flexible approach to most issues / situations. New or improvement opportunities are usually strived for as part of normal business. Solutions are creative, well focused, and are highly valued by customers/users.	Continuously reviewing standard approaches for improvement opportunities. New or improvement opportunities are always strived for as part of normal business with a clear focus on continuous improvement. Solutions are creative, inspirational, and highly valued by customers/users; and operate in the best interests of the Maritime Support Enterprise; and seek opportunities to continuously improve; and which has made a positive contribution to the enterprise to reduce cross lot risk, Naval Base Outcomes and Strategic objectives.

Table 1

Date:		Overall Score: RAG =	
FMSP Contract Number/Description:		Reviews comments /Justification	

Relationship indicators	Category Score	Reviews comments /Justification
1) Decision Making; Consider the approach to decision making and the way in which the joint team achieve resolution		
2) Communication; Consider what communication channels are used, is feedback received and acted on? Is communication open and consistent?		
3) Leadership and Management; Consider leaders approach to change and their method towards delivering significant benefits. Consider deployment of skills and resources		
4) External Interfaces; Consider the relationship outside of the joint team with respect to suppliers, stakeholders and portfolio management teams		
5) Commercial Behaviours & Alignment; Consider whether all parties have an understanding of each other's business drivers, the proposed/resultant contract, and that appropriate 'commercial tools' are used effectively to optimise delivery.		
6) Flexibility; Consider the ability to assess and react effectively to changes in the business/operating environment with agility and innovation		

Table 2

Appendix 3 to Schedule 16 - Service Delivery Plan SDP02 - Integration Plan

The Contractor's Solution (Service Delivery Plan 02 - Integration Plan) set out in Appendix 8 to Annex 1 of Schedule 2 (Requirements) shall apply.

Appendix 4 to Schedule 16 – Management of Cross Lot Risks

1. The Contractor is required to demonstrate effective reporting and management of risks at Contractor level (including its supply chain) and cross Lot where a risk may impact on another party(s). The effective identification, reporting and management of risks must be demonstrated through a collaborative risk management approach.

2. The Contractor shall identify cross Lot risks in the prescribed risk reporting template format provided by the Authority (and as specified in Figure 2 below). Such risks shall also be recorded in a cross Lot risk register to be maintained by the Contractor (the Unpriced Contractor Risk Register).

3. The Contractor shall (in the prescribed form) report such risks to the Authority and other relevant party(s) promptly upon becoming aware of the same and shall also provide a monthly report (and copy of the Unpriced Contractor Risk Register) to the Authority in advance of each monthly meeting of the Ops Co-ordination Group.

4. The Contractor shall manage and mitigate the risks and update the risk report (in the manner set out in the risk reporting template) and Unpriced Contractor Risk Register to identify the action taken and outcome.

5. The Authority shall consolidate the cross Lot risks identified by each Service Delivery Location Supplier into a Combined Lots Unpriced Cross Contractor Integrated Risk Register.

6. The Combined Lots Unpriced Cross Contractor Integrated Risk Register will be consolidated with the Authority's FMSP Risk Register to create the Authority's Consolidated Unpriced Cross Contractor Integrated Risk Register.

7. The Authority will assess the Contractor's performance by assessing the effective identification, reporting and management of cross-Lot risks with other relevant Lots and the Authority.

8. The Contractor's performance will be scored, by the Authority, on a Pass/Fail basis.

9. Figure 1 below provides an outline structure of the risk register hierarchy.

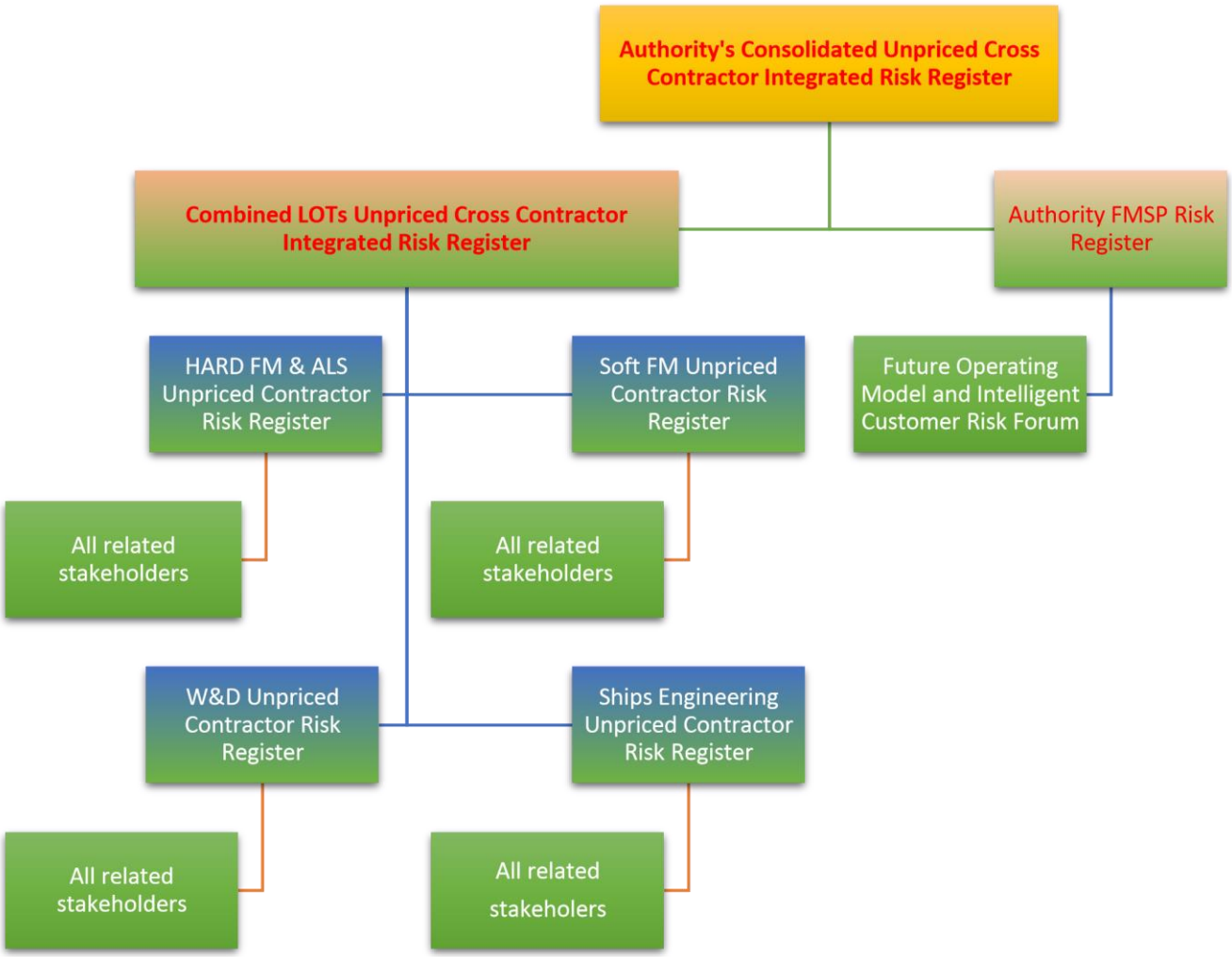
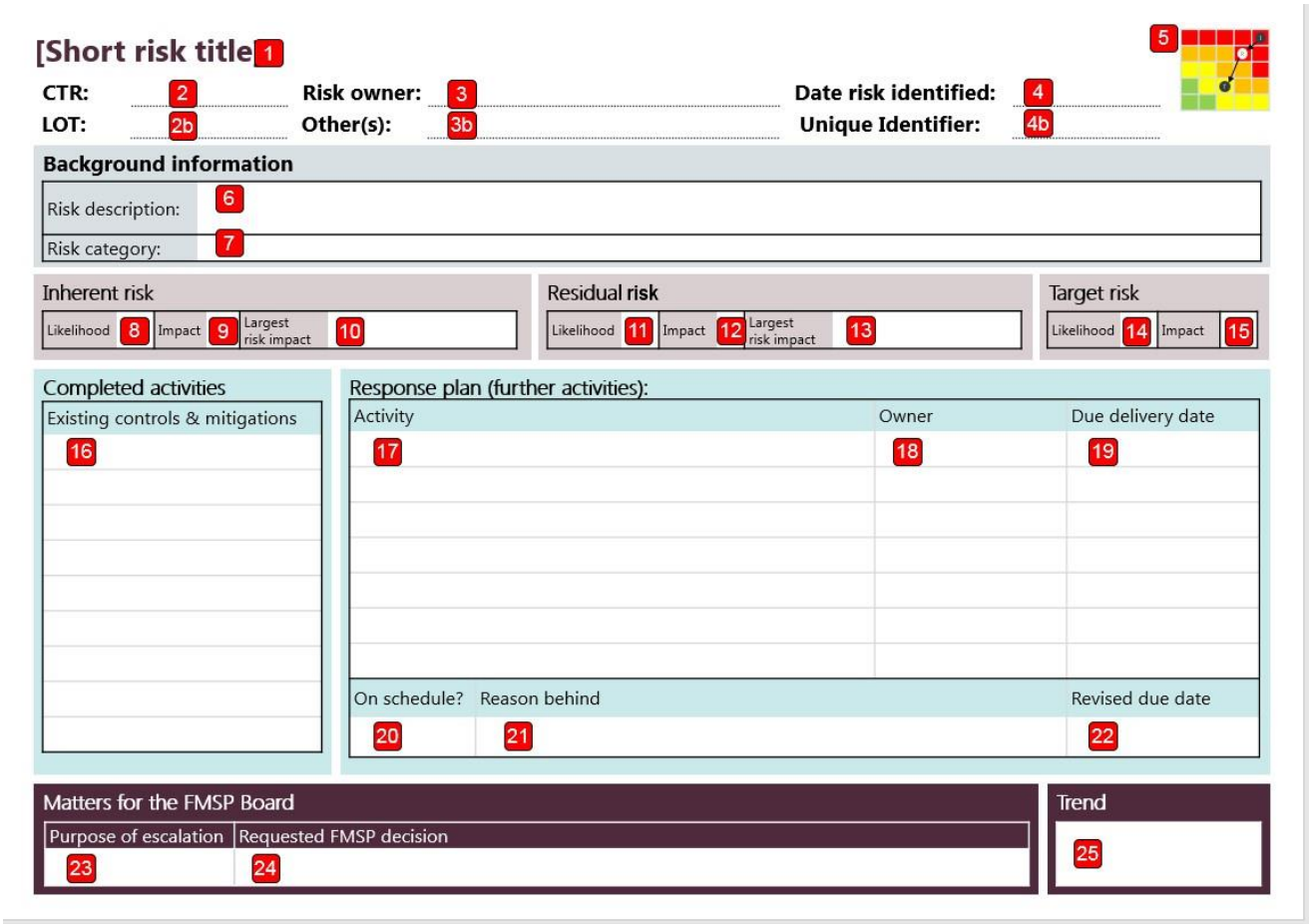


Figure 1: Bottom-up Unpriced cross contractor risk register hierarchy


[Short risk title 1
5
CTR: 2
Risk owner: 3
Date risk identified: 4
LOT: 2b
Other(s): 3b
Unique Identifier: 4b
Background information
Risk description: 6
Risk category: 7
Inherent risk
Likelihood 8
Impact 9
Largest risk impact 10
Residual risk
Likelihood 11
Impact 12
Largest risk impact 13
Target risk
Likelihood 14
Impact 15
Completed activities
Existing controls & mitigations
16
Response plan (further activities):
Activity
Owner
Due delivery date
17
18
19
On schedule?
Reason behind
Revised due date
20
21
22
Matters for the FMSP Board
Purpose of escalation
Requested FMSP decision
23
24
Trend
25

[Short risk title]
Further information
26

Instructions on completing the MOD risk reporting template

1. Short title by which the risk will be referred to
2. The CTR (**Contractor**) submitting the risk 2b **LOT**.
3. The individual **accountable** for the management of the risk 3b. **Others** affected by Risk.
4. The **date** on which the risk was identified 4b.**Unique Identifier,** where the risk is Cross-LOT then this number must feature in other LOTs risk registers.
5. Amend diagram to show the inherent, residual and target risk on the diagram
6. A description of the risk cause, event and consequences. The description should not require any technical or specific MOD understanding and should be sufficiently specific to allow an assessment of likelihood and impact
7. The 'best fit' category for the risk being submitted
8. The likelihood of the risk on a reasonably foreseeable worst case basis, assuming existing controls and mitigations do not exist or are ineffective
9. The impact of the risk on a reasonably foreseeable worst case basis, assuming existing controls and mitigations do not exist or are ineffective
10. The largest inherent impact area (Financial / Reputational / Impact on outputs / capability / HS&E)
11. The likelihood of the risk when existing controls and mitigations work as intended
12. The impact of the risk when existing controls and mitigations work as intended
13. The largest residual impact area (Financial / Reputational / Impact on outputs / capability / HS&E)
14. An assessment of the desired likelihood of the risk (the amount MOD is comfortable tolerating)
15. An assessment of the desired impact of the risk (the amount MOD is comfortable tolerating)
16. A description of the activities currently in place that are expected to reduce the impact or likelihood of the risk occurring
17. A summary list of the planned response activities (additional to those already in place) to further reduce the likelihood and/or impact of the risk
18. The individuals who are responsible the execution of each of the listed planned response activities
19. Date by which each of the listed planned response activities should be delivered
20. Risk response plan status (on schedule / behind schedule / ahead of schedule)

Instructions on completing the MOD risk reporting template (cont'd)

21. Description of the reason, where applicable, why the risk response plan is behind schedule
22. Revised date by which the overall risk response plan will be completed
23. The reason for escalation of the risk to the FMSP Board (FYI / For FMSP decision/action)
24. Description of the decision required from the FMSP Board (where applicable)
25. Risk trend, compared to the last quarter (risk increased / stable / decreased)
26. Optional page where additional context / background information can be included. Page 1 of the reporting **must** be self explanatory / a stand alone template. The Defence Board will only look at page 2 if they want further information.

Figure 2 - Risk Reporting Template

Schedule 17 – Contract Pricing Statement

Service Area Summary	**V.A.T. Treatment**	**Phase 1 (Years 1-3) Total**	**Phase 2 (Years 4-5) Total**	**Optional Extension Phase 1 (Years 6-7)**	**Optional Extension Phase 2 (Year 8)**	**Total Over 5Yr Base Contract**	**Total Over 5 + 2 Yr Contract**	**Total Over 5 +2 + 1 Yr Contract**
		Firm (£)	Fixed (£)	Fixed (£)	Fixed (£)	(£)	(£)	(£)
			Phase 2 contract prices will be derived from Phase 1 prices in accordance with Part 6 of Schedule 4					
			Extension Phase contract prices will be derived from Phase 2 prices in accordance with Part 6 of Schedule 4					
Direct Operating Services								
Warehouse Management	Standard	******						
Sub-total Warehouse Management		******						
Warehousing & Distribution Services	Standard							
Higher Band 2		******						
Higher Band 1		******						
Standard Band								

>Stock Replenishment		******						
>On Base Distribution of Naval Base held Stock		******						
>Naval Base held Stock consignment packed for Off Base Distribution		******						
>On Base Distribution of External Stock		******						
>External Stock consignment packed for Off Base Distribution		******						
>Returns Service		******						
Sub-total Warehousing & Distribution Services Service Standard Band		******						
Lower Band 1		******						
Lower Band 2		******						
Contract Transition	Standard	******						

Sub-total Contract Transition		******						
TOTAL Costs		******						
TOTAL Cost of Output		******						

Schedule 18 – Forms

1 Introduction

1.1 This Schedule sets out a non-exhaustive list of relevant forms and DEFFORMS the Contractor shall submit to the Authority under this Contract.

2 Referenced Forms

2.1 This non-exhaustive list of forms shall be completed and submitted to the authority in accordance with each schedule or part of this Contract.

a) Financial Management Information – At Annex A to this Schedule 18

b) Task Approval Form (TAF) – At Annex B to this Schedule 18

c) DEFFORM 687C (06/01) Electronic Information Sharing Agreement (EISA)

d) DEFFORM 129J (Edn 09/17) The Use Of The Electronic Business Delivery Form

e) DEFFORM 691A (Edn 03/13) Timber And Wood-Derived Products Supplied Under The Contract-Data Requirements

f) DEFFORM 528 (Edn 12/17) Import and Export Controls

g) DEFFORM 139 (Edn 09/19) MOS SME Spend Data Collection

Annex A to Schedule 18

Financial Management Report

Annex A to Schedule 18

Contract No:	SCTX/002		
Description:	Warehousing and Distribution at HMNB Clyde		
Supplier:			
Original Contract price (Ex-VAT):		**Report Date:**	
Revised Contract price (Ex-VAT):		**Currency:**	£GBP

Warehouse Cost Item	**Description**	**Annual Value (Ex-VAT)**	
1	Warehouse Operators - people costs		
2	Warehouse Supervisors -people costs		
3	Approach to surge demand		

Overhead Item	**Description**	**Annual Value (ex VAT)**	
1	Overhead costs - fixed cost		
	Overhead costs - variable cost		
2	Leavers to control additional overhead cost		
3	Profit rates		

Additional Management Information Item	**Description**	**Number**	
1	Number of warehouse operators		
2	Number of warehouse supervisors		
3	Likely number of redundancies		

Contractor Representative:

Name:

Signature:

Position:

Date:

Annex B To Schedule 18 Task Approval Form (TAF)

To be completed in accordance with Schedule 30 (*Change Procedure*)

<table>
<tr><td colspan="7">PART 1 - REQUEST FOR QUOTATION (To be completed by the Authority)</td></tr>
<tr><td>1.</td><td>To:</td><td colspan="2"></td><td>From:</td><td colspan="2">Defence Equipment Support
MOD Abbey Wood
Bristol
BS34 8JH</td></tr>
<tr><td>2.</td><td colspan="2">Contract No:</td><td>SCTX002</td><td colspan="2">Task Identification No:</td><td>Project ……..</td></tr>
<tr><td>3.</td><td colspan="2">Title of Task</td><td colspan="5"></td></tr>
<tr><td>4.</td><td colspan="6">You are requested to provide a firm price quotation for the requirement detailed below in accordance with Schedule 30 (Change Procedure):

Description of Task:
Where applicable a separate Statement of work shall be attached and shall include the following:
Acceptance Criteria, Delivery and Packaging Instructions, Quality Standards and NSNs (where applicable)

This Task is Required to be completed by (ASAP is not acceptable):</td></tr>
<tr><td>5.</td><td colspan="6">The Classification of this requirement is: …….

A Security Aspects Letter for this requirement has been provided YES/ NO</td></tr>
<tr><td>6.</td><td colspan="3">Name:

(Operations Manager)

Name:

(Contract Manager)</td><td colspan="3">Signed……

Signed……</td></tr>
<tr><td>7.</td><td colspan="3">Date</td><td colspan="3"></td></tr>
</table>

<table>
<tr><td colspan="5">PART 2 – QUOTATION (To be completed by the Contractor)</td></tr>
<tr><td>1.</td><td>To:</td><td>Defence Equipment Support
MOD Abbey Wood
Bristol
BS34 8JH</td><td>From:</td><td></td></tr>
<tr><td>2.</td><td colspan="4">Firm Price Offer

A Firm price quotation is provided in respect of Task Number……

The Firm price offered is …… Ex VAT

Your quotation should include a full price breakdown which should include as a minimum:
a. The number of man-hours and hourly rates.
b. Materials and sub contract/inter-divisional costs.
c. Overhead and Profit rates.

The assumed start date for this Task is……..

The completion date for this Task shall be no later than (based on assumed start date)
……

The firm price offer is valid until ……..</td></tr>
<tr><td>3.</td><td colspan="4">Level of change: …….

The Levels of change are defined as:
Level 1 Minor Change - an administrative change or cumulative low value changes up to the value of £50,000 (fifty thousand pounds).
Level 2 Moderate Change - a change or cumulative low value changes up to the value of £5,000,000 (five million pounds) to existing deliverable outputs.
Level 3 Major Change - a higher value change (Over £5,000,000) which will be subject to SSCR/DRA regulations and altering the existing deliverable and/or adding a deliverable or new form of tasking.</td></tr>
<tr><td>4.</td><td colspan="4">Note
The Contractor shall not commence any activity relating to a proposed Change until authorised by the Commercial Officer or his authorised representative in accordance with paragraph 6 Schedule 6 (Governance). Any work undertaken prior to authorisation is at the Contractors own risk.</td></tr>
<tr><td>5.</td><td colspan="4">GFA

The following GFA and timescales required in order to meet the requirement under are requested below:</td></tr>
<tr><td>6.</td><td colspan="2">Name:
(Commercial Manager)</td><td colspan="2">Signed……</td></tr>
<tr><td>7.</td><td colspan="2">Date</td><td colspan="2"></td></tr>
</table>

<table>
<tr><td colspan="5">PART 3 - AUTHORISATION TO PROCEED (To be completed by the Authority)</td></tr>
<tr><td>1.</td><td>To:</td><td></td><td>From:</td><td>Defence Equipment Support
MOD Abbey Wood
Bristol
BS34 8JH</td></tr>
<tr><td>2.</td><td colspan="2">The GFA Requirement requested has been confirmed as available: YES/NO

Operations Manager:
Name: ……</td><td colspan="2">Signed……

Date: ……..</td></tr>
<tr><td>3a.</td><td colspan="4">a) The Task has been rejected for the following reasons

A revised quotation is required YES/NO
- There is no longer a requirement for this task. No further action is to be taken. YES/NO</td></tr>
<tr><td>3b.</td><td colspan="4">b) Authorisation to proceed

You are hereby requested to proceed with the requirement outlined within Task ……;
at the firm price of…..

A Contract Amendment is required: YES/NO</td></tr>
<tr><td>4.</td><td colspan="2">Operations Manager:
Name:</td><td colspan="2">Signed……

Date: ……..</td></tr>
<tr><td>5.</td><td colspan="2">Commercial Manager:
Name:</td><td colspan="2">Signed……

Date: ……..</td></tr>
<tr><td>6</td><td colspan="2">Finance Manager:
Name</td><td colspan="2">Signed……

Date: ……..</td></tr>
</table>

PART 4 - COMPLETION OF THE TASK (To be completed by the Contractor)				
1.	To:	Defence Equipment Support MOD Abbey Wood Bristol BS34 8JH	From:	
2.	Task …… has been completed on ……..			
3.	Name:		Signed……	

PART 5 - COMPLETION AGREEMENT (To be completed by the authority)		
I certify that Task ……has been completed and has been authorised for payment.		
1.	Equipment Support Manager Name:	Signed……

Schedule 19 – Referenced Documents

1 **Key for this Schedule**

1.1 This Schedule contains a non-exhaustive list of Referenced Documents within this Contract. The references below are arranged in order of the Contract parts and schedules.

1.2 **Part 1 – Mechanics**

a) ISO 9000:2015 - Quality Management Systems

1.3 **Part 5 – Standards of Conduct and Required Consents**

a) DEFSTAN 05-132 - Issue 1 Dated 28 Jun 2017 - Marking of Service Materiel Items using a Unique Item Identifier (UII)

b) ITAR Regulations **-** Joint Service Publications to be issued during the Tender Period

1.4 **Part 7 – Reviews, Performance Management, Records and Reporting**

a) National Audit Act 1983 Part II

1.5 **Part 9 – Conduct at the Service Delivery Locations and Other Government Establishments**

a) Income and Corporation Taxes Act 1988 section 839

b) RIDDOR - Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013

1.6 **Part 10 – Personnel**

a) Equality Act 2010

b) Official Secrets Act 1911-1989

1.7 **Part 11 – Leased and Licensed Areas and Environmental Provisions**

a) ISO 14001:2015 - Environmental Management Systems

1.8 **Part 12 – GFA, Issued Property and Redundant Materiel**

a) Def Stan 05-099 Issue 01 - Managing Government Furnished Equipment in Industry

1.9 **Part 15 – Intellectual Property Rights, IT and Shared Data Environment**

a) DEFFORM 687C (Edn 06/01)

b) Def Stan 05-138 – Cyber Security for Defence Suppliers

c) Industry Security Notice 2014/02

d) ISO 22301 – Business Continuity Management

1.10 **Part 18 – Termination**

a) Article 258 of the Treaty on the Functioning of the European Union

b) Bribery Act 2010

c) Companies Act 2006

d) Defence and Security Public Contracts Regulations 2011

e) Insolvency Act 1986

f) Regulation 23 of the Defence and Security Public Contracts Regulations 2011

1.11 **Part 23 – Confidentiality and Disclosure/Protection of Data**

a) Data Protection Act 2018 (DPA)

b) Environmental Information Regulations 2004 - Regulation 5

c) EU General Data Protection Regulation (GDPR) – Article 46

d) Freedom of Information Act 2000

e) Law Enforcement Directive Article 37

f) National Audit Act 1983

g) Official Secrets Acts 1911 to 1989

1.12 **Part 24 – Miscellaneous**

a) Partnership Act 1890

1.13 **Schedule 1 – Definitions**

a) Companies Act 2006 – Section 1159

b) Companies Act 2006 – Section 1162

c) Data Protection Act 2018

d) Defence and Security Public Contracts Regulations 2011 - Regulation 59

e) Def Stan 05-138 - Cyber Security for Defence Suppliers

f) DEFFORM 687C (Edn 06/01)

g) Environmental Information Regulations 2004

h) EU General Data Protection Regulation – Article 4

i) European Privacy and Electronic Communications Directive (Directive 2002/58/EC)

j) Freedom of Information Act 2000 – Section 84

k) General Data Protection Regulation (Regulation (EU) 2016/679)

l) Law Enforcement Directive (Directive (EU) 2016/680)

m) Transfer of Undertakings (Protection of Employment) Regulations 2006

n) U.S. International Traffic in Arms Regulations (22 CFR Part 120-130)

1.14 **Schedule 2 – Requirements to this Contract**

a) BRd (Book of Reference) 3001 Fleet Engineering Orders (Surface Ships) March 2018 v1 Chapter 3 Major Defect Reporting Procedures

b) DEFSTAN 05-099 Managing Government Furnished Equipment in Industry - Part 1 Issue 1 Dated 14 Jul 17

c) DEFSTAN 05-099 Managing Government Furnished Equipment in Industry - Part 2 Issue 1 Dated 14 Jul 17 - Annex B - Physical Verification, Stocktaking and Reconciliation and Annex C - Receipt Discrepancies

d) DEFSTAN 05-132 - Issue 1 Dated 28 Jun 2017 - Marking of Service Materiel Items using a Unique Item Identifier (UII)

e) DEFSTAN 81-041 Packaging of Defence Materiel - Part 1 Issue 9 Dated 14 Dec 16 - Introduction to Defence Packaging Requirements

f) DEFSTAN 81-041 Packaging of Defence Materiel - Part 2 Issue 9 Dated 14 Jan 17 - Design

g) DEFSTAN 81-041 Packaging of Defence Materiel - Part 3 Issue 6 Dated 12 Jun 14 - Environmental Testing

h) DEFSTAN 81-041 Packaging of Defence Materiel - Part 4 Issue 9 Dated 14 Aug 18 - Service Packaging Instruction Sheet

i) DEFSTAN 81-041 Packaging of Defence Materiel - Part 5 Issue 9 Dated 14 Aug 18 - Packaging Process

j) DEFSTAN 81-041 Packaging of Defence Materiel - Part 6 Issue 10 Dated 14 Feb 18 - Package Marking

k) Extracts from DLF - Standard Priority System Policy Document Dated 15 Dec 14 and Non-Conforming Receipts (Unit) Policy

l) International Standard for Phytosanitary Measures 15 (Regulation of Wood Packaging Material in International Trade) – Produced by the Secretariat of the International Plant Protection Convention Adopted 2018; published 2019.

m) JSP 518, Part 2, Annex B to Ch 2 – AC11 Emergency Procedures

n) JSP 515 - The MOD Stores Hazardous Information System - Part 1, V2

o) JSP 515 - The MOD Stores Hazardous Information System - Part 2

p) JSP 800 Vol 3

q) JSP 800 Vol 3 DCOP 1

r) JSP 800 Vol 3 DCOP 2

s) JSP 800 Vol 3 DCOP 3

t) JSP 800 Vol 3 DCOP 4

u) JSP 800 Vol 3 DCOP 5

v) JSP 800 Vol 3 Guidance Leaflet 2

w) JSP 800 Vol 3 Guidance Leaflet 8

x) JSP 800 Vol 3 Guidance Leaflet 10

y) JSP 800 Vol 3 Guidance Leaflet 11

z) JSP 800 Vol 5

aa) JSP 800 Vol 6

bb) JSP 800 DG Manual Version 2

cc) LCST Supplier Manual LDOC/CMO/V2.0 - Version 2 Dated 28 June 2019

dd) SCIS Delivery Partner Group RMADS – Annex A – Administrator SyOps V4.1 9 February 2018, author Neil Langley. (LogDC_Group_RMADS)

ee) SCIS Delivery Partner Group RMADS – Annex B – Administrator SyOps V4.1 9 February 2018, author Neil Langley. (LogDC_Group_RMADS)

ff) SWS Regulations for Clyde - T2600 Chief Strategic Systems Executive Issue 7, Chapter 2, April 2012

gg) SWS Regulations for Clyde - T3600 Chief Strategic Systems Executive, Issue 1, January 2016

1.15 **Schedule 3 – Lot Specific Conditions**

a) Clyde Dockyard Port of Gareloch and Loch Long Order 2011

b) Dockyard Ports Regulation Act 1865

1.16 **Schedule 7 – Dispute Resolution Procedure**

a) Housing Grants Construction and Regeneration Act 1996 (as amended by the Local Democracy, Economic Development and Construction Act 2009)

1.17 **Schedule 8 – Intellectual Property Rights**

a) Copyright, Designs and Patents Act 1988 – Sections 213 and 240

b) Defence Contracts Act 1958 – Section 2

c) Patents Act 1977 – Sections 55-57

d) Registered Designs Act 1949 – Section 12

e) Registered Designs Act 1949 - paragraph 2A(6) of the First Schedule

1.18 **Schedule 9 – Standards of Conduct and Required Consents**

a) CSSE T2034 United Kingdom Strategic Weapon System

1.19 **Schedule 10 – Personnel**

a) Contracts (Rights of Third Parties) Act 1999

b) Employment Rights Act 1996

c) Employment Rights Act 1996 – Section 1

d) Employment Rights Act 1996 – Section 139

e) Equality Act 2010

f) Regulation (EU) 2016/679 Data Protection Act 2018

g) The Superannuation Act 1972

h) Trade Union and Labour Relations (Consolidation) Act 1992

i) Transfer of Undertakings (Protection of Employment) Regulations 2006

1.20 **Schedule 12 – Liabilities, Indemnities, Insurance and Conduct of Claims**

a) Consumer Rights Act 2015

b) Supply of Goods and Services Act 1982

1.21 **Schedule 14 – Supply Chain and Sub-Contracting Strategy**

a) Contracts (Rights of Third Parties) Act 1999.

b) Defence and Security Public Contracts Regulations 2011

c) DEFFORM 139

d) Late Payment of Commercial Debts (Interest) Act 1998

e) Official Secrets Acts 1911-1989

f) Security Policy Framework May 2018 - Cabinet Office

1.22 **Schedule 18 – Forms**

a) DEFFORM 129J (Edn 09/17) The Use of The Electronic Business Delivery Form

b) DEFFORM 139 (Edn 09/19) MOS SME Spend Data Collection

c) DEFFORM 687C (06/01) Electronic Information Sharing Agreement (EISA)

d) DEFFORM 691A (Edn 03/13) Timber And Wood-Derived Products Supplied Under The Contract-Data Requirements

1.23 **Schedule 25 – Form of Parent Company Guarantee**

a) Companies Act 2006 – Section 1162

b) Contracts (Rights of Third Parties) Act 1999

1.24 **Schedule 29 – Specific Standards: Quality Standards**

a) AQAP 2105 Edition C Version 1 - NATO Requirements for Quality Plans

b) AQAP 2110 Edition D Version 1 - NATO QA Requirements for Design, Development & Production

c) BS EN ISO 9001:2015 - UK Accreditation Service

d) Def Stan 05-135 Issue 2 - Avoidance of Counterfeit Material

e) ISO 9000:2015 Quality Management Systems

1.25 **Schedule 29 – Specific Standards to HMNB Clyde**

Naval Base Standing Orders

a) HMG Security Policy Framework

b) HMNB Clyde Security Standing Orders

Site Policies

c) HMNB Clyde Contractor and Visitor Security Policy Document

d) HMNB Clyde Mandatory Training Plan

e) HMNB Clyde Information Guide

f) HMNB Clyde Security Response Plan

g) RNAD Coulport Visitor HSE and Security Leaflet

1.26 **Schedule 32 – Timber and Wood Containing Products Supplied Under the Contract**

a) ISO/IEC 17011:2017

b) ISO/IEC 17065:2012

1.27 **Miscellaneous**

a) Extracts from Defence Logistics Framework

b) JSP 800 Vol 3 Movement of Material by Air - Form 1380

Schedule 20 – Authority Responsibilities

1 Introduction

1.1 The following responsibilities of the Authority shall constitute the "Authority Responsibilities" under this Contract:

a) each general obligation identified in Paragraph 2 (General Obligations) of this Schedule 20; and

b) each specific obligation set out in Paragraph 3 (Specific Obligations) of this Schedule 20.

1.2 Any assumptions, dependencies or obligations on the Authority or any third party which are not contained or referred to in this Schedule 20 (*Authority Responsibilities*) shall not be Authority Responsibilities and the Contractor shall not be entitled to any relief or compensation in respect of such assumptions, dependencies or obligations**.**

1.3 The responsibilities specified within this Schedule shall be provided to the Contractor free of charge, unless otherwise agreed between the Parties.

2 General Obligations

2.1 Subject to Paragraph 1 (*Introduction*) of this Schedule 20:

a) the Authority shall perform those obligations of the Authority which are set out in the Clauses of this Contract and the Paragraphs of the Schedules (other than Annex 1 (Contractor Solution) to Schedule 2 *(Requirements)*) including in accordance with Paragraph 4 (Authority Responsibilities) of Schedule 2 *(Requirements)*; and;

b) the Authority shall:

(i) use its reasonable endeavours to provide the Contractor with access to appropriate members of the Authority's employees and third-party contractor employees, as such access is reasonably requested by the Contractor in order for the Contractor to discharge its obligations under this Contract; and

(ii) use its reasonable endeavours to provide such documentation, data and/or other information that the Contractor reasonably requests that is necessary to perform its obligations under this Contract provided that such documentation, data and/or information is available to the Authority and is authorised for release by the Authority.

3 Specific Obligations

3.1 The Authority shall, in relation to this Contract perform the following Authority Responsibilities identified in Annex 1 (Contractor Solution) to Schedule 2 *(Requirements)*

Document	Location (paragraph)
Not used	Not used
Not used	Not used
Not used	Not used
Not used	Not used
Not used	Not used
Not used	Not used

4 **Prohibited Obligations**

4.1 The Authority shall not provide the following:

a) guaranteed parking for the Contractor Personnel at Authority Premises;

b) guaranteed desks for the Contractor Personnel at Authority Premises;

c) enrolment to and attendance at Authority funded training and development events, unless specifically agreed in this Contract.

Schedule 21 – Essential Services - Not Used

Schedule 22 – Reports

Part 1 to Schedule 22

1 **Not used**

2 **Introduction**

2.1 The Contractor shall provide periodic, ad hoc and other Reports in respect of this Contract, the Services and the Requirements in accordance with this Schedule 22 (*Reports*).

2.2 The Contractor shall provide management information in respect of this Contract, the Services, the Requirements and Commercial Work in accordance with this Contract including this Schedule 22 *(Reports)*.

3 **Contents**

3.1 Contents of this Schedule 22 is as follows:

a) Annex A to this Schedule:

(i) sets out a non-exhaustive list of those Reports which the Contractor is required to submit to the Authority under this Contract (whether in relation to the Services, the Requirements, Commercial Work or otherwise) which have been identified at the date of this Contract.

(ii) refers to the relevant paragraphs and Schedules to, and where appropriate Clauses of, this Contract where the details of the relevant Reports are set out;

(iii) describes the frequency at which the Contractor must submit Reports; and

(iv) is non-exhaustive and without prejudice to any other requirement in this Contract for preparation or submission of reports or plans.

b) Annex B to this Schedule 22 (*Reports*) is the management information:

(i) The Contractor shall compile the management information metrics for use in supporting business decisions and for provision to the Authority in accordance with this paragraph 3.1 b) of this Schedule 22 and as specified (including the stated frequencies) in Annex B to this Schedule 22.

(ii) The Contractor shall provide the management information metrics to the Authority in the format required by the Authority and as notified to the Contractor from time to time.

(iii) The Contractor shall provide a full update of all management information metrics within fourteen (14) days of the end of the Contract Year and whenever requested by the Authority from time to time, provided the Authority will not ask for it more than twice a year.

(iv) The Authority is permitted to review the management information metrics on an ongoing basis with a view to continuous improvement and reserves the right to specify revised or additional management information metrics from time to time acting reasonably to be used by the Contractor when supplying management information.

3.2 Wherever practicable, the Authority and the Contractor shall align their reporting processes to improve efficiency and to prevent the proliferation of reporting formats.

Annex A to Schedule 22

1 **Reporting Requirements**

1.1 This Annex A to Schedule 22 details those Reports which the Contractor is required to submit to the Authority under this Contract in relation to the Services and the Requirements which have been identified at the date of this Contract. These are the reports referred to throughout this Contract and Annex A to this Schedule refers to the relevant paragraphs and Schedules to, and where appropriate Clauses of, this Contract where the details of the relevant Reports are set out.

1.2 This Annex A to this Schedule further describes the frequency at which the Contractor must submit Reports. (For the avoidance of doubt, if there is nothing to report in relation to the Services and the Requirements and the Contractor shall not be obliged to submit a report confirming that fact, notwithstanding the content of the column headed "Reporting Frequency" in the table below. This list is non-exhaustive and without prejudice to any other requirement in this Contract for preparation or submission of reports or plans.

Report Name	Contract Reference	Report Definition (Brief Description and Scope of Report)	Reporting Frequency	Key Recipient
REPORTS REQUESTED IN CLAUSES 1 TO 90 OF THE CONTRACT				
Progress Report	Clause 16.1	The Contractor shall submit Monthly progress reports detailing the Contract performance during that Month	Monthly	Authority Commercial Manager
Financial Management Report	Clause 16.4	Showing the value of all work completed. In the form; Financial Management Information Form as detailed within Schedule 18 *(Forms)*	Annually on the Contract anniversary of the Service Commencement Date	Authority Commercial Officer and Finance Manager
Annual Report	Clause 17.1	Covering such issues as performance of the Contractor against the PIs and KPIs, the extent to which the Commercial Purpose is being achieved, etc	Annually	Authority Commercial Manager
Contractor Personnel	Clause 25.3.1	The Contractor shall submit in writing to the Authority for approval, initially and as necessary from time to time, a list of those Contractor Personnel who are reasonably likely to need to enter a Government Establishment for the purpose of, or in connection with, work under this Contract, giving such particulars as the Authority may require.	Ad-hoc	Authority Commercial Manager
Injuries, Disease and Dangerous Occurrences Report	Clause 25.7	Report any injury, disease or dangerous occurrence at any Government Establishment arising out of the performance of this Contract, which is required to be reported under	Ad-hoc	Authority Operations Manager

Report Name	Contract Reference	Report Definition (Brief Description and Scope of Report)	Reporting Frequency	Key Recipient
		RIDDOR to the Officer in Charge of the Government Establishment. This would be in addition to any report, which the supplier may be required to submit under RIDDOR to the relevant enforcing authority (for example, Health and Safety Executive or Local Authority).		
Major Incident Report	Clause 25.13.7	A full report of the investigation into the Major Incident shall be document and signed at director level of the Contractor before forwarding to the Authority.	Ad-hoc	Authority Operations Manager
Health and safety and environmental performance reporting	Clause 25.15.1	The Contractor shall supply the Authority with reports on its performance, in terms of effective health and safety management and compliance with Environmental Law, in delivering the Services	Ad-hoc	Authority Operations Manager
Persons with Access to Secret Matter Report	Clause 28.5	The Contractor shall provide to the Authority upon request, such records giving particulars of those Contractor Security Personnel who have had access to a Secret Matter	Ad-hoc	Authority Commercial Manager
Asset Register	Clause 39.1.1(c)	Two (2) weeks prior to the end of each quarter of a twelve (12) Month accounting period supply the Authority with a digital copy of the Asset Registers. In addition, upon the request of the Authority submit additional copies of the Asset Registers to the Authority.	Quarterly	Authority Commercial Manager and Finance Manager
Cyber Implementation Plan	Clause 48.3	Immediately the Contractor knows or believe that a Cyber Security Incident has or may have taken place	Ad-hoc	Authority Operations Manager
Test of the Business Continuity and Disaster Recovery Plan	Clause 51	On a regular basis and, in any event, to be tested not less than once in every twelve (12) Month period	Annually	Authority Operations Manager
REPORTS REQUESTED IN SCHEDULES 1-34 OF THE DRAFT CONTRACT				

Report Name	Contract Reference	Report Definition (Brief Description and Scope of Report)	Reporting Frequency	Key Recipient
Performance against KPIs	Schedule 5 *(Performance Management and Measurement)*	The Contractor shall, within ten (10) Business Days after the end of each Month x, provide a report detailing performance against each KPI (with reference to the applicable Rating Criteria) within Month x	Monthly	Authority Operations Manager
Dispute Report	Schedule 7 *(Dispute Resolution Procedure)*, Para 5	Each Party shall require its Dispute Owner to provide a report on the Dispute to a nominated representative of the other Party (or, if the other Party has not nominated a representative, the other Party's Dispute Owner) as soon as is reasonably practicable after service of a Dispute Notice.	Ad-hoc	Authority and Contractor
Post Transfer Reporting (Personnel)	Schedule 10 *(Personnel),* Part 1, Para 4.2	The Contractor shall upon request by the Authority provide (or shall procure that an Employing Sub- Contractor shall provide) the Authority with certain information in respect of the employees who are wholly or mainly employed, assigned or engaged in providing the Services.	During Transition	Authority Commercial Manager
Transition Report	Schedule 13 *(Transition Arrangements)* Para 6.8 and 6.9	The Contractor shall submit weekly Transition Progress Reports to the Authority to demonstrate progress in accordance with the Transition Plan	Weekly (during the Transition period)	Authority Operations Manager
Sub-Contracting	Schedule 14 *(Supply Chain and Sub-Contracting)* – Part 2, Para 4.1 (a) (iv)	If so requested, the Contractor shall provide a report on the number, type and value of Sub-Contracts placed during the Contract Period	Ad-hoc	Authority Commercial Manager
Financial Distress - Financial Indicator Report	Schedule 24 *(Financial Distress)*, Para 2.2 (a)	Monitor and report on the Financial Indicators for each entity in the FDE Group, refer to Schedule 24 *(Financial Distress)*, para 2.3 for content.	Annually/ Bi-annually	Authority Commercial Manager
Financial Distress - Remediation Plan	Schedule 24 *(Financial Distress)*, Para 4.3 (b)(i)	Applicable where the Authority believes the Financial Distress Event could impact on performance	Ad-hoc	Authority Commercial Manager

Report Name	Contract Reference	Report Definition (Brief Description and Scope of Report)	Reporting Frequency	Key Recipient
Financial Distress - Remediation Plan Progress Report	Schedule 24 *(Financial Distress),* Para 4.6	Review and updates to the Financial Distress Remediation Plan so the plan remains up to date and ensures the continued performance and delivery of the Services	Fortnightly	Authority Commercial Manager
Independent verification and report of timber source	Schedule 32 *(Timber and Wood Containing Products Supplied Under the Contract)* Para 5	Where the Authority is not satisfied that timber supplied is incidental to the requirement and from a low risk source. The Contractor shall commission and meet the costs of this independent verification	Ad-hoc	Authority Operations Manager
Statistical reporting for all timber and wood-derived products	Schedule 32 *(Timber and Wood Containing Products Supplied Under the Contract),* Para 6.2	Timber data captured using DEFFORM 691A	Ad-hoc	Authority Operations Manager

Table **{** SEQ Table * ARABIC **}** - Non-Exhaustive List of Reports

Annex B to Schedule 22

1 Management Information and Supporting PIs

1.1 This Annex B to this Schedule details those management information Reports which the Contractor is required to submit to the Authority under this Contract in relation to the Services and the Requirements which have been identified at the date of this Contract. These are the management information reports referred to throughout this Contract and Annex B to this Schedule refers to the relevant paragraphs and Schedules to, and where appropriate Clauses of, this Contract where the details of the relevant Reports are set out.

1.2 This Annex B to this Schedule further describes the frequency at which the Contractor must submit management information Reports. (For the avoidance of doubt, if there is nothing to report in relation to the Services and the Requirements and the Contractor shall not be obliged to submit a report confirming that fact, notwithstanding the content of the column headed “Frequency”. This list is non-exhaustive and without prejudice to any other requirement in this Contract for preparation or submission of reports or plans.

Reference	Requirement supported	Metric name	Metric Definition	Unit	Frequency
WDM001	CWD 1.1, CWD 2.1	Discrepancies	No. and type of discrepancies for non-conformances of receipts?	#	Six (6) Month
WDM002	CWD 1.6	Regulatory Non-Compliance	Instances of non-compliance with relevant Legislation, Regulations, Standards and Site Policies.	#	Six (6) Month
WDM003	CWD 1.11	Safety Near Misses	The no. of safety near misses recorded	#	Monthly
WDM004	CWD 1.11	Safety Non-Compliance	The no. of serious/major safety non-conformances served by the Contractor	#	Monthly
WDM005	CWD 2.0	Materiel Handling Non-Compliance	Instances of Defence Materiel that has not been handled in accordance with UK MOD Policy?	#	Six (6) Month
WDM006	CWD2.1	Goods In Processing	Total number of items processed.	#	Monthly
WDM007	CWD2.2	Receipts To Stock	Total number of items processed	#	Monthly
WDM008	CWD2.2	Receipts To Stock Time	Total time to correctly process items	Days	Monthly
WDM009	CWD 2.3	Picking On Base	Total number of items picked for On Base Distribution	#	Monthly

Reference	Requirement supported	Metric name	Metric Definition	Unit	Frequency
WDM010	CWD 2.3	Picking Off Base	Total number of items picked for Off Base Distribution	#	Monthly
WDM011	CWD 2.4	Off Base Distribution (from Stock)	Total Time from picking to despatch.	Days	Monthly
WDM012	CWD 2.4	Off Base Distribution (external cross-dock)	Total time from receiving to despatch.	Hrs	Monthly
WDM013	CWD 2.4	Cross Docking	Total number of items cross docked	#	Monthly
WDM014	CWD 2.5	Despatch Consignment Rejections	No. consignments that were rejected by an Authorised Transport Provider	#	Monthly
WDM015	CWD 2.5	Despatch Consignment Rejections Reason	Reasons for rejection - categorised and no. of instances for each category	#	Monthly
WDM016	CWD 2.6	On Base Distribution Number	Total number of items processed	#	Monthly
WDM017	CWD 2.6	On Base Distribution Time (from Stock)	Total time to correctly process items	Days	Monthly
WDM018	CWD 2.6	On Base Distribution Time (external stock)	Total time to correctly process items	Days	Monthly
WDM019	CWD 2.6	No. Required Delivery Date (RDD) Failures (from stock)	No. Required Delivery Date (RDD) Failures	#	Monthly
WDM020	CWD 2.6	No. Required Delivery Date (RDD) Failures (external stock)	No. Required Delivery Date (RDD) Failures	#	Monthly

Reference	Requirement supported	Metric name	Metric Definition	Unit	Frequency
WDM021	CWD 2.6	Total RDD Delay	Total delay beyond RDD	Days	Monthly
WDM022	CWD 2.6	Urgent Delivery Failure	No. of urgent delivery requirements failed to be met (On-Base Distribution)	#	Monthly
WDM023	CWD 2.6	Urgent Delivery Failure Time	Total delay for urgent delivery requirements (On-Base Distribution)	Days	Monthly
WDM024	CWD 2.7	Ready Date to Despatch	Time taken from consignment being available for collection to collection happening	Days	Monthly
WDM025	CWD 2.7	Transport Provider collection Failure	No. of failures of Authority's Transport Provider to collect consignments within the agreed time requirement	#	Monthly
WDM026	CWD 2.9	Returns Number	Total number of returns	#	Monthly
WDM027	CWD 2.9	Returns Processing Time	Total time taken from arriving at the Returns store to being correctly processed	Days	Monthly
WDM028	CWD 2.9, CWD 2.17	Non-Conforming returns	No. of non-conforming returns	#	Monthly
WDM029	CWD 2.9	Non-Conforming Returns %	% total non-conforming receipts against total receipts?	%	Monthly
WDM030	CWD 2.15	Surplus Stock Disposal	Number of items processed	#	Monthly
WDM031	CWD 2.15	Surplus Stock Disposal Time	Total time from notification to consignment preparation (Disposal)	Days	Monthly
WDM032	CWD 4.2	Warehouse Storage Space	Volume of storage that is vacant	M3	Monthly
WDM033	CWD 4.2	Warehouse Utilisation Rate	Average monthly storage utilisation rate	M3	Six (6) Monthly

Schedule 23 – Not used

Schedule 24 - Financial Distress

1 Definitions

1.1 In this Schedule, the following definitions shall apply:

Accounting Reference Date means the dates to which the Contractor prepares its audited financial statements.

Board means the Contractor's board of directors

FDE Group means the Contractor, Key Sub-contractors [and the Parent].

Financial Distress Event or FDE means any of the events set out in paragraph 3 of this Schedule 24.

Financial Distress Remediation Plan means a plan setting out how the Contractor will ensure the continued performance and delivery of the Services in accordance with this Contract in the event that a Financial Distress Event occurs.

Financial Indicators in respect of the Contractor, Key Sub-contractors [and the Parent], means each of the financial indicators set out at paragraph 5.1 of this Schedule 24.

Financial Target Thresholds means the target thresholds for each of the Financial Indicators set out at paragraph 5.1 of this Schedule 24.

2 Warranties And Duty To Notify

2.1 The Contractor warrants and represents to the Authority for the benefit of the Authority that as at the Commencement Date and the Service Delivery Date the financial position or, as appropriate, the financial performance of each of the Contractor, [Parent] and Key Sub-contractors satisfies the Financial Target Thresholds.

2.2 The Contractor shall:

a) monitor and report on the Financial Indicators for each entity in the FDE Group against the Financial Target Thresholds on a regular basis and no less than once a year within one hundred and twenty (120) days after the Accounting Reference Date; and

b) promptly notify (or shall procure that its auditors promptly notify) the Authority in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event (and in any event, ensure that such notification is made within ten (10) Business Days of the date on which the Contractor first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event).

2.3 Each report submitted by the Contractor pursuant to paragraph 2.2 (a) shall:

a) be a single report with separate sections for each of the FDE Group entities;

b) contain a sufficient level of information to enable the Authority to verify the calculations that have been made in respect of the Financial Indicators;

c) include key financial and other supporting information (including any accounts data that has been relied on) as separate annexes;

d) be based on the audited accounts for the date or period on which the Financial Indicator is based or, where the Financial Indicator is not linked to an accounting period or an accounting reference date, on unaudited management accounts prepared in accordance with their normal timetable; and

e) include a history of the Financial Indicators reported by the Contractor in graph form to enable the Authority to easily analyse and assess the trends in financial performance.

3 Financial Distress Events

3.1 The following shall be Financial Distress Events:

a) an FDE Group entity issuing a profits warning to a stock exchange or making any other public announcement, in each case about a material deterioration in its financial position or prospects;

b) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of an FDE Group entity;

c) an FDE Group entity committing a material breach of covenant to its lenders;

d) a Key Sub-contractor notifying the Authority that the Contractor has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute;

e) any of the following:

f) commencement of any litigation against an FDE Group entity with respect to financial indebtedness greater than £5m (five million) or obligations under a service contract with a total contract value greater than £5m (five million);

g) non-payment by an FDE Group entity of any financial indebtedness;

h) any financial indebtedness of an FDE Group entity becoming due as a result of an event of default;

i) the cancellation or suspension of any financial indebtedness in respect of an FDE Group entity; or

j) the external auditor of an FDE Group entity expressing a qualified opinion on, or including an emphasis of matter in, its opinion on the statutory accounts of that FDE entity;

k) in each case which the Authority reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance and delivery of the Services in accordance with this Contract; and

l) any [one] of the Financial Indicators set out at Paragraph 5 for any of the FDE Group entities failing to meet the required Financial Target Threshold.

4 Consequences of Financial Distress Events

4.1 Immediately upon notification by the Contractor of a Financial Distress Event (or if the Authority becomes aware of a Financial Distress Event without notification and brings the event to the attention of the Contractor), the Contractor shall have the obligations and the Authority shall have the rights and remedies as set out in Paragraphs 4.3 to 4.6.

4.2 In the event of a late or non-payment of a Sub-contractor pursuant to Paragraph 3.1 (d), the Authority shall not exercise any of its rights or remedies under Paragraph 4.3 without first giving the Contractor ten (10) Business Days to:

a) rectify such late or non-payment; or

b) demonstrate to the Authority's reasonable satisfaction that there is a valid reason for late or non-payment.

4.3 The Contractor shall (and shall procure that [the Parent] and/or any relevant Key Sub-contractor shall):

a) at the request of the Authority, meet the Authority as soon as reasonably practicable (and in any event within three (3) Business Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Contractor in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the Services in accordance with this Contract; and

b) where the Authority reasonably believes (taking into account the discussions and any representations made under Paragraph (a) that the Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with this Contract:

(i) submit to the Authority for its approval, a draft Financial Distress Remediation Plan as soon as reasonably practicable (and in any event, within ten (10) Business Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Contractor in writing); and

(ii) to the extent that it is legally permitted to do so and subject to Paragraph 4.8, provide such information relating to the Contractor, Key Sub-contractors [and/or the Parent] as the Authority may reasonably require in order to understand the risk to the Services, which may include forecasts in relation to cash flow, orders and profits and details of financial measures being considered to mitigate the impact of the Financial Distress Event.

4.4 The Authority shall not withhold its approval of a draft Financial Distress Remediation Plan unreasonably. If the Authority does not approve the draft Financial Distress Remediation Plan, it shall inform the Contractor of its reasons and the Contractor shall take those reasons into account in the preparation of a further draft Financial Distress Remediation Plan, which shall be resubmitted to the Authority within five (5) Business Days of the rejection of the first draft. This process shall be repeated until the Financial Distress Remediation Plan is approved by the Authority or referred to the Dispute Resolution Procedure under Paragraph 4.5.

4.5 If the Authority considers that the draft Financial Distress Remediation Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not ensure the continued performance of the Contractor's obligations in accordance with the Agreement, then it may either agree a further time period for the development and agreement of the Financial Distress Remediation Plan or escalate any issues with the draft Financial Distress Remediation Plan using the Dispute Resolution Procedure.

4.6 Following approval of the Financial Distress Remediation Plan by the Authority, the Contractor shall:

a) on a regular basis (which shall not be less than fortnightly):

(i) review and make any updates to the Financial Distress Remediation Plan as the Contractor may deem reasonably necessary and/or as may be reasonably requested by the Authority, so that the plan remains adequate, up to date and ensures the continued performance and delivery of the Services in accordance with this Contract; and

(ii) provide a written report to the Authority setting out its progress against the Financial Distress Remediation Plan, the reasons for any changes made to the Financial Distress Remediation Plan by the Contractor and/or the reasons why the Contractor may have decided not to make any changes;

b) where updates are made to the Financial Distress Remediation Plan in accordance with Paragraph (a), submit an updated Financial Distress Remediation Plan to the Authority for its approval, and the provisions of Paragraphs 4.4 and 4.5 shall apply to the review and approval process for the updated Financial Distress Remediation Plan; and

c) comply with the Financial Distress Remediation Plan (including any updated Financial Distress Remediation Plan) and ensure that it achieves the financial and performance requirements set out in the Financial Distress Remediation Plan.

4.7 Where the Contractor reasonably believes that the relevant Financial Distress Event under Paragraph 4.1 (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Authority and the Parties may agree that the Contractor shall be relieved of its obligations under Paragraph 4.6.

4.8 The Contractor shall use reasonable endeavours to put in place the necessary measures to ensure that the information specified at paragraph 4.3 (b)(ii) is available when required and on request from the Authority and within reasonable timescales. Such measures may include:

a) obtaining in advance written authority from Key Sub-contractors, [and the Parent] authorising the disclosure of the information to the Authority and/or entering into confidentiality agreements which permit disclosure;

b) agreeing in advance with the Authority, Key Sub-contractors, [and the Parent] a form of confidentiality agreement to be entered by the relevant parties to enable the disclosure of the information to the Authority;

c) putting in place any other reasonable arrangements to enable the information to be lawfully disclosed to the Authority (which may include making price sensitive information available to Authority nominated personnel through confidential arrangements, subject to their consent); and

d) disclosing the information to the fullest extent that it is lawfully entitled to do so, including through the use of redaction, anonymization and any other techniques to permit disclosure of the information without breaching a duty of confidentiality.

5 Financial Indicators

5.1 Subject to the calculation methodology set out at Appendix A of this Schedule, the Financial Indicators and the corresponding calculations and thresholds used to determine whether a Financial Distress Event has occurred in respect of those Financial Indicators, shall be as follows:

Financial Indicator	Calculation	Financial Target Threshold:
1 Operating Margin	Operating Margin = Operating Profit / Revenue	5%
2 Net Debt to EBITDA Ratio	Net Debt to EBITDA ratio = Net Debt / EBITDA	3 times
3 Acid Ratio	Acid Ratio (Current Assets – Inventories) Current Liabilities	0.8 times

5.2 Key:1 – See Annex A of this Schedule which sets out the calculation methodology to be used in the calculation of each Financial Indicator.

6 Termination Rights

6.1 The Authority shall be entitled to terminate the Contract if:

a) the Contractor fails to notify the Authority of a Financial Distress Event in accordance with Paragraph 2.2(b);

b) the Parties fail to agree a Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraphs 4.3 to 4.5; and/or

c) the Contractor fails to comply with the terms of the Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraph 4.6(c).

Annex A to Schedule 24

1 **Calculation Methodology for Financial Indicators**

1.1 The Supplier shall ensure that it uses the following general and specific methodologies for calculating the Financial Indicators against the Financial Target Thresholds:

2 **General methodology**

2.1 Terminology: The terms referred to in this Appendix are those used by UK companies in their financial statements. Where the entity is not a UK company, the corresponding items should be used even if the terminology is slightly different (for example a charity would refer to a surplus or deficit rather than a profit or loss).

a) Groups: Where the entity is the holding company of a group and prepares consolidated financial statements, the consolidated figures should be used.

b) Foreign currency conversion: Figures denominated in foreign currencies should be converted at the exchange rate in force at the relevant date for which the Financial Indicator is being calculated.

c) Treatment of non-underlying items: Financial Indicators should be based on the figures in the financial statements before adjusting for non-underlying items.

3 **Specific Methodology**

Financial Indicator	**Specific Methodology**
1 Operating Margin	The elements used to calculate the Operating Margin should be shown on the face of the Income Statement in a standard set of financial statements. Figures for Operating Profit and Revenue should exclude the entity's share of the results of any joint ventures or Associates. Where an entity has an operating loss (i.e. where the operating profit is negative), Operating Profit should be taken to be zero.
2 Net Debt to EBITDA Ratio	"Net Debt" = Bank overdrafts + Loans and borrowings + Finance leases + Deferred consideration payable – Cash and cash equivalents "EBITDA" = Operating profit + Depreciation charge + Amortisation charge The majority of the elements used to calculate the Net Debt to EBITDA Ratio should be shown on the face of the Balance sheet, Income statement and Statement of Cash Flows in a standard set of financial statements but will otherwise be found in the notes to the financial statements. Net Debt: The elements of Net Debt may be described slightly differently and should be found either on the face of the Balance Sheet or in the relevant note to the financial statements. All interest-bearing liabilities (other than retirement benefit obligations) should be included as borrowings as should, where disclosed, any liabilities (less any assets) in respect of any hedges designated as linked to borrowings (but not non-designated hedges). Borrowings should also include balances owed to other group members. Deferred consideration payable should be included in Net Debt despite typically being non-interest bearing. Cash and cash equivalents should include short-term financial investments shown in current assets. Where Net debt is negative (i.e. an entity has net cash), the relevant Financial Target Threshold should be treated as having been met. EBITDA: Operating profit should be shown on the face of the Income Statement and, for the purposes of calculating this Financial Indicator, should include the entity's share of the results of any joint ventures or Associates. The depreciation and amortisation charges for the period may be found on the face of the Statement of Cash Flows or in a Note to the Accounts. Where EBITDA is negative, the

Financial Indicator	Specific Methodology
	relevant Financial Target Threshold should be treated as not having been met (unless Net Debt is also negative, in which case the relevant Financial Target Threshold should be treated as having been met).
4 Net Interest Paid Cover	"Earnings Before Interest and Tax" = Operating profit "Net Interest Paid" = Interest paid – Interest received Operating profit should be shown on the face of the Income Statement in a standard set of financial statements and, for the purposes of calculating this Financial Indicator, should include the entity's share of the results of any joint ventures or Associates. Interest received and interest paid should be shown on the face of the Cash Flow statement. Where Net interest paid is negative (i.e. the entity has net interest received), the relevant Financial Target Threshold should be treated as having been met.
5 Acid Ratio	[All elements that are used to calculate the Acid Ratio are available on the face of the Balance Sheet in a standard set of financial statements.]
6 Net Asset value	Net Assets are shown (but sometimes not labelled) on the face of the Balance Sheet of a standard set of financial statements. Net Assets are sometimes called net worth or 'Shareholders' Funds'. They represent the net assets available to the shareholders. Where an entity has a majority interest in another entity in which there are also minority or non-controlling interests (i.e. where it has a subsidiary partially owned by outside investors), Net Assets should be taken inclusive of minority or non-controlling interests (as if the entity owned 100% of such entity).
7 Group Exposure Ratio	"Group Exposure" = Balances owed by Group Undertakings + Contingent liabilities assumed in support of Group Undertakings "Gross Assets" = Fixed Assets + Current Assets Group Exposure: Balances owed by (i.e. receivable from) Group Undertakings are shown within Fixed assets or Current assets either on the face of the Balance Sheet or in the relevant notes to the financial statements. In many cases there may be no such balances, in particular where an entity is not a member of a group or is itself the ultimate holding company of the group. Contingent liabilities assumed in support of Group Undertakings are shown in the Contingent Liabilities note in a standard set of financial statements. They include guarantees and security given in support of the borrowings of other group companies, often as part of group borrowing arrangements. Where the contingent liabilities are capped, the capped figure should be taken as their value. Where no cap or maximum is specified, the relevant Financial Target Threshold should automatically be regarded as not having been met. In many cases an entity may not have assumed any contingent liabilities in support of Group Undertakings, in particular where an entity is not a member of a group or is itself the ultimate holding company of the group. Gross Assets: Both Fixed assets and Current assets are shown on the face of the Balance Sheet.

Schedule 25 – Form of Parent Company Guarantee

Dated { FORMTEXT }

The Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland

(MOD)

{ MACROBUTTON NoMacro {Party name 2**} }**
(Parent)

Parent Company Guarantee

Dated { FORMTEXT **}**

Between

The Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland (**MOD**); and

{ MACROBUTTON NoMacro {**Party**} **} {** MACROBUTTON NoMacro [{** }]**}** [registered in England with number **{** MACROBUTTON NoMacro {** }**}** whose registered office is at **{** MACROBUTTON NoMacro {** }**}**][a corporation organised and existing under the laws of **{** MACROBUTTON NoMacro {** }**}** whose principal place of business is at **{** MACROBUTTON NoMacro {** }**}**][of **{** MACROBUTTON NoMacro {** }**}**] (**Parent**).

Recitals

MOD, and **{** FORMTEXT **}** (**Contractor**) are parties to the Agreement (as defined below).

The Contractor has agreed, as a condition precedent to the Agreement, to procure that the Parent guarantees each and every Guaranteed Obligation of the Contractor under the Agreement.

The Parent as the ultimate parent company of the Contractor is willing to enter into this Guarantee on the terms set out in this Guarantee.

It is agreed:

1 **Definitions and interpretation**

1.1 Definitions

1.2 In this Guarantee and the recitals to it, unless the context otherwise requires or unless defined in Clause 1.3 or elsewhere in this Guarantee, words and expressions used in this Guarantee have the same meaning as is given to them in the [Agreement].

1.3 In this Guarantee, the following definitions apply:

Agreement means the [Future Maritime Support Programme Agreement in relation to [** Insert Contract Name / Lot or Service Description], Contract number SCTX/002], between the Contractor and the MOD, dated on or around the date of this Guarantee, including any other agreements entered into pursuant to or in terms of the Agreement, irrespective of whether any such agreement is entered into before, on or after the date of this Guarantee.

Default Rate means [three] per cent [(3%)] per annum.

Group means the Parent and its Subsidiaries [(and any company of which the Parent is a Subsidiary)] from time to time and Group Company means any one of them.

Guaranteed Obligations means each and every obligation or liability of the Contractor to the MOD under or pursuant to the Agreement.

Guarantee Period means the period starting on the date of this Guarantee and ending on the date on which the MOD is satisfied that all the Guaranteed Obligations are irrevocably discharged in full and that the Contractor has no commitment or liability, whether present or future, actual or contingent, in relation to or in connection with the Agreement.

Security means a mortgage, charge, pledge, lien, assignment by way of security, retention of title provision, trust or flawed asset arrangement (for the purpose of, or which has the effect of, granting

security) or other security interest securing any obligation of any person or any other agreement or arrangement in any jurisdiction having a similar effect.

Subsidiary means a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006.

2 **Construction**

2.1 Unless a contrary indication appears, any reference in this Guarantee to:

a) assets includes revenues, property and rights of every kind, present, future, actual and contingent and whether tangible or intangible (including uncalled share capital);

b) Clauses and Schedules are to be construed as references to the clauses of, and schedules to, this Guarantee;

c) the words include(s), including and in particular shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding words;

d) liability and liabilities include any obligation whether incurred as principal or as surety, whether or not in respect of indebtedness, whether present or future, actual or contingent and whether owed jointly or severally or in any other capacity;

e) the words other and otherwise shall not be construed as being limited by any preceding words where a wider construction is possible;

f) any person includes one or more of that person's assigns, transferees, successors in title, delegates, sub-delegates and appointees (in the case of a party to this Guarantee, in so far as such assigns, transferees, successors in title, delegates, sub-delegates and appointees are permitted) and any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality);

g) a regulation includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;

h) any statute or statutory provision includes any statute or statutory provision which amends, extends, consolidates or replaces it, or which has been amended, extended, consolidated or replaced by it, and any orders, regulations, instruments or other subordinate legislation made under it;

i) the Agreement or any other agreement or instrument is a reference to the Agreement or other agreement or instrument as amended, modified, restated, varied, novated, supplemented or replaced from time to time; and

j) a time of day is a reference to London time.

2.2 Section and clause headings are for ease of reference only.

3 **Guarantee and indemnity**

3.1 The Parent irrevocably and unconditionally:

a) guarantees to the MOD the due and punctual performance by the Contractor of its Guaranteed Obligations;

b) undertakes with the MOD that whenever the Contractor does not pay any amount when due under or in connection with the Agreement, it shall immediately on demand pay that amount as if it were the principal debtor;

c) as a separate and independent obligation, undertakes to the MOD that if, for any reason, any amount claimed by the MOD under this Guarantee is not recoverable on the basis of a guarantee, it will be liable as a principal debtor and primary obligor to indemnify the MOD on demand against any cost, expense, charge, damage, loss or liability it incurs as a result of the Contractor not paying any amount expressed to

be payable by it under the Agreement on the date when it is expressed to be due; and

d) as a separate and independent obligation, agrees with the MOD that if the Contractor fails to perform any of its respective Guaranteed Obligations, it shall upon first written demand by the MOD:

(i) perform or take such steps as are necessary to achieve performance or observance of the Guaranteed Obligations; and

(ii) indemnify the MOD against any cost, expense, charge, damage, loss or liability it incurs as a result of such failure.

3.2 Any references in this Guarantee to a guarantee and any provisions of this Guarantee relating to a guarantee but not to a primary obligation shall be ignored for the purpose of interpreting the Guaranteed Obligations under Clause 2.1(c). The amount payable by the Parent under this indemnity will not exceed the amount it would have had to pay under this Guarantee if the amount claimed had been recoverable on the basis of a guarantee.

4 Representations and warranties

The MOD has entered into this Guarantee in reliance on the representations of the Parent set out in this Clause 4, and the Parent warrants to the MOD on the date of this Guarantee and each anniversary of that date as set out in this Clause 4.

5 Corporate Status

5.1 It is a limited liability company, duly incorporated and validly existing under the laws of [England and Wales].

5.2 It has the power to sue and be sued in its own name, to own assets and to carry on business as it is now being conducted.

Execution and performance of Guarantee

5.3 It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Guarantee.

Binding obligations

5.4 The obligations expressed to be assumed by it in this Guarantee are legal, valid, binding and enforceable obligations.

Non-conflict with other obligations

5.5 The execution, delivery and performance by it of, and the transactions contemplated by, this Guarantee do not and will not conflict with or breach:

a) any law, regulation or official or judicial order applicable to it or binding on its assets;

b) its or the Contractor's constitutional documents; or

c) any agreement or instrument binding on it or the Contractor or any of its or the Contractor's assets.

No proceedings pending or threatened

5.6 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 Parent (having made all due enquiry), is pending or threatened against it or the Contractor or against its or the Contractor's assets which might have a material adverse effect on the ability of the Parent to perform its obligations under this Guarantee.

Insolvency

5.7 No proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Parent, 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 or the assets and revenues of the Contractor.

[No Prohibited Acts

5.8 In entering into this Guarantee it has not committed any Prohibited Act.]

[No Material Adverse Change

5.9 There has been no material adverse change in the business, financial condition, assets or prospects of the Group taken as a whole since 24th July 2020.]

6 Preservation of Guarantee

Continuing guarantee

6.1 This Guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable under the Agreement and to each and every Guaranteed Obligation to be performed by the Contractor, regardless of any intermediate payment or the discharge of a particular Guaranteed Obligation in whole or in part.

Reinstatement

6.2 If any discharge, release, settlement, accounting or arrangement (whether in respect of the Guaranteed Obligations or otherwise) is made by the MOD in whole or in part on the faith of any payment, security, recovery or other disposition which is avoided, reduced, rendered unenforceable or required to be restored by virtue of any provision or enactment now or hereafter in force relating to bankruptcy, insolvency, administration, liquidation or otherwise, without limitation, then the liability of the Parent under this Guarantee shall continue or be reinstated as if the discharge, release, settlement, accounting or arrangement had not occurred.

Waiver of defences

6.3 The obligations of the Parent under this Guarantee will not be affected by an act, omission, matter or thing which, but for this clause, would reduce, release or prejudice any of its obligations under this Guarantee (whether or not known to it or the Contractor) including:

a) any time, waiver or consent granted to, or composition with, the Contractor or other person;

b) the release of the Contractor or any other person under the terms of any composition or arrangement with any creditor of any person;

c) the taking, variation, compromise, exchange, renewal, enforcement or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Security over assets of, the Contractor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;

d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members, name or status of the Principal Debtor or any other person;

e) any amendment, modification, replacement, variation, supplement, extension novation, assignment or the avoidance or termination of this Guarantee, the Agreement or any other document;

f) any unenforceability, illegality or invalidity of any obligation of any person under this Guarantee, the Agreement or any other document;

g) any merger, reorganisation, dissolution, insolvency, liquidation, administration or similar procedure relating to the Parent, the Contractor, any other member of their Group or any other person;

h) any change which directly or indirectly affects the shareholding relationships between the Parent and the Contractor and each and every other member of their Group (whether or not such change has been consented to by the Contractor in writing and whether or not this occurred with or without the knowledge and consent of the Parent);

i) any forbearance or indulgence by the Contractor towards any other member of its Group whether as to payment, time, performance or otherwise; or

j) any other event or circumstance which would or might otherwise constitute a legal or equitable discharge of or defence available to any guarantor or surety in respect of the Guaranteed Obligations, except for indefeasible payment and performance and observance in full of the Guaranteed Obligations.

Parent intent

6.4 Without prejudice to the generality of Clause 6.3, the Parent expressly confirms that it intends that this guarantee shall extend from time to time to:

a) any (however fundamental) variation, increase and extension to the Agreement for any purpose whatsoever; and

b) each and every new agreement that is entered into between the MOD and one or more members of the Group after the date of this Guarantee but before the expiry of the Guarantee Period (as such new guaranteed agreements may be varied, increased or extended from time to time).

Immediate recourse

6.5 The Parent waives any right it may have of first requiring the MOD (or any trustee or agent on its behalf) to proceed against or enforce any other rights or claim payment from any person before claiming from the Parent under this Guarantee. This waiver applies irrespective of any law or any provision of the Agreement to the contrary.

Deferral of Parent's rights

6.6 During the Guarantee Period, and unless the MOD otherwise directs, the Parent will not exercise any rights which it may have by reason of performance by it of its obligations under this Guarantee or by reason of any amount being payable, or liability arising, under this Guarantee:

a) to receive or claim payment from or be indemnified by the Contractor;

b) to claim any contribution from any other guarantor of, or provider of Security in respect of any Guaranteed Obligation;

c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the MOD under the Agreement or of any guarantee or Security taken pursuant to, or in connection with, the Agreement;

d) to bring legal or other proceedings for an order requiring the Contractor to make any payment, or perform any obligation, in respect of which the Parent has given a guarantee, undertaking or indemnity under Clause 3;

e) to exercise any right of set-off against the Contractor; and/or

f) to claim or prove as a creditor of the Contractor in competition with the MOD.

Additional Security

6.7 This Guarantee is in addition to, is not in any way prejudiced by, and shall not merge with, any other guarantee or Security now or in the future held by the MOD.

7 **Payment mechanics**

Payments

7.1 On each date on which the Parent is required to make a payment under this Guarantee, the Parent shall make the same available to the MOD for value on the due date at the time and in such funds specified by the MOD.

Interest

7.2 If the Parent fails to pay any amount payable by it under this Guarantee on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at the Default Rate. Any interest accruing under this clause shall be immediately payable by the Parent on demand by the MOD.

Payments without deduction

7.3 All sums payable by the Parent pursuant to Clause 7.1 shall be paid immediately on first written demand by MOD and all sums payable by the Parent shall be paid in full without any deduction, withholding, counter claim or set off.

8 Costs and expenses

Preparation expenses

8.1 Each Party shall pay its own costs for the negotiation, preparation, execution and implementation of this Guarantee.

Amendment costs

8.2 If the Parent requests an amendment, waiver, consent or release of or in relation to this Guarantee, the Parent shall, within three (3) Business Days of demand, reimburse the MOD for the amount of all costs and expenses (including legal fees) reasonably incurred by it in responding to, evaluating, negotiating or complying with that request or requirement.

Enforcement costs

8.3 The Parent shall, within three (3) Business Days of demand, pay to the MOD the amount of all costs and expenses (including legal fees) incurred by the MOD in connection with the enforcement of, or the preservation of any rights under, this Guarantee.

9 Notices

Communications in writing

9.1 Any communication to be made under or in connection with this Guarantee shall be made in writing and, unless otherwise stated, may be made by email or letter.

Addresses

9.2 The address and email (and the department or officer, if any, for whose attention the communication is to be made) of each party for any communication or document to be made or delivered under or in connection with this Guarantee is that identified with its name below or any substitute address, email or department or officer as either party may notify to the other by not less than five (5) Business Days' notice.

9.3 The addresses referred to in Clause 9.2 are:

The Parent:

{ FORMTEXT **}**

Attention: **{** FORMTEXT **}**

Email: **{** FORMTEXT **}**

The MOD:

{ FORMTEXT **}**

Attention: **{** FORMTEXT **}**

Email: **{** FORMTEXT **}**

Delivery

9.4 Any communication or document made or delivered by one person to another under or in connection with this Guarantee will only be effective:

a) if by way of email,

(i) if transmitted between 09:00 and 17:00 hours on a Business Day (recipient's time) on completion of receipt by the sender of verification of the transmission from the receiving instrument; or

(ii) if transmitted at any other time, at 09:00 on the first Business Day (recipient's time) following the completion of receipt by the sender of verification of the transmission from the receiving instrument, or

b) if by way of letter,

(i) when it has been left at the relevant address or

(ii) two (2) Business Days (or, in the case of airmail, five (5) Business Days) after being deposited in the post postage prepaid (or, as the case may be, airmail postage prepaid), in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 9.4, if addressed to that department or officer.

10 **General**

Assignment and Transfer

10.1 Neither party may transfer, sell, assign, transfer or novate any of its rights, benefits or obligations under this Guarantee to any other person unless it has first obtained the prior written consent of the other Party to do so.

Set-off

10.2 The MOD may set off any matured obligation due from the Parent under this Guarantee (to the extent beneficially owned by the MOD) against any matured obligation owed by the MOD to the Parent.

Partial invalidity

10.3 If, at any time, any provision of this Guarantee is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

Further assurances

10.4 The Parent shall execute such further documents and instruments and provide such further assurances and undertakings as the MOD may reasonably request from time to time during the Guarantee Period to achieve the purpose and intent of this Guarantee.

Survival

10.5 The termination of the Guaranteed Obligations under this Guarantee shall be without prejudice to any liability of the Parent accrued prior to such termination, in respect of which the MOD has delivered a written claim to the Parent on or prior to the expiry of the Guarantee Period, and (except to the extent stayed from commencing any such proceedings) any proceedings in respect of that claim are commenced within twelve (12) Months of the expiry of the Guaranteed Period.

10.6 This Guarantee shall survive the termination, for any reason whatsoever, of the Agreement.

Remedies and waivers

10.7 No failure to exercise, nor any delay in exercising, on the part of the MOD, any right or remedy under this Guarantee shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Guarantee are cumulative and not exclusive of any rights or remedies provided by law.

Amendments and waivers

10.8 Any term of this Guarantee may only be amended or waived with the written consent of the Parent and the MOD.

Counterparts

10.9 This Guarantee may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Guarantee.

Third party rights

10.10 The MOD and its officers, employees and agents may enforce any term of this Guarantee which purports to confer a benefit on that person, but no other person who is not a party to

this Guarantee has any right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Guarantee.

10.11 Notwithstanding any term of this Guarantee, the parties to this Guarantee may rescind, vary, waive, release, assign, novate or otherwise dispose of all or any of their respective rights or obligations under this Guarantee without the consent of any person who is not a party to this Guarantee.

11 **Governing law and enforcement**

The Parties irrevocably agree that the provisions of [Clause 90 (*Governing law and jurisdiction*)] of the Agreement shall apply to this Guarantee as if the references in the Guarantee to the Agreement were (for the purposes of this Guarantee only) instead reference to this Guarantee.

12 **Effect as a deed**

This Guarantee shall take effect as a deed even if it is signed under hand on behalf of the MOD.

Executed as a deed and delivered on the date appearing at the beginning of this Guarantee.

Executed and **delivered** as a deed by)
{ FORMTEXT } acting by)
)

Director

Director/Secretary

The corporate seal of
The Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland
hereunto affixed is hereby authenticated by:

Authorised Signatory

Authorised Signatory

Schedule 26 – Form of Performance Bond

[To be determined in the event that a Performance Bond is required in accordance with Part 21 -Financial Security of the Contract]

Schedule 27– Form of Direct Agreement

Direct Agreement

Dated

The Secretary of State for Defence for the United Kingdom of Great Britain and Northern Ireland

(Authority)

[ ] Limited

(Contractor)

[ ] Limited

(Subcontractor)

Re: [*insert description of relevant sub contract*]

[Note: To be considered if Authority requires further affirmative step-in rights]

Direct Agreement

Delivered as a deed and dated

Between

(1) The Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland (the **Authority**);

(2) [*Insert name of primary Subcontractor*] Limited a company incorporated in [ ] with registered number [ ] having its registered office at [ ] (the **Contractor**); [and]

(3) [*Insert name of sub Subcontractor*] Limited a company incorporated in [ ] with registered number [ ] having its registered office at [ ] (the **Subcontractor**)[.]/[;and]

(4) [*insert name of Subcontractor Guarantor*] Limited a company incorporated in [ ] with registered number [ ] having its registered office at [ ] (the **Subcontractor Guarantor**)

Recitals

(1) The Contractor has entered into the Future Maritime Support Programme Contract with the Authority dated [ ] for the provision by the Contractor to the Authority of the Services (as defined therein) (**FMSP**)

(2) The Contractor has engaged or is to engage the Subcontractor under a [*insert contract reference/description*] dated [ ] (as amended from time to time) (the **Contract**), regarding the [insert details of the contract role in the project] in order that the Subcontractor may support the Contractor in the delivery of the Services (as hereinafter defined).

(3) It is a condition of FMSP that the Authority, the Subcontractor and the Subcontractor enter into this Direct Agreement.

(4) The Authority shall be entitled to rely and is deemed to have relied on the Subcontractor's reasonable skill, care and diligence in respect of all matters covered by this Direct Agreement insofar as they relate to the [services provided]/[goods supplied] by the Subcontractor under the Contract.

(5) [The Subcontractor Guarantor has guaranteed the obligations of the Subcontractor under the Contract and is party to this Direct Agreement for that purpose]

It is agreed

1 **Definitions and Interpretation**

1.1 Definitions

a) Unless defined herein, capitalised terms and expressions used in this Direct Agreement shall have the meaning as attributed to them in the Contract.

1.2 In this Direct Agreement the following definitions shall apply:

Appointed Representative means a Representative that has been granted rights in respect of the Contract under Clause 3.1;

Business Day means a day (other than a Saturday or Sunday) on which banks in England are open for the transaction of general business;

Contract Termination Notice means a notice of termination served by the Subcontractor under the Contract;

Contractor Default means a contractor default as defined in FMSP;

Enforcement Action means:

(a) taking any steps to terminate or serve any notice for the purposes of terminating the Contract;

(b) presenting, or taking any steps leading to the presentation of, any petition for the administration, insolvency or winding-up (or equivalent in any jurisdiction) of the Contractor;

(c) commencing any execution or other legal process or proceedings (in any jurisdiction) against the Contractor; or

(d) taking any steps to enforce any judgment or order against the Contractor.

Enforcement Date means the date on which the Authority gives notice to the Contractor of a Contractor Default under the relevant provisions of FMSP;

FMSP has the meaning given to it in Recital 1;

Good Industry Practice means the exercise of that degree of skill, diligence, prudence, foresight and practice which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same type of undertaking as that to which the relevant Service relates under the same or similar circumstances to those in which that Service is to be provided.

Representative means:

(a) the Authority;

(b) an administrative receiver, receiver or receiver and manager of the Contractor appointed under FMSP;

(c) an administrator of the Contractor or an administrator of the Subcontractor;

(d) a person directly or indirectly owned or controlled by the Authority; or

(e) any other person approved by the Subcontractor under the Contract;

Required Period means the period starting on the date of a Termination Notice and ending sixty (60) days later;

Step-In Date means the date on which the Authority takes any action under Clause 3.7;

Step-In Period means the period from the Step-In Date up to and including the earlier of:

(a) the Step-Out Date;

(b) the date of any termination of the Contract under Clause 4.1;

(c) the date of completion of any transfer under Clause 8; and

(d) the date of expiry of the Contract;

Step-Out Date means the expiry of the thirty (30) calendar day notice period in any notice given under Clause 5.1;

Suitable Substitute means a person:

(a) having the legal capacity, power and authority to become a party to and perform the obligations and assume the liabilities of the Contractor under the Contract; and

(b) having, or employing persons having, the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and sub–contracts) which are sufficient to enable it to perform the obligations of the Contractor under the Contract; and

Termination Notice has the meaning given in Clause 2.3.

1.3 Interpretation

a) Unless a contrary indication appears, any reference in this Direct Agreement to:

(i) any Party, the Subcontractor, [the Subcontractor's Guarantor,] the Contractor, the Authority shall be construed so as to include its successors in title, permitted assigns and permitted transferees;

(ii) assets includes present and future properties, assets, intellectual property rights, real property, heritable property, personal property, rights,

revenues, uncalled capital and any rights to receive, or require delivery of, or exercise direct control over any of the foregoing;

(iii) the term including shall be construed as meaning including without limitation;

(iv) an obligation means any duty, obligation or liability of any kind;

(v) a person includes any individual, firm, Contractor, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);

(vi) a regulation includes any present or future law, regulation, rule, official directive, request or guideline having the force of law of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;

(vii) a right means any right, privilege, power, immunity or other interest or remedy of any kind;

(viii) the winding up, dissolution, administration or bankruptcy of a person shall be construed as to include any equivalent or analogous procedures under the laws of any jurisdiction in which such person is incorporated or resident in any jurisdiction in which such person carries on business or in which any of its assets are located (including the seeking of a liquidation, winding up, appointment of bankruptcy trustee, reorganisation, dissolution, administration, arrangement, adjustment, protection or relief of debtors, insolvency and suspension of payments);

(ix) a provision of law or regulation shall be a reference to that provision as amended, supplemented, replaced or re-enacted;

(x) a time of day shall be a reference to London, England time; and

(xi) clauses and schedules are to be construed as references to clauses of and schedules to this Direct Agreement; and

(xii) a Business Day is any day which is not a Saturday a Sunday a bank holiday or a public holiday in England.

1.4 Section, clause and Schedule headings are for ease of reference only and shall be ignored in the interpretation of this Direct Agreement;

2 **Acknowledgement**

2.1 Nothing in this Direct Agreement shall prejudice the Authority's common law rights.

2.2 Notice of repudiation, termination or suspension and existing liabilities

2.3 The Subcontractor shall not repudiate, terminate or suspend its performance under the Contract or serve a Contract Termination Notice or take any other Enforcement Action prior to the expiry of a time period (being equal in length at least to the Required Period) specified in a notice given by it to the Authority (a Termination Notice) stating:

a) the proposed date of repudiation, termination or suspension and/or details of other Enforcement Action; and

b) the grounds for repudiation, termination or suspension or taking other Enforcement Action in reasonable detail.

2.4 Not later than the date falling fourteen (14) days after the date of receipt by the Authority of a Termination Notice or, if earlier, the date falling fourteen (14) days after the date on which the Authority informs the Subcontractor that a Contractor Default has occurred, the Subcontractor shall give to the Authority a notice (a Liabilities Notice) containing details of any amount owed by the Contractor and of any other existing liabilities or unperformed obligations of the Contractor to the Subcontractor of which the Subcontractor is aware (having made reasonable enquiry):

a) as at the date of the Termination Notice or the notification of the relevant Contractor Default; and

b) which will fall due to be paid or discharged under the Contract on or prior to the end of the Required Period or if no Termination Notice has been given, which will fall due to be paid or discharged under the Contract on or prior to the end of a period of days equivalent to the Required Period calculated from the date of the notification of the relevant Contractor Default.

2.5 If the Subcontractor becomes aware that the information contained in a Liabilities Notice is untrue, incomplete and/or inaccurate, or any information relevant to such notice has yet to be disclosed to the Authority, the Subcontractor shall give the Authority a notice updating the Liabilities Notice as soon as reasonably practicable.

2.6 The Authority may instruct the Subcontractor to verify, at the Contractor's cost, the information set out in any Liabilities Notice.

2.7 After receiving notifications from the Authority that a Contractor Default has occurred, the Subcontractor shall accept, as validly given by the Contractor any notices or demands given or made by the Authority pursuant to, and in accordance with, the Contract, provided such notice or demand would have been valid if given by the Contractor.

3 **Representative**

3.1 Without prejudice to the Authority's rights under FMSP, at any time:

a) after a Contractor Default or the Enforcement Date, whether or not a Termination Notice has been served; or

b) during the Required Period,

the Authority may give notice to the Subcontractor that a Representative shall be appointed to administer the Contract who shall have the same rights as if it had at all times been party to a contract on the same terms as the Contract in place of the Contractor (the **Appointed Representative**). The Subcontractor agrees to the appointment of the Appointed Representative, subject only to any challenge by the Subcontractor in accordance with Clause 3.2 below.

2.4 The Subcontractor may only object to the identity of the Appointed Representative if:

(a) the person proposed does not fall within limbs (a) to (d) of the definition of Representative; and

(b) the Subcontractor's objection is reasonable in all the circumstances; and

(c) the Subcontractor's objection is notified to the Authority within five (5) Business Days of receipt of notice from the Authority under Clause 3.1,

in which case the Authority shall propose an alternative Appointed Representative.

2.5 For the purposes of Clause 3.2, the Subcontractor's objection will not be deemed reasonable if the Appointed Representative:

(a) has the legal capacity, power and authority to become a party and perform the obligations and assume the liabilities of the Contractor under the Contract; and

(b) has or employs persons having, the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and sub–contracts) which are sufficient to enable it to perform the obligations of the Contractor under the Contract.

2.6 The Authority shall give the Subcontractor no less than five (5) Business Days' prior notice of any action to be taken pursuant to this Clause 3.

2.7 The date on which the Appointed Representative is appointed shall be the Step-in Date.

2.8 Any sums or obligations not duly notified to the Authority in a Liabilities Notice pursuant to Clauses 2.4 and 2.5:

(a) on or before the date specified in Clause 2.4; or

(b) in the case of a notice given by the Subcontractor under Clause 2.5, on or before the date falling three (3) days prior to the Step-in Date;

shall not be assumed by the Appointed Representative during the Step-in Period.

4 Step In Period

4.1 The Subcontractor shall deal with the Appointed Representative and not the Contractor during the Step-In Period. During the Step-in Period, the Appointed Representative is entitled to exercise the rights of the Contractor under the Contract and is irrevocably authorised and entitled to act on behalf of, and to bind, the Contractor under and pursuant to the Contract. The Subcontractor agrees that payment to it by the Appointed Representative of any sums due under the Contract or performance by the Appointed Representative of any other of the Contractor's obligations under the Contract comprises good discharge of the Contractor's payment obligations and other obligations under the Contract.

4.2 Notwithstanding Clause 2.3 and subject to Clause 4.3, the Subcontractor shall during the Step-in Period be entitled to terminate the Contract only:

a) by written notice to the Contractor, the Authority and the Appointed Representative, if any amount referred to in the Liabilities Notice issued in accordance with Clauses 2.4 or 2.5 above has not been paid to the Subcontractor on or before the Step-In Date, provided that such amount has been agreed between the Subcontractor and the Contractor or the Subcontractor and the Authority to be due or has otherwise been determined to be due in accordance with the terms of the Contract; or

b) by written notice to the Contractor, the Authority and the Appointed Representative, if amounts which become payable under the terms of the Contract after the date referred to in Clause 2.4 have not been discharged on or before the date falling thirty (30) days after the Step-In Date, provided that such amounts have been agreed between the Subcontractor and the Contractor or the Subcontractor and the Authority to be due or have otherwise been determined to be due in accordance with the terms of the Contract; or

c) on grounds arising after the Step-In Date permitting termination under the terms of the Contract, and following compliance by the Subcontractor with any procedures applicable to termination under the Contract, as if the Appointed Representative had been named in place of the Contractor.

4.3 The Subcontractor may not terminate the Contract during the Step-In Period on any of the following grounds:

a) on any grounds for termination that arose prior to the Step-In Date, although such grounds may be taken into account after the Step-Out Date;

b) on the grounds that the Appointed Representative has not discharged any outstanding performance or payment obligations of the Contractor which have arisen or fallen due prior to the Step-in Date, unless such sums or obligations have been specified in the Liabilities Notice issued in accordance with Clause 2.4;

c) by reason of the Authority having taken any action referred to in Clause 4; or

d) on any grounds arising solely in relation to the Contractor as opposed to the Appointed Representative.

5 Step Out

5.1 The Appointed Representative or the Authority may give the Subcontractor thirty (30) days' prior written notice of the date on which the Appointed Representative will step out (the Step-Out Date).

5.2 Upon the Step-Out Date:

a) all rights of the Appointed Representative against the Subcontractor will be cancelled, other than those relating to circumstances arising prior to the Step-Out Date; and

b) the Appointed Representative will be released from all obligations and liabilities to the Subcontractor under the Contract and this Direct Agreement which may have arisen prior to the Step-Out Date, howsoever arising (including tort, misrepresentation or unjust enrichment).

c) Subject to Clause 7.3, the Contractor or the Subcontractor shall continue to be bound by the terms of the Contract (as the case may be), notwithstanding the occurrence of the Step-Out Date.

6 **Not Used**

7 **Novation**

7.1 Subject to Clause 7.2, at any time:

a) after an Enforcement Date; or

b) during the Required Period; or

c) during a Step-In Period,

the Authority may give written notice to the Subcontractor and any Appointed Representative, that it wishes to procure the transfer of the Contractor's rights under the Contract to a Suitable Substitute. Such written notice shall contain details of the proposed Suitable Substitute.

7.2 The Subcontractor may only object to the identity of the Suitable Substitute if:

a) the Subcontractor's objection to such person is reasonable in all the circumstances; and

b) the Subcontractor's objection is notified to the Authority within ten (10) days of receipt of the notice under Clause 7.1,

in which case the Authority may propose an alternative Suitable Substitute. The procedure outlined in this Clause 7.2 may be repeated until the Subcontractor does not object to the identity of the proposed Suitable Substitute.

7.3 As soon as the identity of the Suitable Substitute is determined in accordance with Clauses 7.1 and 7.2 above, the Subcontractor, the Contractor and the Authority shall procure that the Suitable Substitute shall enter into a deed of novation within five (5) Business Days of the Authority's request which provides for the following:

a) the Contractor to be released from and the Suitable Substitute to assume:

(i) any obligations or liabilities of the Contractor arising on or after the date of the deed of novation under or in connection with the Contract; and

(ii) any outstanding liabilities arising prior to the date of the deed of novation which have been notified to the Authority in accordance with Clause **{** REF _Ref279594196 \n \h * MERGEFORMAT **}**, provided such amounts have been agreed between the Contractor and the Subcontractor or the Subcontractor and the Authority (as the case may be) to be due or have otherwise been determined to be due in accordance with the terms of the Contract;

b) the Suitable Substitute to have the same rights and benefits of the Contractor (or the Appointed Representatives thereof) arising in connection with the Contract as if he had at all times been party to a contract on the same terms as the Contract in place of the Contractor;

c) any then subsisting ground for termination of the Contract by the Subcontractor to be deemed to have no effect and any subsisting Termination Notice to be automatically revoked; and

d) the Subcontractor to enter into a direct agreement with the Authority lending to the Suitable Substitute on substantially the same terms as this Direct Agreement.

7.4 Without limiting the application of Clause 2.3, the Subcontractor shall not take any Enforcement Action during the period between receipt of the notice of proposed transfer in

accordance with Clause 7.1 and the date of the deed of novation entered into pursuant to Clause 7.3.

8 **Not Used**

9 **Copyright Licence**

9.1 The Subcontractor hereby grants to the Authority a non-exclusive, royalty free licence to copy, use and, subject to the restrictions relating to confidentiality in the Contract, communicate the [Subcontractor's Documents] for the purposes of operating, repairing, replacing, maintaining, adjusting or dismantling the [refer to the relevant asset/goods/services as appropriate] or any part thereof until the full and final repayment of all amounts due to the Authority pursuant to FMSP or otherwise. In relation to software the licence is restricted to a licence to use, only.

10 **Limitation of Liability**

10.1 Notwithstanding the foregoing provisions, nothing in this Direct Agreement shall require the Subcontractor to incur any more expenditure or suffer any loss it would not have incurred under the Contract.

10.2 Neither the Authority nor any Appointed Representative shall be liable to the Subcontractor for any costs, losses, liabilities or expenses relating to the realisation of the Contractor's rights under the Contract or from any act, default, omission or misconduct of the Authority or any Appointed Representative or their respective officers, employees or agents in relation to the Contract or in connection with FMSP except to the extent set forth in this Direct Agreement and except to the extent that such costs, losses, liabilities or expenses are caused by the gross negligence, fraud or wilful misconduct of the Authority, Appointed Representative or respective officers, employees or agents.

10.3 Notwithstanding anything to the contrary, neither the Authority nor any Appointed Representative shall be liable to the Subcontractor, whether in contract, tort, equity, negligence, warranty, strict liability, breach of statutory duty or otherwise for any special, indirect, incidental or consequential damages or for any loss of profit, loss of use, loss of production, loss of contract, financing costs or any financial or economic loss suffered by the Subcontractor.

11 **Representations and Warranties**

11.1 The Subcontractor warrants and undertakes the following to the Authority that as at the date of this Direct Agreement:

a) it has complied and will continue to comply with all terms and obligations arising out of the Contract on the Subcontractor's part to be performed and observed and shall [provide the services]/[supply the goods] in accordance with the Contract;

b) without prejudice to (a), that

(i) it has exercised and will continue to exercise all due skill, care and diligence to be expected from a properly qualified and competent [service provider]/[supplier of goods] engaged on a similar basis;

(ii) that all materials and goods [used in the provision of the services] correspond to the description, quality and conditions set out in the requirements under the Contract; and

(iii) in performing its obligations under the Contract, it has complied with all relevant legislation and Good Industry Practice;

c) it is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation (and if relevant under those laws, is in good standing) and has the power to own its property and assets and to carry on its business as contemplated herein;

d) it has the power to:

(i) execute this Direct Agreement and the Contract and any other documentation relating to this Direct Agreement to which it is a party;

(ii) to deliver this Contract and the Contract and any other documentation relating to this Contract or the Contract that it is required by this Direct Agreement or the Contract to deliver; and

(iii) to perform its obligations under this Direct Agreement and the Contract (as the case may be).

e) it has taken all necessary action to authorise the execution, delivery and performance referred to in paragraph (b) and such execution, delivery and performance does not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgement of any court or other agency of government applicable to it or any of its assets or any contractual restrictions binding on or affecting it or any of its assets; and

f) its obligations under this Direct Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law).

g) Contract Remains in Effect

11.2 Subject to the provisions of this Direct Agreement, the provisions and stipulations of the Contract shall remain valid and in effect.

12 Duration

12.1 Without prejudice to any accrued rights and obligations arising pursuant to this Direct Agreement existing at the date of termination, this Direct Agreement shall remain in effect until the earlier of:

a) the date on which the Contract has terminated (in accordance with this Direct Agreement) or expired; and

b) the date on which a transfer occurs pursuant to a deed of novation entered into in accordance with Clause 7.

12.2 The Authority shall promptly notify the Subcontractor of any Contractor Default of which the Authority is aware and any Enforcement Date.

13 Confidentiality

13.1 [To be aligned with approach from sub-contracting and supply chain workstream]

14 Severance

14.1 If any provision of this Direct Agreement or part thereof is rendered void, illegal or unenforceable in any respect (whether against all or only some of the parties), the validity, legality and enforceability of the remaining provisions (and such aforesaid provision against the other parties) shall not in any way be affected or impaired thereby.

15 Assignment and Transfer

15.1 This Direct Agreement is binding on and shall ensure for the benefit of the Parties and their respective successors and permitted assignees.

15.2 No Party to this Direct Agreement may transfer, sell, assign, novate, create any encumbrance or otherwise dispose of this Direct Agreement or any part thereof, or any benefit, interest or advantage of this Direct Agreement or any part thereof without the prior written consent of the other Parties.

16 Amendments

16.1 Any amendments to this Direct Agreement shall be in writing and with the consent of each of the parties.

16.2 The Subcontractor shall not make any amendment, variation, supplement or novation of or to the Contract without the prior written consent of the Authority.

17 **Further Assurance**

17.1 Each of the Parties shall, at its own cost, do all further acts and things and execute and deliver all instruments as shall be reasonably necessary for the carrying out of their respective obligations under this Direct Agreement.

18 **Remedies and Waivers**

18.1 Waiver must be in writing

a) If a Party breaches a term of this Direct Agreement, the rights of each other Party arising from that breach cannot be waived except:

(i) with the express written consent of that other Party; and

(ii) to the extent set out in that consent,

and waiver of one breach does not waive or imply waiver of any further or other breach.

18.2 Limited exercise is not a waiver

18.3 This Clause 18 applies if a Party becomes entitled to exercise any right or remedy under this Direct Agreement or by law or regulation. No failure to exercise, no delay in exercise and no single or partial exercise of that right or remedy shall:

a) adversely affect that right or remedy;

b) waive it; or

c) prevent any further exercise of it or of any other right or remedy,

except to the extent the Parties have expressly agreed otherwise in writing.

18.4 Rights and remedies cumulative

18.5 The rights and remedies arising from this Direct Agreement are cumulative. They are not exclusive of any other rights or remedies provided by law or otherwise except to the extent this Direct Agreement expressly states otherwise.

18.6 Without prejudice

18.7 Nothing in this Direct Agreement or the arrangements contemplated thereby shall prejudice the rights of any of the Authority under FMSP or shall be construed as obligating the Authority to exercise any of its rights under FMSP or under this Direct Agreement**.**

19 **No conflict**

19.1 If there is any conflict or inconsistency between the provisions of this Direct Agreement and the Contract, the provisions of this Direct Agreement shall prevail.

20 **Acknowledgement of Guarantor**

20.1 The Subcontractor's Guarantor joins in this Direct Agreement to acknowledge and consent to the arrangements set out in it and agree not knowingly to do or omit to do anything that may prevent any party from enforcing its rights under this Direct Agreement.

21 **Third party rights**

21.1 Save for any successor Authority and to the extent provided for in this Direct Agreement in respect of the Appointed Representative and the Suitable Substitute, no right is granted to any person who is not a party to this Direct Agreement to enforce any term of this Direct Agreement in its own right and the Parties to this Direct Agreement declare that they have no intention to grant any such right.

22 **Counterparts**

22.1 This Direct Agreement may be entered into in any number of counterparts and by the parties on separate counterparts, and each of the executed counterparts, when duly exchanged or delivered, shall be deemed to be an original, but taken together they shall constitute one and the same instrument.

23 **Notices**

23.1 Notices

a) Any notice or other communication to a party to this Direct Agreement must be in writing. It must be addressed for the attention of such person, and sent to such address or email address, as that party may from time to time notify to the other parties.

b) The initial administrative details of the parties are detailed below, but any party may amend those details by notice to the Authority.

23.2 Delivery

a) Any notice or other communication to a party to this Direct Agreement will only be effective:

(i) if by way of email, the Business Day following sending; or

(ii) if by way of letter, when it has been left at the relevant address, or five (5) Business Days after being deposited in the post (postage prepaid) in an envelope addressed to such party at its address as notified in accordance with this Direct Agreement.

b) Any communication or document to be made or delivered to the Authority will be effective only when actually received by the Authority and then only if it is expressly marked for the attention of the department or officer identified in Clause 23.3 below (or any substitute department or officer as the Authority shall specify for this purpose).

c) Any reference in this Direct Agreement to the date of a notice shall be interpreted as the date when such notice became effective.

23.3 The address and email address of each party to this Direct Agreement shall be:

Authority

For the attention of: [ ]

Address: [ ]

Email Address: [ ]

Contractor

For the attention of: [ ]

Address: [ ]

Email Address: [ ]

Subcontractor

For the attention of: [ ]

Address: [ ]

Email Address: [ ]

24 **Governing Law and Jurisdiction**

24.1 Governing law

24.2 English law governs this Contract, its interpretation and any non-contractual obligations arising from or connected with it.

24.3 Jurisdiction

24.4 Each Party agrees that a judgment or order of an English court in a dispute (without limiting any rights that such Party may have to appeal a judgment or order) is conclusive and binding on it and may be enforced against it in the courts of any other jurisdiction.

Executed as a deed and delivered on the date appearing at the beginning of this Direct Agreement.

EXECUTION PAGE

The CORPORATE SEAL of the SECRETARY OF STATE FOR DEFENCE hereto affixed is hereby authenticated by: -	)
	)
	)
	)

Signature ……

Full Name ……

Post title ……

Authorised by the Secretary of State

Executed as a deed by **[*Contractor*]**)

Limited acting by)

a director) ……

Director

in the presence of:

Signature of witness: ……

Name of witness: ……

Address: ..……

……..

……..

Executed as a deed by **[*Subcontractor*]**)

Limited acting by)

a director) ……

Director

in the presence of:

Signature of witness: ……

Name of witness: ……

Address: ..……

……..

……..

Schedule 28 – Locations of the SDE System - Not used

Schedule 29 – Specific Standards

Key for this Schedule

Standards

This Schedule 29 sets out the specific standards that shall apply to the performance of this Contract. This list is not exhaustive and the Contractor will be required to comply with all Naval Base permanent and temporary memoranda as and when promulgated throughout the duration of the Contract.

Quality Standards

- ISO 9001:2015 - UK Accreditation Service
- ISO 9000:2015 - Quality Management Systems
- AQAP 2110 Edition D Version 1 - NATO QA Requirements for Design, Development & Production
- AQAP 2105 Edition C Version 1 - NATO Requirements for Quality Plans
- Def Stan 05-135 Issue 2 - Avoidance of Counterfeit Material

Naval Base Standing Orders

- HMNB Clyde Security Standing Orders

Site Policies

- HMG Security Policy Framework
- HMNB Clyde Contractor and Visitor Security Policy Document
- HMNB Clyde Mandatory Training Plan
- RNAD Coulport Visitor HSE and Security Leaflet
- HMNB Clyde Information Guide
- HMNB Clyde Security Response Plan

Schedule 30– Change Procedure

1 **Notice of Change**

1.1 Either Party may propose a Change (a Change Proposal) such that:

a) if the Authority requires a Change, it shall serve a Change Notice on the Contractor in the form of a draft Tasking Order using a Task Approval Form (TAF) at Annex B to Schedule 18 (*Forms)*. The Authority will prepare the draft Tasking Order with sufficient detail as to the required Change to enable the Contractor to provide a proposal for the completion of the Change; or

b) if the Contractor requires a Change, it shall serve a Change Notice on the Authority in the form of a draft Tasking Order. The Contractor will prepare the draft Tasking Order with sufficient detail as to the required Change to enable the Authority to evaluate the request and to proceed to a formal Change Proposal. if applicable.

1.2 Each draft Tasking Order shall be identified by means of a unique Task Identification Number (TIN). The Contract Number and TIN must be shown on all correspondence relating to that Tasking Order.

1.3 The Contractor or the Authority (as applicable in the circumstances) shall give an early warning by notifying the other Party in writing (including through the Governance processes under this Contract) as soon as either reasonably becomes aware of any matter which is reasonably likely to necessitate:

a) a request for additional work under Outcome 4; or

b) an alteration to:

(i) the fit, form, function or characteristics of the Services; or

(ii) other work caused by the alteration at b) (i); or

(iii) any applicable Law;

all of which may constitute a Change to the Contract.

1.4 The Parties shall work together to minimise the volume of Change(s).

1.5 Without prejudice to paragraph 1.1, a Party shall not serve a Change Proposal in respect of a proposed Change(s), until such time as the anticipated cumulative value of the Change(s) not covered by an existing Change Proposal exceeds (£10,000) ten thousand pounds (without prejudice to that Party's right to include the full value of such Change(s), once it becomes entitled to raise the relevant Change Proposal). Except by agreement of the Operating Board that the Change is of sufficient urgency that it can be processed as a Level 1 Change.

1.6 No Change:

a) may be proposed except in accordance with this Schedule 30; and

b) shall be made or take effect except in accordance with this Schedule 30;

and a Change for these purposes includes the agreement of, or any amendment to, a Tasking Order.

1.7 The Levels of change are defined as:

a) Level 1 Minor Change - an administrative change or cumulative low value changes up to the value of £50,000 (fifty thousand pounds).

b) Level 2 Moderate Change - a change or cumulative low value changes up to the value of £5,000,000 (five million pounds) to existing deliverable outputs.

c) Level 3 Major Change - a higher value change (Over £5,000,000) which will be subject to SSCR/DRA regulations and altering the existing deliverable and/or adding a deliverable or new form of tasking.

1.8 The Authority shall have the right to negotiate prices under the terms of DEFCON 643 (Price Fixing (Non-qualifying contracts)) or DEFCON 127 (Price Fixing Condition for Contracts of

Lesser Value). Where DEFCON 643 is used, the Contractor shall make arrangements with their sub-contractors in accordance with clause 5 of DEFCON 643.

1.9 There may be circumstances where:

a) the Parties may not need to adjust any Pricing Parameter if the Parties agree that the impact of a Change could be mitigated through appropriate programme management action to minimise the need to alter any Pricing Parameter; and/or

b) it is important that the Change is processed by a certain date. Accordingly, prior to the Change Proposal being served, the Parties shall discuss in good faith the possibility of minimising any impact of a proposed Change to the Pricing Parameters and the attainment of key dates through appropriate programme management.

1.10 The Contractor shall not commence any activity relating to a proposed Change until authorised by the Commercial Officer or his authorised representative in accordance with paragraph 4 Schedule 6 *(Governance).* Any work undertaken prior to authorisation is at the Contractors own risk. If the proposed Change is exceptional work, this will be in accordance with paragraph 5.

2 Contractor Response Period

2.1 The Contractor shall be required to submit a proposal (the Change Proposal) to the Authority offering to undertake the Task described in the draft Tasking Order at paragraph 1.1 a) within:

a) seven (7) Business Days of receipt of the draft Tasking Order, or such other period as within that seventh (7th) Business Day for a Level 1 change; or

b) fifteen (15) Business Days of receipt of the draft Tasking Order, or such other period as within that fifteenth (15th) Business Day for a Level 2 change; or

c) thirty (30) Business Days of receipt of the draft Tasking Order, or such other period as within that thirtieth (30^{th}) Business Day for a Level 3 change;

2.2 The Contractor may reject any draft Tasking Order unless a Change is required in accordance with paragraph 1.2 b) (iii). If a draft Tasking Order is rejected, the Contractor shall provide a full, written explanation for their rejection within the timelines specified in paragraph 2.1 a), b) or c).

Contractor's Change Proposal

2.3 The Change Proposal submitted by the Contractor in accordance with paragraph 2.1 shall contain all the information requested by the Authority in the draft Tasking Order, and where appropriate any further information discussed and agreed between the Authority and the Contractor following the issue of the draft Tasking Order and in accordance with the requirements of paragraph 4.

2.4 The Authority will evaluate the Contractor's Change Proposal and may either:

a) approve the proposal through the issue of a Tasking Order; or

b) reject the proposal, giving reasons for such rejection, and if appropriate, indicating whether an amended proposal may be submitted; or

c) enter into a process of dialogue and/or negotiation as may be necessary to reach an agreed Tasking Order Form.

2.5 Where applicable, the Contractor shall use a configuration control system to control Specification Changes. The configuration control system shall be compatible with ISO 9001 (latest published version) or as otherwise specified in accordance with this Contract.

3 Change Proposal

3.1 Any Change Proposal must contain the following information:

a) the Contract Number and TIN;

b) the justification for the Change;

c) sufficient detail in relation to the Change, including key programme dates, to enable the Parties to evaluate the Change Proposal in full;

d) the proposed timetable for the implementation of the Change;

e) full details of the net benefit to the Authority, enabling the Authority to conduct a Value for Money (VFM) review;

f) any key assumptions or dependencies in relation to the proposed Change;

g) dates by which a decision by the Authority or the Contractor is critical;

h) an estimate of the additional costs or the savings resulting from implementation of the Change and proposed changes to any Pricing Parameter reasonably required to properly reflect such costs or savings (such estimate or cost to be consistent with existing Pricing Parameters to the extent reasonably possible draw on the existing contractual provisions where appropriate);

i) any proposed adjustments to payments or incentives under this Contract;

j) any amendment required to this Contract as a result of the Change(s);

k) the impact of the Change(s) on the Services;

l) any additional matters identified by either Party as being relevant in relation to the proposed Change(s);

3.2 The Authority may request that the Contractor provide any missing and/or additional information before continuing with the determination of the Change Proposal.

4 **Determination of Change Proposal**

4.1 As soon as reasonably practicable after the Authority receives the Change Proposal, the Contract Manager shall consider Change the Proposal, taking into account all relevant issues, including:

a) whether the Change(s) reflects a change to the current obligations of the Parties as set out in the Contract;

b) whether the Change(s) affects the quality of the Services or the likelihood of successful delivery of the Services or achievement of the Commercial Purpose;

c) the impact, if any, on any Pricing Parameter and the financial implications of the Change(s) on both Parties;

d) whether the Change(s) materially affects the risks or costs to which any Party is exposed; and

e) the safety and security implications of the Change(s).

4.2 A Party shall have the right to reject a Change proposed by the other Party, wholly or in part where it considers that that the implementation of the proposed Change would:

a) be unsafe to any civilian or service personnel or plant or equipment present at the Service Delivery Locations or any part of Service Delivery Locations;

b) contravene any Law; or

c) otherwise prevent, impede or inhibit the Contractor or the Authority from performing their respective obligations under this Contract.

4.3 Where a change is a Mandatory Change the Contractor may not refuse to implement the proposed Change.

4.4 Following the determination of the Change Procedure, the relevant Contract Manager shall prepare a written statement of the terms of the Change as agreed by the Parties (a **Change Notice**) which shall be attached to DEFFORM 10B and counter signed by the Parties. Thereafter, the Parties shall follow the processes set out in Clause 72 (*Amendments to Contract*). Where the Change involves an increase in the amounts payable by the Authority to the Contractor, the Change Notice shall include where possible the agreed or determined amount of such increase.

4.5 As soon as reasonably practicable after a Change is agreed, the Parties shall implement the Change in accordance with the timetable set out in the Change Notice or such other timetable as may be agreed between the Parties.

5 **Expedited Change**

5.1 If the proposed Change is deemed exceptional and required to follow an expedited change process to meet specified milestones, the work will be actioned in accordance with this paragraph 5.

5.2 An Authority representative on the Operating Board or another Authority Representative, to whom this function has been delegated, may notify the Contractor in writing that the Authority requires the Contractor to carry out some exceptional work, incurring costs in respect of such work up to an amount specified in such notification by the Authority, and where such a notification is given:

a) the notification shall explain why it is not practicable, or desirable for operational reasons, to reach agreement on all aspects of work and complete a Change Notice before commencing the work; and

b) the Contractor shall commence work in accordance with the notification and shall not exceed the amount of costs specified in the notification.

5.3 Any amount of costs specified in a notification provided by the Authority to the Contractor under paragraph 5.2 shall represent the Authority's limit of liability in respect of the work conducted by the Contractor to which the Exceptional Work relates, pending finalisation of the Exceptional Work. The Contractor shall inform the Authority in writing as soon as reasonably practicable if the Contractor's appropriate, attributable and reasonable costs in relation to the work the subject of the notification reaches or exceeds eighty percent (80%) of the limit of liability set out in the notification. Promptly following such notification, the Parties shall meet to discuss:

a) how likely it is that the Contractor will need to incur appropriate, attributable and reasonable costs in excess of the Authority's limit of liability before the Expedited Change is finalised; and

b) depending on the conclusion reached in respect of the consideration set out in paragraph 5.3 a) above, whether the Authority (in its discretion) wishes:

(i) to increase the limit of liability from that set out in the notification, and if so by what value (and in such event the Authority's limit of liability for the purposes of this paragraph 5.3 shall be increased by such amount and the process set out in this paragraph 5.3 b) (i) shall continue to apply until the Expedited Change is implemented or the work completed); or

(ii) the Contractor to stop working on the work the subject of the notification when it reaches the limit of liability, until the Expedited Change is finalised in accordance with the process detailed at paragraph 5.

5.4 Where paragraph 5.3 (b) applies (and save in circumstances where the Authority provided the original notification under paragraph 5.2 under the Contractor's advice and such advice subsequently proves unnecessary or incorrect), the Contractor shall have no liability arising directly in connection with work which it ceases before it has been completed when it reaches the limit of liability, and to the extent that the Contractor suffers any loss or liability as a result of stopping work in accordance with the Authority's instructions, such circumstances shall constitute a Compensation Event for the purposes of Clause 53 (*Relief Events and Compensation Events*).

5.5 For the purposes of paragraph 5.2 and of the exercise of its rights under paragraph 4 of Schedule 6 (*Governance*), the Authority shall ensure that:

a) there are notified to the Contractor from time to time details of one or more Authority Representatives (in addition to the Authority representatives on the Operating Board) to whom the Authority Contract Manager considers it appropriate to be delegated the responsibility of determining and notifying to the Contractor a

requirement, and a suitable limit on the costs to be incurred, under paragraph 5.3; and

b) the Contractor has the means of contacting at least one such Authority Representative (or an Authority representative on the Operating Board) at all times.

5.6 The Contractor shall ensure that all Contractor Personnel are aware that no other person has the authority to authorise work in the circumstances described in this paragraph 5.

5.7 As at the Service Delivery Date, the relevant Authority Representatives for the purposes of paragraph 5.2 shall be those individuals listed in Annex 2 of Schedule 6 (*Governance*). The Authority Contract Manager shall be entitled to update such list of Authority Representatives at any time by providing ten (10) Business Days' written notice to the Contractor Contract Manager.

5.8 Except where the procedure in paragraph 5.1 has been followed and the Authority's requirement has been notified by the appropriate individual or post-holder in accordance with Paragraph 5.3:

a) the Contractor shall not begin to carry out work which is the subject of a Change Proposal; and

b) the Authority shall have no liability to pay the Contractor for work carried out before the obligation to carry out such work forms part of the Contract.

Schedule 31 – Not Used

Schedule 32 – Timber and Wood Containing Products Supplied Under the Contract

1 **Definitions**

1.1 In this Schedule, the following words and expressions shall have the meanings set out respectively against them:

CPET means the UK Government's Central Point of Expertise for Timber.

FLEGT means the Forest Law Enforcement, Governance and Trade initiative by the European Union to use the power of timber-consuming countries to reduce the extent of illegal logging.

Evidence means either:

(a) an invoice or delivery note from the timber supplier or sub-contractor to the Contractor specifying that the product supplied to the Authority is Forest Stewardship Council FSC or Programme for the Endorsement of Forest Certification PEFC certified; or

(b) other robust evidence of sustainability or FLEGT licensed origin, as advised by CPET.

Independent Verification means that an evaluation is undertaken and reported by an individual or body:

(c) whose organisation, systems and procedures conform to ISO/IEC 17065:2012 General requirements for bodies operating product certification systems or equivalent; and

(d) who is accredited to audit against forest management standards by a body whose organisation, systems and procedures conform to ISO 17011: 2017 General Requirements for Providing Assessment and Accreditation of Conformity Assessment Bodies or equivalent.

Timber and Wood-Derived Products means timber (including Recycled Timber and Virgin Timber but excluding Short-Rotation Coppice) and any products that contain wood or wood fibre derived from those timbers. Such products range from solid wood to those where the manufacturing processes obscure the wood element.

Recycled Timber means recovered wood that prior to being supplied to the Authority had an end use as a standalone object or as part of a structure. This Schedule 32 uses Recycled Timber to cover:

(e) Pre consumer reclaimed wood and wood fibre and industrial by products but excluding sawmill co-products which fall within the category of Virgin Timber;

(f) Post consumer reclaimed wood and wood fibre, and driftwood;

(g) Reclaimed timber abandoned or confiscated at least ten years previously.

Virgin Timber means Timber and Wood-Derived Products that do not include Recycled Timber

Short-Rotation Coppice means a specific management regime whereby the poles of trees are cut every one to two years and which is aimed at producing biomass for energy. It is exempt from the UK Government timber procurement policy. For avoidance of doubt, Short-Rotation Coppice is not conventional coppice, which is subject to the timber policy.

Legal and Sustainable means production and process methods, also referred to as timber production standards, as defined by the document titled UK Government Timber Production Policy: Definition of legal and sustainable for timber procurement. The edition current on the day the Authority issued the contract documents shall apply.

2 **Requirements for Timber**

2.1 All Timber and Wood-Derived Products supplied by the Contractor under this Contract (including all Timber and Wood-Derived Products supplied by Sub-Contractors):

a) shall comply with the Contract Specification; and

b) must originate either;

(i) from a Legal and Sustainable source; or

(ii) from a FLEGT-licensed or equivalent source.

2.2 In addition to the requirements of paragraph 2.1 above, all Timber and Wood-Derived Products supplied by the Contractor under the Contract (including all Timber and Wood-Derived Products supplied by sub-contractors) shall originate from a forest source where management of the forest has full regard for:

a) identification, documentation and respect of legal, customary and traditional tenure and use rights related to the forest;

b) mechanisms for resolving grievances and disputes including those relating to tenure and use rights, to forest management practices and to work conditions; and

c) safeguarding the basic labour rights and health and safety of forest workers.

3 **Requirements for Proof of Timber Origin**

3.1 If requested by the Authority, the Contractor shall provide to the Authority evidence that the Timber and Wood-Derived Products supplied to the Authority under the Contract complies with the requirements of paragraphs 2.1 or 2.2, or both.

3.2 The Authority reserves the right at any time during the execution of the Contract and for a period of five (5) years from final delivery under the Contract to require the Contractor to produce the evidence required for the Authority's inspection within fourteen (14) days of the Authority's request.

3.3 If the Contractor has already provided the Authority with the evidence required under paragraph 3.1 the Contractor may satisfy these requirements by giving details of the previous notification and confirming the evidence remains valid and satisfies the provisions of paragraphs

3.4 The Contractor shall maintain records of all Timber and Wood-Derived Products, delivered to and accepted by the Authority, in accordance with Clause 18 (Records).

4 **Recycled Timber**

4.1 Notwithstanding paragraph 3.1, if exceptional circumstances render it strictly impractical for the Contractor to record evidence of proof of timber origin for previously used Recycled Timber, the Contractor shall support the use of this Recycled Timber with:

a) a record tracing the Recycled Timber to its previous end use as a standalone object or as part of a structure; and

b) an explanation of the circumstances that rendered it impractical to record evidence of proof of timber origin.

5 **Independent Verification**

The Authority reserves the right to decide, except where in the Authority's opinion the timber supplied is incidental to the requirement and from a low risk source, whether the evidence submitted to it demonstrates compliance with paragraphs 2.1 and 2.2. In the event that the Authority is not satisfied, the Contractor shall commission and meet the costs of an Independent Verification and resulting report that will:

a) verify the forest source of the timber or wood; and

b) assess whether the source meets the relevant criteria of paragraph 2.2.

6 **Statistical Reporting**

6.1 The statistical reporting requirement at paragraph 6.2 applies to all Timber and Wood-Derived Products delivered under the Contract. The Authority reserves the right to amend the requirement for statistical reporting, in the event that the UK Government changes the requirement for reporting compliance with the Government timber procurement policy. Amendments to the statistical reporting requirement will be made in accordance with Clause 72 (*Amendments to Contract*).

6.2 The Contractor shall provide to the Authority, using DEFFORM 691A, the data or information the Authority requires in respect of Timber and Wood-Derived Products delivered to the

Authority under this Contract. The Contractor shall send all completed DEFFORMs 691A, including Nil Returns where appropriate, to the Authority's representative (Commercial)

6.3 DEFFORM 691A may be amended by the Authority from time to time, in accordance with Clause 72 (*Amendments to Contract).*

Schedule 33 – Cyber Implementation Plan

[***Note: Insert the Cyber Implementation Plan, where required under Clause 3.1.1(f) (Conditions Precedent and/or Clause 48 (Cyber)***]

Schedule 34 - Exit Agreements

Tenderer Note: Form of BTA to follow.

Transitional services agreement

Dated

[ ]

(the Outgoing Contractor)

[ ]

(the Incoming Contractor)

Transitional Services Agreement

Dated

Between

(a) **{** FORMTEXT **}** (the **Outgoing Contractor**) [a company incorporated in England and Wales (registered number **{** FORMTEXT **}**) whose registered office is at **{** FORMTEXT **}**] [a corporation organised and existing under the laws of; and

(b) **{** FORMTEXT **}**(the **Incoming Contractor**) [a company incorporated in England and Wales (registered number **{** FORMTEXT **}**) whose registered office is at **{** FORMTEXT **}**] [a corporation organised and existing under the laws of **{** FORMTEXT **}** whose principal place of business is at **{** FORMTEXT **}**].

Recitals

The Outgoing Contractor currently provides **{** FORMTEXT **}** to the Secretary of State for Defence.

The Secretary of State for Defence has conducted a competition in relation to the continued provision of the services referred to in Recital A and the Incoming Contractor has been successful in that competition.

As a result of its success in the competition referred to in Recital B, the Incoming Contractor will be responsible for providing the services referred to in Recital A from [**DN: insert date**].

Prior to the sale, the Outgoing Contractor supplied the Outgoing Contractor Services to the [Business] and the Incoming Contractor wishes the Outgoing Contractor to continue providing the Outgoing Contractor Services for a limited time.

It is agreed

1 **Definitions and Interpretation**

1.1 In this Agreement the following definitions apply.

Agreement means this Transitional Services Agreement as the same may be amended or supplemented from time to time in accordance with the terms hereof.

Applicable Law means any:

(a) law including any statute, statutory instrument, bye-law, order, regulation, directive, treaty, decree, decision (as referred to in Article 288 of the Treaty on the Functioning of the European Union) (including any judgment, order or decision of any court, regulator or tribunal;

(b) legally binding rule, policy, guidance or recommendation issued by any governmental, statutory or regulatory body; and/or

(c) legally binding industry code of conduct or guideline,

in force from time to time which relates to this Agreement and/or the Services and/or the activities which are comprised in all or some of the Services or the use or application of the output from the Services.

Completion means **{** FORMTEXT **}** [**DN: insert date**].

Contract manager shall have the meaning given in Clause 7.1.

Force Majeure means, in relation to either Party, an event, condition or circumstance beyond the reasonable control of that Party and without the fault or negligence of the Party claiming Force Majeure which causes a delay or disruption in the performance by such Party of any of its obligations under this Agreement including, without limitation:

(a) fire, explosion or other disruption, mechanical breakdown, electrical shortage or blackout, decline or shortages of supply, [and circumstances arising out of information technology not being millennium compliant]; and

(b) lockouts, strikes and other industrial disputes.

For the avoidance of doubt, the settlement of a labour strike, lockout or any other kind of labour dispute is not within the reasonable control of the Party affected and this Clause shall not oblige that Party to settle a strike, lockout or other labour dispute on terms contrary to its wishes.

[**Incoming Contractor Group** means [DN: insert definition].]

Outgoing Contractor Services means those Services provided by the Outgoing Contractor or its Subsidiaries as set out in Schedule 1 to this Schedule 34.

Parties means the Outgoing Contractor and the Incoming Contractor, and Party means either or them.

Services means:

(a) the Outgoing Contractor Services; and

(b) [the Third-Party Services],

and Service means any one of the above as the context may require.

Service Provider means:

(a) that Party providing Services to the other Party; [or]

(b) [a Third-Party Service Provider].

Subsidiaries means those entities which are subsidiaries [or subsidiary undertakings] of the relevant Party.

Tax Authority means any government, state or municipality or any local, state, federal or other authority, body or official anywhere in the world exercising a fiscal, revenue, customs or excise function (including without limitation, HM Revenue and Customs).

Termination Date means [**DN: insert term**] Months from the date hereof unless Schedule 1 to this Schedule 34, or Schedule 2 to this Schedule 34 provide otherwise or this Agreement is terminated pursuant to Clause 9.

[**Third Party Service Provider** means a third party in a contractual relationship with one Party for the provision of any Service.]

[**Third Party Services** means those Services provided by a third party as set out in Schedule 2 to this Schedule 34, or agreed between the Parties from time to time.]

VAT means:

(a) any tax imposed in compliance with the council directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112) (including value added tax imposed by VATA and legislation and regulations supplemental thereto); and

(b) any other tax of a similar nature (including, without limitation, any value added tax, turnover tax, sales tax, use tax, goods and services tax and consumption tax), whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in (a), or elsewhere.

VAT Group means a group for the purposes of the VAT Grouping Legislation.

VAT Grouping Legislation means (a) sections 43 to 43D (inclusive) of VATA and (b) the Value Added Tax (Groups: eligibility) Order 2004 (SI 2004/1931).

VATA means the Value Added Tax Act 1994.

1.2 In this Agreement, unless otherwise specified:

a) the words and expressions defined in sections 1159, 1161 and 1162 of the Companies Act 2006 have the same meanings, except that a company is to be

treated as a member of another company for the purposes of subsections 1159(1)(b) and (c) even if its shares in that other company are registered in the name of:

(i) its nominee or any other person acting on its behalf, or

(ii) another person by way of security over those shares;

b) reference to any statute, bye law, regulation, rule, delegated legislation or order is to any statute, bye law, regulation, rule, delegated legislation or order as amended, modified or replaced from time to time and to any statute, bye-law, regulation, rule, delegated legislation or order replacing or made under any of them;

c) references to any Clause, paragraph or Schedule are to those contained in this Agreement and all Schedules to this Agreement are an integral part of this Agreement;

d) headings are for ease of reference only and shall not be taken into account in construing this Agreement;

e) reference to any English legal concept, term, action, remedy, method of judicial proceeding, legal document, legal status, court or official shall, in respect of any jurisdiction other than England and Wales, be deemed to refer to what most nearly approximates to it in that jurisdiction;

f) reference to any English statute, bye-law, regulation, rule, delegated legislation or order shall, in relation to any assets owned, liabilities incurred, company incorporated or business carried on in any jurisdiction other than England and Wales, be deemed to include what most nearly approximates to it in that jurisdiction;

g) the expression **this Clause** shall unless followed by reference to a specific provision be deemed to refer to the whole Clause (not merely the sub-clause, paragraph or other provision) in which the expression occurs;

h) **person** includes any individual, firm, company or other incorporated or unincorporated body;

i) **in writing** includes any communication made by letter or facsimile transmission;

j) **business day** means a day (not being a Saturday or Sunday) on which banks are open for normal banking business in London;

k) the expressions **hereof, herein or hereunder** shall unless followed by reference to a specific provision be deemed to refer to the whole clause (not merely the sub-clause, paragraph or other provision) in which the expression occurs; and

l) any reference in this Agreement to any person, when construing any provision in relation to VAT, shall (where appropriate and unless the context otherwise requires) be construed, at any time when such person is treated as a member of a VAT Group, to include a reference to the representative member of such group at such time (so that a reference to x, for example, would read "x or the relevant representative member of the VAT Group of which x is a member (as the case may be)") (the term "representative member" to have the same meaning as for the purposes of the VAT Grouping Legislation).

2 Outgoing Contractor Services

2.1 The Outgoing Contractor agrees to provide or procure that its Subsidiaries [or a Third-Party Service Provider] provide the Outgoing Contractor Services to the Incoming Contractor [Group].

2.2 [The Outgoing Contractor's obligation to deliver any Third-Party Service is conditional upon its obtaining the consent of the relevant Third-Party Service Provider. If that consent cannot reasonably be obtained, the Parties will use reasonable efforts to arrange for alternative methods of delivering any such Service.]

3 Duration

3.1 Subject to Clauses **{** REF _Ref22542432 \r \h **}** and **{** REF _Ref22542232 \r \h **}**, this Agreement shall commence upon Completion **[DN: to discuss timing of the commencement of the transitional services**] and shall terminate upon the expiry of twelve (12) Months from the date hereof, except insofar as Schedule 1, or Schedule 2 to this Schedule 34 provide a different Termination Date for a particular Service.

3.2 The duration of this Agreement may be extended by written agreement between the Parties. [No later than [**DN: insert period**] Months from the date hereof, the Parties will discuss whether to enter into longer-term arrangements with respect to any Services.]

3.3 Neither the termination nor expiry of this Agreement shall affect:

a) the liability of any Party for breach of this Agreement;

b) the obligations of any Party to make payments when due hereunder; or

c) the provisions contained in Clauses 4, 5, 7, 9 and 24 and the related definitions, each of which shall survive the termination or expiration of this Agreement.

4 **Pricing and Payment**

4.1 Payment for the Services shall be payable by the Incoming Contractor [monthly] [quarterly] [yearly] on the basis set out in Schedule 3 to this Schedule 34.

4.2 Credit Terms will be thirty (30) calendar days from the date of [receipt of] each invoice.

4.3 [The invoice for the Services performed in a particular country shall be rendered by the relevant Service Provider in that country on a separate invoice each Month. Invoice amounts shall be stated in local currency and payments shall be made in such local currency within thirty (30) calendar days of the date of receipt of the relevant invoice.]

4.4 If the Parties agree to extend the Termination Date with respect to any Service, any such Service rendered shall be charged to and payable by the Incoming Contractor [at a price agreed by the Parties in writing, or if no price is agreed at costs typical for providing such Services.]

5 **VAT**

5.1 All sums or other consideration set out in this Agreement or otherwise payable or otherwise provided by the Incoming Contractor to the Outgoing Contractor pursuant to this Agreement shall be deemed to be exclusive of any VAT which is chargeable on the supply or supplies for which such sums or other consideration (or any part thereof) are the whole or part of the consideration for VAT purposes.

5.2 Where, pursuant to the terms of this Agreement, the Outgoing Contractor makes a supply to the Incoming Contractor for VAT purposes and VAT is or becomes chargeable on such supply, the Incoming Contractor shall pay to the Outgoing Contractor (in addition to and at the same time as any other consideration for such supply) a sum equal to the amount of such VAT and the Outgoing Contractor shall provide the Incoming Contractor with a valid VAT invoice in respect of such supply.

5.3 Where either party is required by the terms of this Agreement to reimburse or indemnify the other party for any cost, expense or other liability, such first party shall reimburse or indemnify such other party for the full amount of such cost, expense or other liability, including such part thereof as represents VAT, save to the extent that such other party is entitled to credit or repayment in respect of such VAT from the relevant Tax Authority.

6 **Warranties**

6.1 The Outgoing Contractor warrants that the Services performed by it [and by each of its Subsidiaries] shall be performed:

a) in accordance with good industry practice;

b) with reasonable skill and care;

c) by individuals qualified for the tasks to which they are assigned;

d) at a quality consistent with that provided prior to the date of this Agreement; and

e) in compliance with all Applicable Laws.

6.2 The Outgoing Contractor warrants that it will provide all co-operation, information and assistance as reasonably requested by the Incoming Contractor in relation to the Services.

6.3 The Outgoing Contractor warrants that it will obtain and maintain in force all licences, permissions, authorisations, consents and permits needed to provide the Services (or the benefit thereof) and to perform the Services in accordance with this Agreement.

6.4 Upon a written request by the Incoming Contractor, the Outgoing Contractor shall use reasonable efforts to pursue (on the Incoming Contractor's behalf) all rights under any contract to which it is a party with a Third-Party Service Provider relating to any Service provided by the Third-Party Service Provider to the Incoming Contractor. The Incoming Contractor shall fully indemnify the Outgoing Contractor for costs in connection with pursuing any such rights.

6.5 The Outgoing Contractor undertakes that if it experiences any shortage, interruption, delay, inadequacy or limitation in the availability of any of the Services (by reason of Force Majeure or otherwise) and is unable to fulfil all the requirements of the other Party, it shall ensure the other Party is treated no less favourably than any Subsidiary of the Party providing the Service in the allocation of such Services which remain to be performed.

7 Contract Management

7.1 Each party will at all times have a nominated representative (**Contract Manager**) to act as its primary point of contact for co-ordination of the provision or receipt of Services. Each party will notify the other party in writing within five (5) Business Days of any change to the identity of its Contract Manager. As at the date of this Agreement, the Incoming Contractor's Contract Manager is [insert details] and the Outgoing Contractor's Contract Manager is [insert details].

7.2 The parties will procure that the Contract Managers will meet at least once in each Month and at such other intervals as reasonably requested by the Incoming Contractor to discuss the provision and receipt of the Services. The meetings will take place at the dates, times and places agreed by the Contract Managers.

7.3 Each party will ensure that its Contract Manager is available on reasonable notice during business hours to discuss the Services and this Agreement.

8 Confidentiality

8.1 The Parties and their respective employees may receive or have access to information or materials that are confidential or proprietary to the other Party. The Parties, their [Subsidiaries] and their respective employees shall access and use such information and materials only in connection with the performance of Services hereunder, and shall safeguard such confidential and proprietary information and materials against disclosure to all others, both for the duration of this Agreement and for a period of [two (2)] years thereafter.

8.2 This Clause shall not apply to any such information or material that:

a) was already known to such person prior to disclosure in connection herewith;

b) is or becomes public knowledge without disclosure by such person in connection herewith;

c) is lawfully acquired by such person, its agents, counsel or other advisers from a source not under any obligation to the Parties regarding disclosure of such information;

d) is disclosed by such Person under operation of law or with the prior consent of the Parties; or

e) is not identified in writing as confidential and proprietary at the time of disclosure.

8.3 The Parties will use reasonable efforts to cause any Third-Party Service Provider to enter into a confidentiality agreement, containing substantially the same restrictions as are contained in Clause 8.1 of this Agreement.

9 Termination

9.1 This Agreement shall be construed as a separate and independent agreement for each and every Service provided under this Agreement. Any termination or expiration of this Agreement with respect to any Service shall not terminate this Agreement with respect to any other Service then being provided under this Agreement.

9.2 Subject to Clause 9.1 hereof, upon written notice the Incoming Contractor may terminate this Agreement relating to any Service if the Outgoing Contractor has committed a material breach of this Agreement with respect to such Service, unless within a period of thirty (30) calendar days after receipt of such notice the Outgoing Contractor remedies the breach. For the purposes of this Agreement, material breach shall include the occurrence of numerous immaterial breaches, whether they occur simultaneously or over a period of time, if the aggregate effect of such breaches is material.

9.3 The Outgoing Contractor may suspend or terminate this Agreement on and by immediate written notice to the Incoming Contractor where the Incoming Contractor, without proper justification, fails to pay any charge as and when due, and such failure continues for a period of at least thirty (30) calendar days after written notice from the Outgoing Contractor.

9.4 Upon the expiration or termination of this Agreement with respect to any Service, all rights under this Agreement to receive such Service will cease.

10 Force Majeure

10.1 Neither the Parties nor any of their Subsidiaries shall be held responsible for failure or delay in delivery of Services hereunder, nor shall the Parties or any of their Subsidiaries be held responsible for failure or delay in receiving Services hereunder, if such failure or delay is due to an event of Force Majeure. Subject to Clause 10.2, in the event of failure of or delay in the provision or acceptance of Services under this Agreement as a result of a Force Majeure, the invoice price of such Services ordered may be reduced accordingly by written notice by either Party to the other.

10.2 If the performance of this Agreement by either Party hereunder is prevented, restricted or interfered with by reason of a Force Majeure event, the Party whose performance is so affected, upon giving prompt notice to the other Party, shall be excused from such performance to the extent of such Force Majeure event; provided however, that the Party so affected shall take all reasonable steps to avoid or remove such causes of non-performance and shall continue performance whenever such causes are removed.

11 Limitation of liability

11.1 [Liability under this Agreement, whether in contract, tort or otherwise, arising out of or in connection with the performance of the obligations in this Agreement shall be limited to [£**{** FORMTEXT **}**in aggregate.]

11.2 For the avoidance of doubt, nothing in this Agreement shall exclude or limit either Party's liability for:

a) death or personal injury resulting from negligence;

b) fraud or fraudulent misrepresentation;

c) for breach of its obligations arising under Section 2 of the Supply of Goods and Services Act 1982; or

d) any other matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability.

12 Successors and assigns

12.1 This Agreement shall bind and inure to the benefit of the Parties and their respective successors and permitted assigns. This Agreement shall not be assigned by either Party without the prior express written consent of the other Party.

13 Employees

13.1 The Outgoing Contractor agrees and undertakes that any employee it uses, appoints or seconds to fulfil its obligations to the Incoming Contractor under this Agreement is and shall

for all purposes remain the employee of the Outgoing Contractor and that it is not intended that the contracts of employment of any such persons will transfer to the Incoming Contractor or any Third Party which may be substituted for the Incoming Contractor (the Substitute) on termination or expiry of this Agreement (or any part of it).

13.2 If, notwithstanding the above, any such employee shall be transferred by operation of law, then the Outgoing Contractor (the Transferor) shall, unless Incoming Contractor (the Transferee which expression shall include any permitted Substitute) has been in breach of any obligation owed to or in relation to that employee, indemnify and keep indemnified the Transferee (and any Substitute) against any and all loss, costs, damages or expenses, proceedings and claims arising in connection with the termination of employment of any such employee of the Transferor (including without limitation claims for redundancy, unfair and wrongful dismissal and any additional costs in contracting with the Substitute).

13.3 Before terminating the employment of any such employee who has transferred to the Incoming Contractor contrary to the Parties' intentions in Clause 13.1 above, the Incoming Contractor must give the Outgoing Contractor a reasonable opportunity to re-employ that employee.

13.4 This indemnity will survive termination or expiry of this Agreement only in relation to terminations of employment which take place within one (1) Month of the termination or expiry of this Agreement.

13.5 In this Clause:

a) **claim** includes a claim by any person (including a trade union, a governmental or statutory or local authority or commission).

b) **liability** and **liabilities** include any award, compensation, damages, fine, loss, order, payment made by way of settlement, costs and expenses (including legal expenses on an indemnity basis) properly incurred in connection with a claim and also includes the costs and expenses of any investigation by the Equality and Human Rights Commission and of implementing any requirements which may arise from any such investigation.

13.6 If the Transferee becomes aware of any matter which might give rise to a claim for an indemnity under this Clause from the Transferor, the following provisions shall apply:

a) The Transferee shall immediately give written notice to the Transferor of the matter in respect of which the indemnity is being claimed (stating in reasonable detail the nature of the matter and, so far as practicable, the amount claimed) and shall consult with the Transferor with respect to the matter.

b) The Transferee shall:

(i) take such action and institute such proceedings, and give such information and assistance, as the Transferor or its insurers may reasonably request to dispute, resist, appeal, compromise, defend, remedy or mitigate the matter and enforce against any person (other than the Transferor) the rights of the Transferee or its insurers in relation to the matter;

(ii) in connection with any proceedings related to the matter (other than against the Transferor) use professional advisers nominated by the Transferor or its insurers and, if the Transferor or its insurers so request, allow the Transferor or its insurers the exclusive conduct of the proceedings in each case on the basis that the Transferor shall fully indemnify the Transferee for all costs incurred as a result of any request or nomination by the Transferor or its insurers; and

(iii) not admit liability in respect of or settle the matter without the prior written consent of the Transferor, such consent not to be unreasonably withheld or delayed.

13.7 If the Transferor has conduct of any litigation and negotiations in connection with a claim, the Transferor shall promptly take all proper action to deal with the claim so as not, by any act or omission in connection with the claim, to cause the Transferee to be in breach of its

obligations to its current or past employees or to cause the Transferee's business interests to be materially prejudiced.

14 **Entire agreement**

14.1 This Agreement and the documents referred to herein:

a) constitute the entire agreement and understanding between the Parties with respect to the subject matter of this Agreement; and

b) (in relation to such subject matter) supersede all prior discussions, understandings and agreements between the Parties and their agents (or any of them) and all prior representations and expressions of opinion by any Party (or its agent) to the other Party (or its agent).

14.2 Each of the Parties acknowledges that it is not relying on any statements, warranties or representations given or made by either of them in relation to the subject matter hereof, save those expressly set out in this Agreement and the other documents referred to above, and that it shall have no rights or remedies with respect to such subject matter otherwise than under this Agreement (and the documents executed at the same time as it or referred to in it) save to the extent that they arise out of the fraud or fraudulent misrepresentation of any party.

15 **Survival**

15.1 The termination or expiration of this Agreement, for whatever reason, shall not affect any of the provisions of this Agreement which are expressly or by implication to come into or continue in force after such termination or expiration.

16 **Variation**

16.1 No variation of this Agreement shall be effective unless made in writing and signed by or on behalf of each of the Parties.

17 **Severance**

17.1 If at any time any provision of this Agreement is or becomes invalid or illegal in any respect, such provision shall be deemed to be severed from this Agreement but the validity, legality and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby.

18 **Waivers**

18.1 A failure by any party to exercise and any delay, forbearance or indulgence by any party in exercising any right, power or remedy under this Agreement shall not operate as a waiver of that right, power or remedy or preclude its exercise at any subsequent time or on any subsequent occasion. The single or partial exercise of any right, power or remedy shall not preclude any other or further exercise of that right, power or remedy. No custom or practice of the Parties at variance with the terms of this Agreement shall constitute a waiver of the rights of any party under this Agreement. The rights, powers and not exclusive of any rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law.

19 **Costs**

19.1 The Parties shall pay their own costs and expenses in relation to the preparation, execution and carrying into effect of this Agreement.

20 **Third party rights**

20.1 The Parties do not intend that any term of this Agreement shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party to this Agreement.

21 **No partnership or agency**

21.1 Nothing in this Agreement and no action taken by the parties in connection with it will create a partnership or joint venture between the parties or give either party authority to act as the

agent of or in the name of or on behalf of the other party or to bind the other party or to hold itself out as being entitled to do so.

22 **Independent contractors**

22.1 Each party agrees that it is an independent contractor and is entering into this Agreement as principal and not as agent for or for the benefit of any other person.

23 **Counterparts**

23.1 This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, and which together shall constitute one and the same Agreement. Unless otherwise provided in this Agreement, this Agreement shall become effective and be dated (and each counterpart shall be dated) on the date on which the last counterpart of this Agreement has been signed and delivered by the last of the parties to execute this Agreement.

24 **Notices**

24.1 Any notice required to be given under this Agreement shall be in writing signed by (or by some person duly authorised by) the Party giving it and may be served by delivering it personally or by confirmed facsimile transmission with a copy by overnight delivery, receipt required, and shall be deemed to have been given when so delivered one (1) Business Day after the date on which the same was sent by facsimile and overnight delivery to the addresses in Clause 24.2 below (unless otherwise specified by a Party in a written notice to the other Parties).

24.2 Any notice required to be given under this Agreement shall be sent to:

{ FORMTEXT **}**The Outgoing Contractor**{** FORMTEXT **}** at: **{** FORMTEXT **}**

Facsimile No: **{** FORMTEXT **}**

For the attention of: **{** FORMTEXT **}**

With copies to: **{** FORMTEXT **}**

Facsimile No: **{** FORMTEXT **}**

For the attention of: **{** FORMTEXT **}**

{ FORMTEXT **}**The Incoming Contractor**{** FORMTEXT **}** at: **{** FORMTEXT **}**

Facsimile No: **{** FORMTEXT **}**

For the attention of:	**{** FORMTEXT **}**
With copies to:	**{** FORMTEXT **}**
Facsimile No:	**{** FORMTEXT **}**
For the attention of:	**{** FORMTEXT **}**

25 **Dispute Resolution**

25.1 Any dispute arising under this Agreement shall be referred to **{** FORMTEXT **}** as a representative of the Incoming Contractor and to **{** FORMTEXT **}** as a representative of the Outgoing Contractor for resolution (or such other successor representative identified by the appropriate Party).

25.2 If the persons referred to in Clause 25.1 are unable to achieve an acceptable resolution within thirty (30) calendar days of the referral, either Party may demand that the matter be referred to the [insert role] of the Outgoing Contractor and the [insert role] of the Incoming Contractor for resolution.

25.3 If the matter cannot be resolved within thirty (30) calendar days after the referral to the respective representatives referred to in Clause 25.2, the matter in question shall be submitted to binding arbitration pursuant to the rules of the International Chamber of Commerce using three arbitrators, one appointed by each of the Parties and the third appointed jointly by such arbitrators. The seat of the arbitration shall be London.

26 **Governing law**

26.1 English law governs:

a) this Agreement and its interpretation; and

b) any non-contractual obligations arising from or connected with this Agreement.

As witness the hands of the duly authorised representatives of the Parties hereto the day and year full above written.

Signed by **{** FORMTEXT **}** for **the Outgoing Contractor**)

Signed by **{** FORMTEXT **}** for **the Incoming Contractor**)

Schedule 1 to Schedule 34– Outgoing Contractor Services

Ref	Function and Service Area	No. Of Months Service Required	Estimated Costs	Further Information
	Human Resources - Payroll	**[-]**	**[-]**	**Support services in respect of the administration of the Incoming Contractor's employees' payroll system including ensuring all of the Incoming Contractor's employees are paid what they are contractually owed, in full and on-time.**
	Human Resources **– Occupational Health Services**	**[-]**	**[-]**	
	Human Resources **– Case Support**	**[-]**	**[-]**	**Support services in respect of the administration and monitoring of the Incoming Contractor's employees' long-term leave, maternity leave, sick leave and other types of leave. Support services in terms of on-going disputes including employment tribunals, and any [Transferring Employee] outstanding claims**
	Human Resources – Record Transfer	**[-]**	**[-]**	
	Human Resources – administrative support services regarding travel to work scheme.	**[-]**	**[-]**	
	Information Technology Support Services **– Hardware Maintenance**	**[-]**	**[-]**	**Support services in respect of the IT hardware used by the Incoming Contractor in the provision of services to the MOD in terms of the FMSP Contract, including IT hardware such as desktops, printers, peripherals, photocopiers, network.**
	Information Technology Support Services – Software Maintenance	[-]	[-]	Support services in respect of the IT software used by the Incoming Contractor in the provision of the services to the MOD in terms of the FMSP Contract including 1st and 2nd line support, licencing, training on bespoke systems.
	General – First Aid provision	[-]	[-]	

Schedule 2 to Schedule 34 – Third Party Services

Ref	Function And Service Area	No. Of Months Service Required	Estimated Costs	Further Information

Schedule 3 to Schedule 34– Payment

DEFFORM 111

(Edn 05/19)

Appendix - Addresses and Other Information

1. Commercial Officer Name:
Chayley Done

Address: DE&S Logistics Delivery Operating Centre
MOD Abbey Wood (South)
Neighbourhood 3, Cedar 3a #3362
Bristol
BS34 8JH

Email: Chayley.Done651@mod.gov.uk

☎

2. Project Manager, Equipment Support Manager or PT Leader (from whom technical information is available) Name: Andrew Clark

Address: DE&S Logistics Delivery Operating Centre
MOD Abbey Wood (South)
Neighbourhood 3, Cedar 3a #3362
Bristol
BS34 8JH

Email: Andrew.Clark155@mod.gov.uk

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3. Packaging Design Authority
Organisation & point of contact:

(Where no address is shown please contact the Project Team in Box 2)

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4. (a) Supply / Support Management Branch or Order Manager:
Branch/Name:

☎

(b) U.I.N.

8. Public Accounting Authority

1. Returns under DEFCON 694 (or SC equivalent) should be sent to DBS Finance ADMT – Assets In Industry 1, Level 4
Piccadilly Gate, Store Street, Manchester, M1 2WD
☎ 44 (0) 161 233 5397

2. For all other enquiries contact DES Fin FA-AMET Policy,
Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD
☎ 44 (0) 161 233 5394

9. Consignment Instructions
The items are to be consigned as follows:

10. Transport. The appropriate Ministry of Defence Transport Offices are:
A. DSCOM, DE&S, DSCOM, MoD Abbey Wood, Cedar 3c, Mail Point 3351, BRISTOL BS34 8JH
Air Freight Centre
IMPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943
EXPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943
Surface Freight Centre
IMPORTS ☎ 030 679 81129 / 81133 / 81138 Fax 0117 913 8946
EXPORTS ☎ 030 679 81129 / 81133 / 81138 Fax 0117 913
8946 **B.**
JSCS

JSCS Helpdesk No. 01869 256052 (select option 2, then option 3)
JSCS Fax No. 01869 256837 **{** HYPERLINK "http://www.freightcollection.com/" \h **}{** HYPERLINK "http://www.freightcollection.com/" \h **}**

5. Drawings/Specifications are available from

11. The Invoice Paying Authority
Ministry of Defence ☎ 0151-242-2000
DBS Finance
Walker House, Exchange Flags Fax: 0151-242-2809
Liverpool, L2 3YL **Website is: {** HYPERLINK "https://modgovuk.sharepoint.com/sites/DESLDSCTXWDO/Shared%20Documents/WDO-FMSP/FMSP%20ITN/FMSP%20W%26D%20Contract%20Schedules/Contract%20Updates" **}** https://www.gov.uk/government/collections/ministry-of-defence-supplier-invoicing-and-payment-information**{** HYPERLINK "https://www.gov.uk/government/organisations/ministry-of-defence/about/procurement" \l "invoice-processing" \h **}**

6. Intentionally Blank

12. Forms and Documentation are available through *:
Ministry of Defence, Forms and Pubs Commodity Management
PO Box 2, Building C16, C Site
Lower Arncott
Bicester, OX25 1LP (Tel. 01869 256197 Fax: 01869 256824) **Applications via fax or email:**
Leidos-FormsPublications@teamleidos.mod.uk

7. Quality Assurance Representative:

Commercial staff are reminded that all Quality Assurance requirements should be listed under the General Contract Conditions.

AQAPS and **DEF STANs** are available from UK Defence Standardization, for access to the documents and details of the helpdesk visit **{** HYPERLINK "http://dstan.uwh.diif.r.mil.uk/" \h **}{** HYPERLINK "http://www.dstan.dii.r.mil.uk/" \h **}{** HYPERLINK "http://www.dstan.dii.r.mil.uk/" \h **}{** HYPERLINK "http://www.dstan.dii.r.mil.uk/" \h **}{** HYPERLINK "http://www.dstan.dii.r.mil.uk/" \h **}**[intranet] or **{** HYPERLINK "https://www.dstan.mod.uk/" \h **}{** HYPERLINK "https://www.dstan.mod.uk/" \h **}**[extranet, registration needed].

*** NOTE**

1. Many **DEFCONs** and **DEFFORMs** can be obtained from the MOD Internet Site: **{** HYPERLINK "https://www.aof.mod.uk/aofcontent/tactical/toolkit/index.htm" \h **}{** HYPERLINK "https://www.aof.mod.uk/aofcontent/tactical/toolkit/index.htm" \h **}**

2. If the required forms or documentation are not available on the MOD Internet site requests should be submitted through the Commercial Officer named in Section 1.