



Ministry of Defence

20 June 2023

MaST Delivery Team
Contract No: MSS/141

MaST Multi-Supplier Framework for MSS Supported Spares Framework Agreement

Dated

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

[Name of Contractor]
(the Contractor)

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

Between

- (1) **The Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland** (the **Authority**); and
- (2) [**Contractor name**], a company incorporated and registered in [●] (with registered number [●]) which has its registered office at [●] (**Contractor**),¹

each a **Party**.

Recitals

- A The Authority placed MOD Contract Notice Nr: MSS/141 (the **Contract Notice**) seeking expressions of interest for appointment to a framework of potential suppliers of maritime equipment (the **Spares Framework**).
- B The Contractor submitted an application for appointment to the Spares Framework and was successful.
- C This Agreement provides for the Contractor's appointment to the Spares Framework, and sets out the obligations of the Parties in relation to the Spares Framework.
- D In consideration of the Contractor's appointment to the Spares Framework and the matters set out herein, the Parties have agreed to comply with their respective obligations set out in this Agreement.

It is agreed

1 Definitions and interpretation

1.1 Definitions

In this Agreement, unless the context requires the contrary:

Additional Scope means Safety Critical Scope and Asset Availability Scope.

Agreement means this written agreement, including the Schedules, as amended, supplemented, substituted, novated or replaced from time to time in accordance with its terms.

Agreement Date means the date this Agreement is signed by both parties.

Agreement DateTerms means Clauses 1 (*Definitions and Interpretation*), 2 (*Effectiveness and Term*), 3 (*Conditions Precedent*), 9 (*Parent Company Guarantee*), 10 (*Financial Standing*), 12 (*Data Protection*), 13 (*Security*), 14 (*Intellectual Property*), 15 (*Statement Relating to Good Standing*), 17 (*Confidentiality*), 18 (*Transparency*), 19 (*Change of Control*), 21 (*Governance*) 22 (*Authority Representatives*), 23 (*Social Value*), 24 (*Liability*) and 26 (*Early Termination*) to 28 (*Miscellaneous Provisions*) (inclusive).

¹ **Note to bidders:** In the event that there is a consortium bid, please refer to paragraph A30 of the DEFFORM 47. Amendments may need to be made to this Agreement if a tender consists of an unincorporated joint venture.

Anti-Counterfeiting Management Plan means the Contractor's anti-counterfeiting management plan:

- (a) as finalised in accordance with 8.3 (*Finalising Framework Plans*); and
- (b) thereafter amended from time to time in accordance with 8.4 (*Maintaining Framework Plans*).

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

Asset Availability has the meaning given to it in any Call-Off Contract.

Asset Availability Scope means In Scope Spares comprised or to be comprised in an Order that includes a requirement for delivery of any In Scope Spares on an Asset Availability basis.

Asset Availability Framework Support Requirements means the requirements set out in Section c.2 of Part 3 (*Statement of Requirements for Additional Scope*) of the Statement of Requirements.

Authority Representatives means the individuals appointed in accordance with Clause 22 (*Authority Representatives*).

Business Day means 09:00 to 17:00 Monday to Friday, excluding public and statutory holidays.

Call-Off Contract means an agreement between the Authority and the Contractor in respect of an Order made pursuant to the provisions of, but separate to, this Agreement comprising an:

- (a) Order Form;
- (b) the Call-off Terms, as the same may have been developed or amended in respect of the Order concerned in accordance with Schedule 3 (*Call-Off Award Process*).

Call-Off Start Date means the effective date of any Call-Off Order, as stated in the Order Form.

Call-Off Terms means the terms and conditions in Schedule 6 (*Call-Off Terms*).

Capable Contractor has the meaning given to that term in Clause 4.3(b).

Central Government Body means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

- (a) Government Department;
- (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- (c) Non-Ministerial Department; or

(d) Executive Agency;

Condition Precedent has the meaning given to it in Clause 3 (*Conditions Precedent*).

Contract Notice has the meaning given to it in Recital (A).

Contractor Order means an Order awarded to the Contractor pursuant to this Agreement.

Contractor Personnel means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any Employing Entity engaged in the performance of the Contractor's obligations under this Agreement.

Control means the power of a person to secure that the affairs of the Contractor are conducted in accordance with the wishes of that person:

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

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

Core Framework Support Requirements means the core requirements set out in Part 2 (*Statement of Requirements for Core Scope*) of the Statement of Requirements.

Core Scope means In Scope Spares that are not Safety Critical Scope or Asset Availability Scope.

Data Protection Law means all law relating to data privacy and data protection, including:

- (a) the European Union Regulation on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (Regulation 2016/679) (**GDPR**);
- (b) the Data Protection Act 2018 and any other law implementing the GDPR;
- (c) the Data Protection Act 1998 and any other law implementing Directive 95/46/EC (Data Protection Directive);
- (d) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426) and any other law implementing Directive 2002/58/EC (**e-Privacy Directive**); and
- (e) any related guidance, guidelines, codes of practice and approved codes of conduct guidance issued by a supervisory or competent authority.

DEFCONs means Ministry of Defence Defence Conditions (DEFCONs).

DEFFORMs means Ministry of Defence Defence Forms (DEFFORMs).

DEFSTANs means Ministry of Defence Defence Standards (DEFSTANs)

Delivery Phase in respect of a Call-Off Contract, means the time from the entry into such Call-Off Contract until all goods and equipment required to be delivered under it have been delivered.

Effective Date means the date on which the Conditions Precedent are satisfied or waived in accordance with Clause 2.3.

Employing Entity means any entity employing or engaging Contractor Personnel and providing any part of the Services.

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 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.

Former Authority Employee means at any time any person who was employed by the Authority whose employment previously transferred to a contractor or its sub-contractor pursuant to the Transfer Regulations and who has, pursuant to this Agreement and/or 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.

Framework Contractors means the Contractor and other suppliers appointed to the Spares Framework.

Framework Plans means:

- (a) the Safety and Environmental Management Plan;

- (b) the Anti-Counterfeiting Management Plan; and
- (c) the Quality Plan.

Framework Key Performance Indicators means the key performance indicators detailed in Schedule 9 (*Key Performance Indicators*).

Framework Start Date means [**Note to bidders: to be a single start date for all Spares Frameworks**].

Framework Support Requirements means the Core Framework Support Requirements, the Asset Availability Framework Support Requirements and the Safety Critical Framework Support Requirements.

Good Industry Practice means using standards, practices, methods and procedures conforming to the Applicable Laws and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person seeking in good faith to comply with its obligations and engaged in a similar type of undertaking that provides the same or similar services as the Services.

Guarantor means the entity providing the 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 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.

Indicator Shortfall has the meaning given to it in Schedule 12 (Financial Standing).

In Scope Spare means (subject to Clause 4.1(a)) any item of equipment or sub-division or part thereof for fitment to, or support of, In Scope Equipment.

In Scope Equipment means any item of equipment listed in the Scope Table.

Information means any information in any written or other tangible form disclosed to one Party by or on behalf of the other Party under or in connection with this Agreement.

Insolvency Event means if any of the following occurs:

- (a) a court makes an order that the Contractor or any holding company of the Contractor (other than in each case, for the purposes of a bona fide internal reorganisation or amalgamation) 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 in the case of each entity for the purposes of a bona fide internal solvent reorganisation or amalgamation), 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 the Contractor or any holding company of the Contractor; or

- (c) a meeting of creditors or any class of shareholders of the Contractor or any holding company of the Contractor passes a resolution for the winding-up, bankruptcy or dissolution of such entity (other than other than in each case for the purposes of a solvent reconstruction or amalgamation); or
- (d)
 - (i) the Contractor or any holding company of the Contractor 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 the Contractor or any holding company of the Contractor or the appointment of an administrator to the Contractor or any holding company of the Contractor and where (and only where) such an application is made solely by one or more creditors of such entity, that application is not withdrawn or dismissed within twenty (20) Business Days; or
 - (iii) any other material steps are taken by the Contractor or any holding company of the Contractor (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 the Contractor or any holding company of the Contractor (other than in each case for the purposes of a bona fide internal reorganisation or amalgamation) and such petition is not, or such other steps are not, discharged or withdrawn within twenty (20) Business Days; or
- (f) either the Contractor or any holding company of the Contractor 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) the Contractor or any holding company of the Contractor ceases to carry on business (unless in each case it relates to an intra group reorganisation of such entity 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)(c) 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) the Contractor or any holding company of the Contractor suffers any event analogous to any of the foregoing in any jurisdiction in which it is incorporated or resident or such entity takes steps in any jurisdiction for protection from its creditors or for any moratorium or stay of any creditor action.

Intellectual Property Rights means rights, title and interest in:

- (a) patents, trade marks, service marks, trade names, goodwill, registered designs, design rights, semiconductor topography rights, database rights, copyrights and other forms of intellectual or industrial property (in each case in any part of the world, whether or not registered or registerable for their full period of registration with all extensions, renewals and revivals, and including all applications for registration, rights to claim priority or otherwise);
- (b) inventions, formulae, confidential information (including know-how or secret processes);
- (c) rights in computer software; and
- (d) any similar or equivalent rights and assets which may now or in the future subsist anywhere in the world.

ITT means the invitation to tender issued to pre-qualified bidders issued in relation to the opportunity set out in the Contract Notice.

KPI Default has the meaning given to that term in Schedule 9 (*Key Performance Indicators*).

Maximum Profit Rate in relation to a price included in a Supplemental Tender means the profit rate allowed for in the price concerned, taking into account all expected costs of performing the proposed Call-Off Contract.

Mini-Competition has the meaning given to it in Schedule 3 (*Call-Off Award Process*).

Operative Terms means the provisions of this Agreement other than the Agreement Date Terms.

Order means any order made or proposed to be made by the Authority for In Scope Spares.

Order Form means a document setting out details of a Contractor Order made under this Agreement in the same form and substance as the Template Order Form.

Parent Company Guarantee means a parent company guarantee that the Contractor provides either under Clause 9.1 (*Parent Company Guarantee*) or Paragraph 5 of Schedule 12 (*Financial Standing*).

PCSPS means the Principal Civil Service Pension Scheme established under The Superannuation Act 1972.

PQQ means the Pre-Qualification Questionnaire issued in relation to the Contract Notice.

Prohibited Act means:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage:
 - (i) to induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;

- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (c) an offence:
 - (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
 - (ii) under legislation creating offences concerning fraudulent acts relating to this Agreement or any other contract with the Authority;
 - (iii) at common law concerning fraudulent acts; or
 - (iv) of defrauding, attempting to defraud or conspiring to defraud the Authority (including offences by the Contractor under Part 3 of the Criminal Finances Act 2017);
- (d) any activity, practice or conduct which would constitute one of the offences listed under paragraph (c) if such activity, practice or conduct had been carried out in the UK.

Quality Plan means the Contractor's quality plan:

- (a) as finalised in accordance with 8.3 (*Finalising Framework Plans*); and
- (b) thereafter amended from time to time in accordance with 8.4 (*Maintaining Framework Plans*).

Rectification Plan means the Contractor's plan (or revised plan) to rectify a breach of its obligations which shall include:

- (a) full details of the breach that has occurred, including a root cause analysis;
- (b) the actual or anticipated effect of the breach; and
- (c) the steps which the Contractor proposes to take to rectify the breach (if applicable) and to prevent such breach from recurring, including timescales for such steps and for the rectification of the breach (where applicable).

Regulations means the Defence and Security Public Contracts Regulations 2011, as amended and updated from time to time.

Relevant Requirements means all Applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.

Safety and Environmental Management Plan means the Contractor's safety and environmental management plan:

- (a) as set out in Schedule 16 (*Safety and Environmental Management Plan*) at the Agreement Date; and

- (b) thereafter amended from time to time in accordance with 8.4 (*Maintaining Framework Plans*).

Safety Critical Equipment means equipment designated by the Authority as being any one or more of:

- (a) safety critical;
- (b) material for safety in submarines;
- (c) first level capability,

in each case as contemplated under Safety Critical Standards.

Safety Critical Scope means In Scope Spares that are or are for fitment to or support of Safety Critical Equipment.

Safety Critical Standards means and of the following standards:

- (a) 05-061 Quality Assurance Procedural Requirements Part 9: Independent Inspection Requirements for Safety Critical Items;
- (b) Defence Standard 02-207 – Quality Management Framework and Requirements for Materiel Safety in Submarines;
- (c) Sea Systems Publication 25 – Quality Assurance for Safety in Submarines; and
- (d) SSSP 25 Quality Assurance for Safety in Submarines, Chapter 5.

Safety Critical Framework Support Requirements means the requirements set out in Section c.1 of Part 3 (*Statement of Requirements for Additional Scope*) of the Statement of Requirements.

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.

Scope Table means:

- (a) the table "MSS 141" set out in Schedule 1; or
- (b) the latest version of any new table of In Scope Spares issued by the Authority from time to time pursuant to Claus 4.1.

Security Aspects Letter means the Authority executed security aspects letter to be provided by the Authority Representative to the Contractor on or before the Effective Date in substantially the same form and substance as Schedule 14 (*Security Aspects Letter*).

Sensitive Information means the Information listed in Schedule 4 (*Contractor's Sensitive Information*), which is Information notified by the Contractor to the Authority, which is acknowledged by the Authority as being sensitive, at the point at which this Agreement is

entered into or amended (as relevant) and remains sensitive information at the time of publication.

Services means the spares supply services to be provided by the Contractor under this Agreement and any Call-Off Contract.

Social Value Model means the Authority's social value model as amended from time to time, accessible online at the time of signing at the following location:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/940826/Social-Value-Model-Edn-1.1-3-Dec-20.pdf.

Spares Framework has the meaning given to that term in Recital A.

Spares Framework Agreements means this Agreement and each other agreement between the Authority and a Spares Framework Contractor providing for its appointment to and participation in the Spares Framework (but not including any Call-Off Contract as defined in a Spares Framework Agreement).

Statement of Requirements means the Authority's Statement of Requirements set out in Schedule 2 (*Statement of Requirements*).

Statement Relating to Good Standing means a statement by the Contractor:

- (a) in substantially the same form and substance as the template set out in Schedule 10 (*Statement Relating to Good Standing*); and
- (b) in respect of facts and circumstances existing at the time such statement is made.

Supplemental Tender means all parts of the Contractor's submissions in respect of an Order (whether pursuant to a Mini Competition or for a proposed Direct Award).

Suspension Circumstances has the meaning given to it in Schedule 12 (*Financial Standing*).

Suspension Event has the meaning given to that term in Schedule 9.

Template Order Form means the template form of Order Form set out in Schedule 5 (*Template Order Form*).

Template Parent Company Guarantee means the form of guarantee set out in Schedule 7 (*Template Parent Company Guarantee*).

Tender means the tender for appointment to the Spares Framework submitted by the Contractor to the Authority in response to the ITT.

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.

Transparency Information means the content of this Agreement in its entirety, including from time-to-time agreed changes to this Agreement, except for (i) any Information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act

2000 (**FOIA**) or the Environmental Information Regulations 2004 (**EIR**), which shall be determined by the Authority, and (ii) any Sensitive Information.

1.2 Interpretation

Unless a contrary indication appears, any reference in this Agreement to:

- (a) **Clauses, Paragraphs, sub paragraphs, parts** and **Schedules** are references to clauses, paragraphs, sub paragraphs, parts and schedules to this Agreement and references to Sections, Appendices and Attachments (if any) are references to sections, appendices and attachments to or contained in this Agreement;
- (b) 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;
- (c) the words **other** and **otherwise** shall not be construed ejusdem generis with any preceding words where a wider construction is possible;
- (d) 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, 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);
- (e) a **public organisation** shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both the functions and responsibilities of such public organisation;
- (f) 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;
- (g) 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;
- (h) any **agreement, document** or **annex** include (subject to all relevant approvals and any other provisions of this Agreement concerning amendments to agreements or documents) a reference to that agreement, document or annex as amended, supplemented, substituted, novated or replaced from time to time;
- (i) any **Applicable Law** is to be construed as reference to that Applicable Law as from time to time amended from time to time or to any Applicable Law from time to time replacing, extending, consolidating or amending the same;
- (j) the terms "**holding company**", "**subsidiary**", "**parent undertaking**", "**subsidiary undertaking**" and "**wholly-owned subsidiary**" shall be interpreted in accordance with the Companies Act 2006, and the term "**associated company**" shall be interpreted in accordance with section 449 of the Corporation Tax Act 2010;

- (k) **Parties** means the parties to this Agreement and a reference to a Party means one of the parties to this Agreement;
 - (l) the terms "**data processor**", "**personal data**" and "**processing**" shall bear the meaning ascribed to them in the Data Protection Act 2018;
 - (m) a time of day is a reference to London time.
- 1.3 Clause and schedule headings and any marginal notes and references to them in this Agreement shall be deemed not to be part of this Agreement and shall not be taken into consideration in the interpretation of this Agreement.
- 1.4 Where capitalised terms are used in this Agreement but not defined in this Agreement those terms shall be given their ordinary industry meaning, other than where the context requires otherwise.

2 Effectiveness and Term

- 2.1 Subject to Clause 2.3, this Agreement begins on the Agreement Date and, unless terminated earlier in accordance with the provisions of this Agreement, shall continue in force until the date falling seven (7) years after the Framework Start Date (the **Term**).
- 2.2 The Agreement Date Terms shall come into effect on the Agreement Date.
- 2.3 The effectiveness of the Operative Terms shall be conditional on the Conditions Precedent being satisfied or waived.

3 Conditions Precedent

- 3.1 Each of the following is a **Condition Precedent**:
- (a) if a Parent Company Guarantee is required under Clause 9.1:
 - (i) the provision of that Parent Company Guarantee; and
 - (ii) a legal opinion in respect of that Parent Company Guarantee, in form and substance satisfactory to the Authority;
 - (b) receipt by the Authority (in each case in form and substance satisfactory to it) of the following in respect of (i) the Contractor; and (ii) (if a Parent Company Guarantee is required under Clause 9.1) the Guarantor (each a **relevant party**):
 - (i) evidence that all consents, licences, registrations or approvals which may be required in respect of the relevant party prior to entering into this Agreement have been obtained;
 - (ii) copies, certified by an officer of the relevant party to be true, complete and up-to-date copies, of its constitutional documents;
 - (iii) copies, certified by an officer of the relevant party to be true copies, and as being in full force and effect and not amended or rescinded, of resolutions duly passed by the board of directors of the relevant party;

- (A) approving the terms of, and the transactions contemplated by, this Agreement or the Parent Company Guarantee (as the case may be); and
 - (B) authorising a specified person or persons to sign and deliver on behalf of the relevant party this Agreement or the Parent Company Guarantee (as the case may be);
 - (iv) a copy, certified by an officer of the relevant party to be a true copy, and as being in full force and effect and not amended or rescinded, of the list of authorised signatories of the relevant party's and evidence of the relevant party's authorised signatories' signatures;
- 3.2 The Contractor shall procure the satisfaction of each Condition Precedent as soon as reasonably practicable after the Agreement Date and in any event within 10 (ten) Business Days.
- 3.3 The Authority may waive any Condition Precedent in writing.
- 4 Scope of Framework and Contractor's appointment**
- 4.1 The Parties acknowledge and agree that:
- (a) only items of equipment or sub-divisions or parts thereof that are contemplated by the Contract Notice may be In Scope Spares; and
 - (b) the Authority may (subject to (a)), in its absolute discretion, amend or add to the Scope Table from time to time.
- 4.2 The Authority shall notify the Contractor in writing of any changes made to the Scope Table.
- 4.3 Subject to and in accordance with the terms of this Agreement:
- (a) the Authority appoints the Contractor to the Spares Framework.
 - (b) the Contractor shall be deemed capable to receive Orders:
 - (i) in respect of the Core Scope; and
 - (ii) in respect of such parts of the Additional Scope that it is designated as capable to receive Orders for in accordance with Clause 5 (*Capability in respect of Additional Scope*),
- and references to Orders in respect of which the Contractor is a **Capable Contractor** shall be interpreted accordingly.
- 4.4 During the Term the Authority may at its absolute discretion and from time-to-time place Orders with the Contractor in respect of which the Contractor is a Capable Contractor, in each case subject to and in accordance with the terms of this Agreement.
- 4.5 The Contractor acknowledges and agrees that:
- (a) there is no guarantee that the Authority will place any Contractor Orders with it or any other Framework Contractor;

- (b) no form of exclusivity has been granted by the Authority to the Contractor or any other Framework Contractor; and
- (c) the Authority is at all times entitled to enter into other contracts and arrangements with other suppliers for the provision of any or all services which are the same as or similar to the Services, whether or not pursuant to a Spares Framework Agreement.

5 Capability in respect of Additional Scope

5.1 For the purposes of this Clause:

- (a) **Relevant Support Requirements** means:
 - (i) in respect of Asset Availability Scope, the Asset Availability Support Requirements; and
 - (ii) in respect of Safety Critical Scope, the Safety Critical Support Requirements;
- (b) **Relevant Evidence**, in respect of Relevant Support Requirements, means full and detailed evidence that the Contractor is capable of performing those Relevant Support Requirements, such evidence to:
 - (i) demonstrate that each "*Measure of Performance*" relating to those Relevant Support Requirements will be met;
 - (ii) to include:
 - (A) all items set out in the "*Proposed Validation Method*" column corresponding to those Relevant Support Requirements; and
 - (B) any other evidence the Authority shall require (acting reasonably);
- (c) **Scope Enhancement** has the meaning given to it in Clause 5.2(b)(i), and **Scope Enhanced** and cognate terms shall be construed accordingly; and
- (d) **Scope Reduction** has the meaning given to it in Clause 5.2(b)(ii), and **Scope Reduced** and cognate terms shall be construed accordingly.

5.2 The Parties acknowledge and agree that (subject to Clause 8.5.2, Paragraph 3.5 of Schedule 9 (*Key Performance Indicators*) and Paragraph 3 of Schedule 12 (*Financial Standing*):

- (a) as at the Agreement Date the Contractor has been designated as:
 - (i) [*capable*] / [*not capable*]² to receive Orders in respect of Safety Critical Scope;

² **Note to bidders:** delete or keep word in squares brackets as applicable depending on whether Supplier has been deemed, as a result of its bid, to be capable to receive orders in respect of Safety Critical Scope. See the DF47

- (ii) [capable] / [not capable]³ to receive Orders requiring the delivery of stock on an Asset Availability basis;
- (b) the Contractor may (in the case of (i), subject to Clause 5.7) at any time during the Term be designated:
 - (i) under Clauses 5.3 and 5.4 as capable to receive Orders for Additional Scope (whether Safety Critical Scope or Asset Availability Scope) in respect of which it was not, prior to such designation, a Capable Contractor (following which it shall be a Capable Contractor in respect of the Additional Scope concerned, such designation being a **Scope Enhancement**));
 - (ii) under Clauses 5.3 and 5.5 as not capable to receive Orders for Additional Scope (whether Safety Critical Scope or Asset Availability Scope) in respect of which it was, prior to such designation, a Capable Contractor (following which it shall not be a Capable Contractor in respect of the Additional Scope concerned, such designation being a **Scope Reduction**).

5.3 The Contractor may be:

- (a) Scope Enhanced in relation to a category of Additional Scope (whether Safety Critical Scope or Asset Availability Scope) if, by providing Relevant Evidence, it demonstrates to the satisfaction of the Authority that it is capable of performing the Relevant Support Requirements in accordance with Good Industry Practice and the standards required under this Agreement; or
- (b) Scope Reduced in relation to a category of Additional Scope (whether Safety Critical Scope or Asset Availability Scope) if the Authority is satisfied that available evidence demonstrates that it is not capable of performing the Relevant Support Requirements in accordance with Good Industry Practice and the standards required under this Agreement.

5.4 If, during the Term of this Agreement, the Contractor considers that it should be Scope Enhanced it shall provide a written request supported by Relevant Evidence to the Authority (an **Enhancement Request**) stating which Additional Scope (whether Safety Critical Scope or Asset Availability Scope) the request relates to, and following such Enhancement Request:

- (a) the Authority may request further Relevant Evidence and/or consultation with the Contractor, and the Contractor shall cooperate with any such request, acting reasonably; and
- (b) the Authority shall assess the Contractor's request and thereafter notify the Contractor whether or not the Scope Enhancement shall be granted,

and, until such time as the Authority has confirmed that the Enhancement Request has been granted, the Contractor shall not be a Capable Contractor in respect of the Additional Scope concerned.

5.5 If, during the Term of this Agreement, the Authority believes that the Contractor should be Scope Reduced it shall provide a written notice with reasons for that belief to the Contractor

³ **Note to bidders:** delete or keep word in squares brackets as applicable depending on whether Supplier has been deemed, as a result of its bid, to be capable to receive orders in respect of Asset Availability Scope. See the DF47

(a **Reduction Notice**) stating which Additional Scope (whether Safety Critical Scope or Asset Availability Scope) the notice relates to, and following such Reduction Notice:

- (a) the Contractor may request further consultation with the Contractor, and the Authority and the Authority shall cooperate with any such request, acting reasonably; and
- (b) the Authority shall (following any consultation under (a)) notify the Contractor whether or not it wishes to confirm the Scope Reduction or revoke the Reduction Notice,

and, following such Reduction Notice, the Contractor shall not be a Capable Contractor in respect of the Additional Scope concerned unless and until either:

- (i) the Authority revokes the Reduction Notice in accordance with this Clause 5.5; or
- (ii) the Contractor is subsequently Scope Enhanced in respect of that Additional Scope in accordance with Clauses 5.3 and 5.4.

5.6 The Authority shall use reasonable endeavours to complete any assessment under Clause 5.4(b) within 3 (three) months of the Enhancement Request.

5.7 If the Contractor has issued an Enhancement Request in respect of any category of Additional Scope within the previous twelve (12) month period, unless agreed otherwise by the Parties in writing, the Contractor shall not be entitled to issue a further Enhancement Request in respect of the same category of Additional Scope.

5.8 No Scope Enhancement under Clause 5.4 or Scope Reduction under Clause 5.5 shall affect any Order or Call-Off Contract that the Contractor has already been awarded or entered into.

5.9 If, at the time the Contractor is Scope Reduced under Clause 5.5, the Contractor is participating in a Mini Competition for an Order in respect of the category of Additional Scope concerned, or has been invited to, the Authority may, at its discretion, discontinue the Contractor's participation in that Mini Competition and/or withdraw that invitation.

6 Employees

Employee Information

6.1 During the Term the Contractor shall provide to the Authority employment or engagement and pension information reasonably requested by the Authority concerning Contractor Personnel. Such information shall be provided as expeditiously as possible (save in exceptional circumstances no later than 15 Business Days of any request by the Authority) in a reasonable and standard form and at no cost to the Authority.

6.2 The Contractor confirms that any information provided pursuant to Clause 6.1 above, will be accurate at the date it is provided.

6.3 Subject to the Transfer Regulations and any express provision to the contrary incorporated in any Call-Off Contract from time to time, clauses 6.1 and 6.2 are subject to Data Protection Law. All data provided pursuant to those clauses shall be provided in anonymous form.

Contractor Personnel

- 6.4 The Contractor shall not and shall procure that no Employing Entity shall during the term of the Agreement increase the remuneration paid to any Contractor Personnel engaged in the provision of the Services above acceptable market rates for the relevant role undertaken in the location concerned.
- 6.5 The Contractor shall ensure that all Contractor Personnel comply with Authority policies and vetting requirements applicable to their role.

Equality

- 6.6 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.
- 6.7 Without prejudice to the generality of the obligation in Clause 6.6, 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 Agreement is being performed.
- 6.8 The Contractor agrees to secure the observance of Clauses 6.6 and 6.7 by anyone acting under its direction or control who are engaged in the performance of the Services.

Indemnity

- 6.9 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 tax and similar taxes or liability for deduction of PAYE tax properly incurred by the Authority arising as a result of, or otherwise directly or indirectly in connection with, any breach by the Contractor and/or any Employing Entity of this Clause 6.

Transfer Regulations

- 6.10 The parties do not envisage that there will be any transfer under the Transfer Regulations as a result of the Parties entering into or terminating this Agreement (or on expiry in the ordinary course). It is envisaged that the Transfer Regulations may apply from time to time on commencement, or termination of individual Call-Off Contracts.
- 6.11 Schedule 10 to the Call-Off Terms (*TUPE Transfer Regulations*) contains clauses that shall be incorporated in Call-Off Contracts as relevant where the Transfer Regulations are envisaged to apply. If it is found or asserted that the Transfer Regulations apply in any other circumstances, the parties agree that the provisions set out in Schedule 10 to the Call-Off Terms (*TUPE Transfer Regulations*) shall be deemed to be incorporated into the body of this Agreement and/or any additional Call-Off Contract as applicable. Where it is necessary to select between parts of Schedule 10 to the Call-Off Terms (*TUPE Transfer Regulations*), the applicable part of Schedule 10 to the Call-Off Terms (*TUPE Transfer Regulations*) shall be selected depending on whether the Transfer Regulations apply (or may apply) on commencement or on termination, and whether the employees in scope to transfer would include Former Authority Employees. The Contractor and the Authority shall co-operate to finalise any details applicable to the circumstances of the transfer and shall otherwise comply with their obligations under the applicable provisions to the fullest extent possible in all the circumstances.

7 Awarding orders

Schedule 3 (*Call-Off Award Process*) shall have effect.

8 Contractor's performance

8.1 Framework Performance

8.1.1 The Contractor shall comply with:

- (a) the Core Framework Support Requirements;
- (b) the Asset Availability Framework Support Requirements, at all times that:
 - (i) in accordance with Clause 5, it is a Capable Contractor in respect of Asset Availability Scope; or
 - (ii) it is a party to a Call-Off Contract in respect of Asset Availability Scope that is in the Delivery Phase;
- (c) the Safety Critical Framework Support Requirements, at all times that:
 - (i) in accordance with Clause 5, it is a Capable Contractor in respect of Safety Critical Scope; or
 - (ii) it is a party to a Call-Off Contract in respect of Safety Critical Scope that is in the Delivery Phase.

8.1.2 The Contractor shall ensure that, at all times during the Term, it is certified to ISO 9001:2015 (*Quality Management Systems*):

- (a) by a body accredited to the United Kingdom Accreditation Service; and
- (b) for a scope that includes In Scope Spares.

8.1.3 The Contractor shall register with the Authority's CP&F payment system.

8.2 Order Performance

8.2.1 The applicable Call-Off Contract shall apply in respect of the Contractor's performance in respect of each Contractor Order.

8.2.2 Unless otherwise specified in the Order Form, the Contractor shall comply with the DEFCONs and DEFSTANs, and complete the DEFFORMs, as set out in the relevant Call-Off Terms.

8.3 Finalising Framework Plans

8.3.1 The Parties acknowledge and agree that at the Agreement Date:

- (a) the draft Anti -Counterfeiting Management Plan set out in Schedule 15 (*Draft Anti - Counterfeiting Management Plan*); and
- (b) the draft Quality Plan set out in Schedule 8 (*Draft Quality Plan*),

are in each case in preliminary draft form, and intended to be used as the starting point for the preparation of final drafts in accordance with this Clause 8.3.

8.3.2 Within three months of the Agreement Date the Contractor shall prepare a proposed final draft of each of the Anti -Counterfeiting Management Plan and the Quality Plan (each a **Draft Final Plan**), ensuring that each such Draft Final Plan:

- (a) is consistent with the draft set out in Schedule 15 (*Draft Anti -Counterfeiting Management Plan*) or Schedule 8 (*Draft Quality Plan*), as the case may be; and
- (b) will constitute a Framework Plan that is compliant with the requirements set out in Clause 8.4.1.

8.3.3 The Authority shall provide any comments on the Draft Final Plans provided by the Contractor under Clause 8.3.2 within 30 (thirty) days of receipt.

8.3.4 The Contractor shall prepare a final version of the Anti -Counterfeiting Management Plan and the Quality Plan taking into account the Authority's comments and such final versions shall be the Quality Plan and the Anti -Counterfeiting Management Plan for the purposes of this Agreement, subject to the provisions of Clause 8.4.

8.4 Maintaining Framework Plans

8.4.1 The Contractor shall ensure that at all times:

- (a) each of the Framework Plans is compliant with:
 - (i) Good Industry Practice; and
 - (ii) the applicable requirements of the Framework Support Requirements;
- (b) the Safety and Environmental Management Plan is compliant with all applicable Health and Safety Law and Environmental Law; and
- (c) the Quality Plan is compliant with Nato Standard AQAP-2105.

8.4.2 The Contractor shall review the Framework Plans periodically and, unless otherwise requested by the Authority, no less than once each year, to check whether they are:

- (a) up to date; and
- (b) compliant with Clause 8.4.1,

and shall, following such review, implement any changes required to ensure that they are up to date and compliant with Clause 8.4.1, subject to and in accordance with Clause 8.4.3.

8.4.3 The Contractor may (subject to Clause 8.4.4) amend any Framework Plan subject to first:

- (a) giving the Authority notice of the proposed revisions and obtaining the Authority's consent, acting reasonably, to the amendment; and
- (b) demonstrating to the Authority's reasonable satisfaction that any amendment complies with Clause 8.4.1.

- 8.4.4 If the Contractor proposes to change any Framework Plan such that the Authority believes (acting reasonably and in good faith) such changes shall have, or potentially have, an adverse effect on the provision of the Services, the Authority shall provide reason(s) for its belief to the Contractor in writing and the Contractor shall not be permitted to implement the proposed change.

8.5 Complying with and implementing Framework Plans

- 8.5.1 Subject to Clause 8.5.2, the Contractor shall at all times:
- (a) comply with the provisions of the Framework Plans;
 - (b) maintain the resources required to undertake its obligations under each Framework Plan; and
 - (c) demonstrate its compliance with paragraphs 8.5.1(a) and 8.5.1(b) whenever requested by the Authority.
- 8.5.2 Prior to finalisation of the Anti -Counterfeiting Management Plan and the Quality Plan in accordance with Clause 8.3, the Authority may, at its discretion, decide to exclude the Contractor from any Mini-Competition or Direct Award in respect of an Order for which it would otherwise be a Capable Contractor.

9 Parent Company Guarantee

- 9.1 Where a parent company guarantee has been requested by the Authority prior to the Agreement, the Contractor shall procure the issue of such guarantee by the entity approved by the Authority and notified to the Contractor prior to the Agreement Date in the form of the Template Parent Company Guarantee as security to the Authority for the Contractor's liabilities arising under this Agreement and each Call-Off Contract on or as soon as reasonably practicable after the Agreement Date.
- 9.2 The Contractor shall, subject to Clause 9.3, maintain the continuing validity and effectiveness of each Parent Company Guarantee issued under Clause 9.1 or under Paragraph 6 of Schedule 12 (*Financial Standing*) (each a **Required PCG**) from the date that such security is provided to the Authority, for the duration of the Term and, following the end of the Term, for the period that liabilities or obligations of the Contractor in connection with this Agreement or any Call-Off Contract remain outstanding or unperformed.
- 9.3 The Contractor shall not be obliged to maintain a Required PCG from the time (the **Relevant Time**) that it demonstrates to the Authority (acting reasonably) that there is no Indicator Shortfall in respect of the Contractor.
- 9.4 The Parties acknowledge and agree that:
- (a) Clause 9.3 shall not affect the Authority's rights under Paragraph 3.2 of Schedule 12 (*Financial Standing*) if, at any time following the Relevant Time, Suspension Circumstances arise; and
 - (b) if at any time a Required PCG is no longer in full force and effect, including as a result of the Guarantor giving notice to end such Required PCG in accordance with its terms, the Contractor shall be deemed to be in breach of Clause 9.2.

10 Financial Standing

Schedule 12 (*Financial Standing*) shall have effect.

11 Warranties

11.1 Warranties by the Contractor

The Contractor warrants and represents to the Authority that:

- (a) it has full capacity and authority and all necessary consents to enter into and to perform its obligations under this Agreement;
- (b) this Agreement is executed by a duly authorised representative of the Contractor;
- (c) the information provided to the Authority by Contractor in the Tender was, at the time given, to the best of Contractor's knowledge, information and belief, true and accurate;
- (d) the information provided to the Authority in the Contractor's Statement Relating to Good Standing is to the best of Contractor's knowledge, information and belief, true and accurate;
- (e) there are no actions, suits, proceedings or regulatory investigations pending or threatened against, or affecting Contractor before any court, administrative body or arbitration tribunal that might materially affect Contractor's ability to perform this Agreement; and
- (f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue.

11.2 Warranties by the Authority

The Authority warrants and represents to the Contractor that:

- (a) it has full capacity and authority and all necessary consents to enter into and to perform its obligations under this Agreement; and
- (b) this Agreement is executed by a duly authorised representative of the Authority.

11.3 Separate warranties

Each of the warranties and representations contained and referred to in Clause 11 (*Warranties*) shall be read and construed as a separate warranty and representation and shall not be limited or restricted by any reference to or inference from any other terms of this Agreement.

12 Data protection

- 12.1 For the purpose of this Clause, the terms consent, data subject, personal data, personal data breach, processing, processor and supervisory authority have the meanings given in the GDPR.
- 12.2 Contractor shall comply fully with all Data Protection Law with regard to the collection, processing and use of any personal data of the Authority which Contractor may obtain during the provision of the Services or otherwise by reason of the Agreement or any Call-Off Contract, including putting in place and maintaining throughout the Term of the Agreement appropriate technical and organisational measures against the accidental, unauthorised or unlawful processing, destruction, loss, damage or disclosure of personal data and adequate security programmes and procedures to ensure that unauthorised persons do not have access to any equipment used to process personal data.
- 12.3 Contractor shall on demand indemnify the Authority from and against all losses incurred by the Authority its employees, officers, agents and contractors arising out of or in connection with any breach by or on behalf of Contractor of Clause 12 (*Data protection*).

13 Security

- 13.1 The Contractor shall comply with the Security Aspects Letter in its performance of this this Agreement and each Call-Off Contract.
- 13.2 The Authority shall be entitled to terminate this Agreement and any Call-Off Contract immediately if the Contractor has committed a breach of or failed to comply with this Clause 13 (*Security*). In addition the Authority may claim such damages as may have been sustained as a result of the Contractor's breach of this Clause.
- 13.3 A decision of the Authority to serve a Termination Notice in respect of Clause 13.2 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 Applicable Law, the Authority shall provide reasonable details of the event or considerations upon which the Authority's decision is based.

14 Intellectual property

- 14.1 For the purposes of this Clause 14 the following DEFCONs are the **Applicable IPR DEFCONS**:
- (a) DEFCON 14 (Inventions and Designs);
 - (b) DEFCON 91 (Intellectual Property Rights in Software);
 - (c) DEFCON 531 (Confidentiality);
 - (d) DEFCON 632 (Third Party Intellectual Property Rights and Restrictions); and
 - (e) DEFCON 707 (Rights in Technical Data).
- 14.2 The Applicable IPR DEFCONS are, subject to Clause 14.3, incorporated into and shall form part of:

- (a) this Agreement; and
- (b) each Call-Off Contract, save to the extent expressly provided to the contrary in the Call-Off Contract concerned.

14.3 For the purposes of this Agreement, references in the Applicable IPR DEFCONS to:

- (a) the **Contract** means this Agreement;
- (b) **Contractor Deliverable** means:
 - (i) any item or document required to be delivered or provided to the Authority under this Agreement; and
 - (ii) any Supplemental Tender or any other document or information supplied by the Contractor pursuant to the Award Procedure.

15 Statement Relating to Good Standing

The Contractor shall make and provide to the Authority a Statement Relating to Good Standing:

- (a) on each anniversary of the Agreement Date; and
- (b) if requested by the Authority, prior to entering into any Call-Off Contract.

16 Audit and record keeping

16.1 Record keeping

16.1.1 Contractor shall at all times operate a system of accounting and maintain complete and accurate records and accounts of all actions taken in connection with, and all supporting documentation in relation to, the performance of its obligations under this Agreement (the **Records**).

16.1.2 The Contractor shall keep the Records in accordance with good accountancy practice.

16.1.3 The Contractor shall maintain the Records for the duration of the Agreement and then for as long as required by Applicable Law.

16.1.4 The Contractor's obligations under Clause 16.1 (Record keeping) shall remain in force for a period of six (6) years after termination or expiry of this Agreement (or as long a period as may be agreed between the Parties).

16.2 Audit

16.2.1 In order that the Authority or any of the Authority's internal and external auditors, including the Authority's statutory or regulatory auditors and any party appointed by the Authority to carry out audit or similar review functions (the **Auditor**) may audit the Contractor's compliance with the terms of this Agreement, the Contractor shall provide the Authority and the Auditor, on request, at no additional charge, with reasonable access to, and copies of, the Records.

16.2.2 Subject to the Authority's rights of confidentiality, the Contractor shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to an audit, including:

- (a) all information requested by the Auditor within the scope of the audit;
- (b) reasonable access to sites controlled by the Contractor and to equipment used in the provision of the Services; and
- (c) access to any Contractor Personnel.

16.3 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 16, unless an audit reveals a material breach of this Agreement by the Contractor in which case the Contractor shall reimburse the Authority for the Authority's reasonable costs incurred in relation to the audit.

16.4 Audit of profit rate

Notwithstanding its rights to audit in accordance with Clause 16.2 (*Audit*), at any time, the Authority may request such further information as it may reasonably require to evaluate the Contractor's compliance with Paragraph 4.5.1(e) of Schedule 3 (*Call-Off Award Process*). The Contractor shall within 5 (five) Business Days, or such other period as the Authority and the Contractor may agree, provide such information to the Contractor.

17 Confidentiality

17.1 In the event of any inconsistency between this Clause 17 and any Applicable IPR DEFCON, this Clause 17 will prevail.

17.2 Subject to Clauses 17.5 to 17.10 and Clause 18 (*Transparency*) each Party:

- (a) shall treat in confidence all Information it receives from the other;
- (b) shall not disclose any of that Information to any third party without the prior written consent of the other Party, which consent shall not unreasonably be withheld, except that the Contractor may disclose Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of this Agreement;
- (c) shall not use any of that Information otherwise than for the purpose of this Agreement; and
- (d) shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under this Agreement.

17.3 The Contractor shall take all reasonable precautions necessary to ensure that all Information disclosed to the Contractor by or on behalf of the Authority under or in connection with this Agreement:

- (a) is disclosed to their employees and sub-contractors, only to the extent necessary for the performance of this Agreement; and
- (b) is treated in confidence by them and not disclosed except with the prior written consent of the Authority or used otherwise than for the purpose of performing work or having work performed for the Authority under this Agreement or any sub-contract.

17.4 The Contractor shall ensure that their employees are aware of the Contractor's arrangements for discharging the obligations at Clauses 17.1 and 17.3 before receiving Information and shall take such steps as may be reasonably practical to enforce such arrangements.

17.5 A Party shall not be in breach of Clauses 17.1, 17.3, 17.6, 17.8 and 17.9 to the extent that either Party:

- (a) exercises rights of use or disclosure granted otherwise than in consequence of, or under, this Agreement;
- (b) has the right to use or disclose the Information in accordance with other Clauses of this Agreement; or
- (c) can show:
 - (i) that the Information was or has become published or publicly available for use otherwise than in breach of any provision of this Agreement or any other agreement between the Parties;
 - (ii) that the Information was already known to it (without restrictions on disclosure or use) prior to receiving the Information under or in connection with this Agreement;
 - (iii) that the Information was received without restriction on further disclosure from a third party which lawfully acquired the Information without any restriction on disclosure; or
 - (iv) from its records that the same Information was derived independently of that received under or in connection with this Agreement,

provided that the relationship to any other Information is not revealed.

17.6 Neither Party shall be in breach of this Clause:

- (a) As a result of uploading information to the Authority's CP&F system (or any system that replaces it);
- (b) where it can show that any disclosure of Information was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the Party making the disclosure shall ensure that the recipient of the Information is made aware of and asked to respect its confidentiality. Such disclosure shall in no way diminish the obligations of the Parties under this Clause.

17.7 The Authority may disclose the Information:

- (a) to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body, which shall include: disclosure to the Cabinet Office and/or HM Treasury for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes. Where such a disclosure is made the Authority shall ensure that the recipient is made aware of its confidentiality;

- (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- (c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) subject to Clause 17.8 below, on a confidential basis to a professional adviser, consultant or other person engaged for any purpose relating to or connected with this Agreement;
- (e) subject to Clause 17.8 below, on a confidential basis for the purpose of the exercise of its rights under this Agreement; or
- (f) on a confidential basis to a proposed body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement;

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

- 17.8 Where the Authority intends to disclose Information to a commercial entity which is not a Central Government Body in accordance with Clauses 17.7(d) or 17.7(e) above, the Authority will endeavour to provide the Contractor with 3 (three) Business Days' notice in advance of such disclosure. In relation to a disclosure of Information made under Clause 17.7(c) above, if reasonably requested by the Contractor within 2 (two) Business Days of such notice being given, where the Authority has not already done so, it will endeavour to procure from the intended recipient of the Information an agreement containing confidentiality terms the same as, or substantially similar to, those placed on the Authority under this Clause.
- 17.9 Before sharing any Information in accordance with Clause 17.7, the Authority may redact the Information. Any decision to redact Information made by the Authority shall be final.
- 17.10 The Authority shall not be in breach of this Agreement where disclosure of Information is made solely and to the extent necessary to comply with the Freedom of Information Act 2000 (**FOIA**) or the Environmental Information Regulations 2004 (**EIR**). To the extent permitted by the time for compliance under the FOIA or the EIR, the Authority shall consult the Contractor where the Authority is considering the disclosure of Information under the FOIA or the EIR and, in any event, shall provide prior notification to the Contractor of any decision to disclose the Information. The Contractor acknowledges and accepts that their representations on disclosure during consultation may not be determinative and that the decision whether to disclose Information in order to comply with the FOIA or the EIR is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the FOIA or the EIR.
- 17.11 Nothing in this Clause shall affect the Parties' obligations of confidentiality where Information is disclosed orally in confidence.
- 17.12 Each party shall tell the other immediately if it discovers that this Clause 17 has been breached and shall, on request, return to the other all of the other party's Information which is in a physical form and destroy any other records containing the other party's Information.

- 17.13 The Contractor shall not and shall ensure that any employee or sub-contractor shall not communicate with representatives of the press, television, radio or other media on any matter concerning this Agreement unless the Authority has given its prior written consent.
- 17.14 The obligations in this Clause 17 shall continue without limit in time.

18 Transparency

- 18.1 Notwithstanding any other term of this Agreement, including Clause 17 (*Confidentiality*), the Contractor understands that the Authority may publish the Transparency Information to the general public.
- 18.2 Subject to Clause 18.3 the Authority shall publish and maintain an up-to-date version of the Transparency Information in a format readily accessible and reusable by the general public under an open licence where applicable.
- 18.3 If, in the Authority's reasonable opinion, publication of any element of the Transparency Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Authority acknowledges that it shall only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude Information from publication on that basis, it will provide a clear statement to the general public explaining the categories of information that have been excluded from publication and reasons for withholding that information.
- 18.4 The Contractor shall assist and co-operate with the Authority as reasonably required to enable the Authority to publish the Transparency Information, in accordance with the principles set out above. Where the Authority publishes Transparency Information, it shall:
- (a) before publishing, redact any Information that would be exempt from disclosure if it was the subject of a request for information under the Freedom of Information Act 2000 (**FOIA**) or the Environmental Information Regulations 2004 (**EIR**), for the avoidance of doubt, including Sensitive information;
 - (b) taking account the Sensitive Information set out in Schedule 4 (*Contractor's Sensitive Information*), consult with the Contractor where the Authority intends to publish Information which has been identified as Sensitive Information. For the avoidance of doubt the Authority, acting reasonably, shall have absolute discretion to decide what information shall be published or be exempt from disclosure in accordance with the FOIA and/or the EIR; and
 - (c) present information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how this Agreement is being performed.

19 Change of Control

- 19.1 The Contractor shall notify the Authority at the address given in Clause 19.2 as soon as practicable, in writing of any intended, planned or actual change of Control of the Contractor, its affiliates or any subcontractors. The Contractor shall not be required to submit any notice which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any

regulations governing the conduct of the Contractor in the UK or other jurisdictions where the Contractor may be subject to legal sanction arising from issuing such a notice.

- 19.2 Each notice of change of Control shall be taken to apply to all contracts with the Authority. Notices shall be submitted to:

Mergers & Acquisitions Section,
Strategic Contractor Management Team,
Spruce 3b # 1301,
MOD Abbey Wood,
Bristol, BS34 8JH,

and emailed to: DefComrclSSM-MergersandAcq@mod.gov.uk

- 19.3 The Authority shall consider the notice of change of Control and advise the Contractor in writing of any concerns the Authority may have. Such concerns may include but are not limited to potential threats to national security, the ability of the Authority to comply with its statutory obligations or matters covered by the declarations made by the Contractor prior to contract award.
- 19.4 The Authority may terminate this Agreement and any Call-Off Contract:
- (a) by giving written notice to the Contractor within six months of the Authority being notified in accordance with Clause 19.1; or
 - (b) immediately on becoming aware of a failure by the Contractor to notify the Authority of a change of Control in accordance with Clause 19.1.
- 19.5 The Authority shall act reasonably in exercising its right of termination under this Clause 19.
- 19.6 If the Authority exercises its right to terminate in accordance with Clause 19.4 the Contractor shall be entitled to request the Authority to consider making a payment representing any commitments, liabilities or expenditure incurred by the Contractor in connection with this Agreement or any Call-Off Contract up to the point of termination. Such commitments, liabilities or expenditure shall be reasonably and properly chargeable by the Contractor, and shall otherwise represent an unavoidable loss by the Contractor by reason of the termination. Any payment under this Clause 19.6 must be fully supported by documentary evidence. The decision whether to make such a payment shall be at the Authority's sole discretion.
- 19.7 Notification by the Contractor of any intended, planned or actual change of Control shall not prejudice the existing rights of the Authority or the Contractor under this Agreement or any Call-Off Contract nor create or imply any rights of either the Contractor or the Authority additional to the Authority's rights set out in this Clause 19.

20 Key performance indicators

Schedule 9 (*Key Performance Indicators*) shall have effect.

21 Governance

- 21.1 The Parties shall each appoint a contract manager to:
- (a) oversee the delivery and receipt of the Services on a day-to-day basis;

- (b) deal with and sign any change orders that are issued in accordance with the change control procedure in Schedule 11 (*Change Control Procedure*); and
- (c) oversee and manage the performance of and compliance with the Parties obligations under this Agreement.

22 Authority Representatives

- 22.1 The Authority shall notify the Contractor of the Authority's Representative for the purposes of this Agreement in writing as soon as reasonably practicable after the Agreement Date.
- 22.2 From time to time the Authority may amend the Authority's Representative and provide the Contractor with written confirmation of any change to the identity of the Authority's Representative.
- 22.3 The Parties acknowledge and agree that the Authority's representative for the purposes of any Call-Off Contract will be the individual listed in the relevant Order Form and may be a different person to the Authority's Representative.
- 22.4 Any reference to the Authority in respect of:
- (a) the giving of consent;
 - (b) the delivering of any notices; or
 - (c) the doing of any other thing that may reasonably be undertaken by an individual acting on behalf of the Authority,
- shall be deemed to be references to the Authority's Representative in accordance with this Clause 22.
- 22.5 The Authority's Representative shall have full authority to act on behalf of the Authority for all purposes of this Agreement. Unless notified in writing before such act or instruction, the Contractor shall be entitled to treat any act of the Authority's Representative which is authorised by this Agreement as being expressly authorised by the Authority and the Contractor shall not be required to determine whether authority has in fact been given.
- 22.6 The Contractor shall not be entitled to rely on and the Authority shall not be bound by any statement, consent, notice or other communication (written or otherwise) from an Authority employee or agent in relation to the execution of the Parties' rights or obligations under this Agreement unless issued by the Authority's Representative.

23 Social Value

- 23.1 Where the Contractor is awarded a Call-Off Contract that meets the conditions for the mandatory inclusion of social value as notified to the Contractor by the Authority from time to time, the Contractor shall support the Authority's Social Value Model as required under the relevant Call-Off Contract.
- 23.2 Where Clause 23.1 applies, the Contractor shall periodically prepare and deliver to the Authority a report setting out the steps it has taken to ensure compliance with this Clause 23.

24 Liability

- 24.1 Subject to Clause 24.2, the Contractor's annual aggregate liability under or in connection with this Agreement, whether arising from contract, negligence or otherwise, shall be £20,000.
- 24.2 Notwithstanding any other provisions of this Agreement and neither Party excludes or limits liability to the other Party for:
- (a) any liability arising under Clause 14 (*Intellectual Property*) or the DEFCONs incorporated in this Agreement under Clause 14 (*Intellectual Property*);
 - (b) any breach of the obligations in Clause 12 (*Data Protection*);
 - (c) any breach of the obligations in Clause 17 (*Confidentiality*);
 - (d) any breach of the obligations in Clause 25 (*Insurance*) or Schedule 13 (*Required Insurances*);
 - (e) any liability arising under Clause 6 (*Employees*);
 - (f) any liability arising under Clause 28.1 (*VAT*);
 - (g) any losses which the Authority may suffer or liabilities which the Authority may incur in connection with Contractor's wilful failure to perform this Agreement;
 - (h) any liability arising as a result of fraud or fraudulent misrepresentation by it or its employees;
 - (i) death or injury caused by its own negligence, or that of its employees, agents or sub-contractors (as applicable);
 - (j) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - (k) anything else which cannot be excluded or limited by Applicable Law.
- 24.3 Neither Party shall be entitled to recover under this Agreement or any Call-Off Contract more than once in respect of the same loss suffered (or part of such loss), and no amount (including any relief) shall be taken into account, set off or credited more than once for breach of or under this Agreement or a relevant Call-Off Contract, with the intent that there will be no double counting under this Agreement or any Call-Off Contract.

25 Insurance

- 25.1 Without prejudice to its liability to indemnify or otherwise be liable to the Authority under this Agreement, the Contractor shall for the periods specified in Schedule 13 (*Required Insurance*) take out and maintain or procure the taking out and maintenance of the insurances as set out under this Clause 25 (*Insurance*) and Schedule 13 (*Required Insurance*) and any other insurances as may be required by Applicable Law, together the **Required Insurances**. The Contractor shall ensure that each of these Required Insurances are effective in each case not later than the date on which the relevant risk commences.
- 25.2 The Required Insurances shall be taken out and maintained with insurers who are of good financial standing and of good repute in the international insurance market.

- 25.3 Where specified in Schedule 13 (*Required Insurance*) the Contractor shall ensure that the relevant policy of insurance:
- (a) shall contain an indemnity to principals clause or additional insureds equivalent, under which the Authority shall be indemnified in respect of claims made against the Authority arising from death or bodily injury or third party property damage, and for which the Contractor is legally liable in respect of this Agreement;
 - (b) names the Authority as co-insured for its separate interest with attendant non vitiation, waiver of subrogation and notice of cancellation provisions.
- 25.4 Where insurances are placed in the United Kingdom, the Contractor shall discharge in full all duties and obligations in respect of the Insurance Act 2015 when procuring, maintaining or amending any insurance(s) required by this contract, including in circumstances where the Contractor is required to name the Authority on any such insurance policies to protect the Authority's separate interests.
- 25.5 Where the minimum limit of indemnity required in relation to any of the Required Insurances is provided as being "in the aggregate" and the level of insurance cover available falls below that minimum because a claim or claims, the Contractor shall ensure that the insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified in Schedule 13 (*Required Insurance*).
- 25.6 The Contractor shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.
- 25.7 The Authority may elect (but shall not be obliged) where notice has been provided to the Contractor to purchase any insurance which the Contractor is required to maintain pursuant to this Agreement but has failed to maintain in full force and effect, and the Authority shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Contractor.
- 25.8 The Contractor shall from the date of any Call-Off Contract and within fifteen (15) working days after the renewal of each of the Required Insurances, provide evidence, in a form satisfactory to the Authority, that the Required Insurances are in full force and effect and meet in full the requirements of this Clause 25 (*Insurance*) and Schedule 13 (*Required Insurance*). Receipt of such evidence by the Authority shall not in itself constitute acceptance by the Authority or relieve the Contractor of its liabilities and obligations under this Agreement.
- 25.9 The Contractor shall notify the Authority in writing at least ten (10) days prior to the cancellation, suspension, termination or non-renewal of any of the Required Insurances. This Clause 25.9 shall not apply where the termination of any Required Insurances occurs purely as a result of a change of insurer in respect of any of the Required Insurances required to be taken out and maintained in accordance with this Clause 25 (*Insurance*).
- 25.10 The Contractor shall promptly notify to insurers any matter arising from, or in relation to, any Call-Off 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 any Call-Off 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.

- 25.11 Except where the Authority is the claimant party, the Contractor shall give the Authority notice within twenty (20) working days after any insurance claim in excess of fifty thousand pounds £50,000 relating to any Call-Off Contract on any of the Required Insurances or which, but for the application of the applicable policy excess, would be made on any of the Required Insurances and (if required by the Authority) full details of the incident giving rise to the claim.
- 25.12 Where any Required Insurance requires payment of a premium, the Contractor shall be liable for such premium.
- 25.13 Where any insurance referred to in this Clause 25 (*Insurance*) and Schedule 13 (*Required Insurance*) is subject to an excess or deductible below which the indemnity from insurers is excluded, the Contractor shall be liable for such excess or deductible. The Contractor shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Agreement or otherwise.
- 25.14 All insurance proceeds received in respect of the Property Damage "All Risks" Insurance, or Goods in Transit Insurance or Cargo Insurance as specified in Schedule 13 (*Required Insurance*) shall be used to reinstate, repair or replace the insured property in respect of which the insurance proceeds were received.

26 Early termination

26.1 Termination without a reason

From and including the second anniversary of the Agreement Date, the Authority shall be entitled to terminate this Agreement at any time without reason by giving the Contractor at least 30 days' notice.

26.2 Rectification Plan process

- 26.2.1 If there is a breach by the Contractor of any of its obligations under this Agreement, the Authority may, without limiting its other rights, request that the Contractor provide a Rectification Plan within 10 (ten) Business Days.
- 26.2.2 When the Authority receives a requested Rectification Plan it can either:
- (a) reject the Rectification Plan or revised Rectification Plan, giving reasons; or
 - (b) accept the Rectification Plan or revised Rectification Plan (without limiting its rights) and the Contractor must immediately start work on the actions in the Rectification Plan at its own cost, unless agreed otherwise by the Parties.
- 26.2.3 Where the Rectification Plan or revised Rectification Plan is rejected, the Relevant Authority:
- (a) must give reasonable grounds for its decision; and
 - (b) may request that the Contractor provides a revised Rectification Plan within 5 Business Days.
- 26.2.4 If the Authority rejects any Rectification Plan, or revised Rectification Plan, the Authority does not have to request a revised Rectification Plan before exercising its right to terminate the Agreement under Clause 26.3.

26.3 When Authority can end the Agreement

The Authority has the right to immediately terminate the Agreement by issuing a Termination Notice to the Contractor:

- (a) in accordance with Clause 13.2 of this Agreement;
- (b) in accordance with Clause 19.4 of this Agreement;
- (c) if any of the following events happen:
 - (i) there is a Contractor Insolvency Event;
 - (ii) there is a breach of the Contractor's obligations in respect of which:
 - (A) a Rectification Plan is requested under Clause 26.2 and either:
 - 1) the Contractor fails to provide the Authority with such Rectification Plan within 10 (ten) Business Days; or
 - 2) the Parties fail to agree an appropriate Rectification Plan for the breach within 20 (twenty) Business Days days of that request; or
 - (B) a Rectification Plan is requested under Clause 26.2, but which is not rectified within the timeframe agreed in such Rectification Plan; or
- (d) the Contractor commits any material breach of the Agreement (other than under Clauses 13.2, 19.4 or 27);
- (e) any Call-Off Contract is terminated as a result of the Contractor's default;
- (f) a KPI Default occurs;
- (g) where any warranty given in Clause 11 (*Warranties*) of this Agreement is found to be untrue or misleading;
- (h) if the Authority discovers that the Contractor was in one of the situations in 23(1) or 23(4) of the Regulations at the time the Agreement was awarded; or
- (i) the Contractor breaches Clause 27 (*Bribery, Modern Slavery and Collusive Behaviour*);
- (j) the Contractor commits any offence or is subject to regulatory enforcement action in relation to Health and Safety Law.

26.4 What happens if the Agreement ends

- 26.4.1 Unless expressly stated to the contrary, the service of a notice to terminate this Agreement shall not operate as a notice to terminate any Call-Off Contract made under it. Termination or expiry of this Agreement shall not cause any Call-Off Contract to terminate automatically and all Call-Off Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.

- 26.4.2 Where a Party terminates this Agreement accumulated rights of the Parties are not affected.
- 26.4.3 Where the Authority terminated the Agreement under Clause 26.3, the Contractor shall within 28 (twenty-eight) days provide all product information referred to in Sections 9 to 9.6 (*inclusive*) of the Statement of Requirements) in respect of all items delivered or required to be delivered under each Call-Off Contract.
- 26.4.4 The following Clauses survive the termination or expiry of the Agreement: Clause 1 (*Definitions and Interpretation*), Clause 8 (*Contractor's Performance*) (but only so long as any Call-Off Contract is in Delivery Phase), Clause 9 (*Parent Company Guarantee*), Clause 10 (*Financial Standing*), Clause 11 (*Warranties*), Clause 12 (*Data Protection*), Clause 13 (*Security*), Clause 14 (*Intellectual Property*), Clause 14.1 (*Statement Relating to Good Standing*), (but only so long as any Call-Off Contract is in Delivery Phase), Clause 16 (*Audit and Record Keeping*), Clause 17 (*Confidentiality*), Clause 18 (*Change of Control*), Clause 22 (*Authority Representatives*), Clause 24 (*Liability*), Clause 25 (*Insurance*), Clause 28.4 (*Dispute Resolution*), Clause 28.5 (*Governing law and jurisdiction*), Schedule 2 (*Statement of Requirements*), Schedule 13 (*Required Insurances*) and any Clauses and Schedules which are expressly or by implication intended to continue.

27 Bribery, Modern Slavery and Collusive Behaviour

27.1 Interpretation

For the purposes of this Clause 27 **collusion**:

- (a) is an illegal or unethical agreement, understanding or cooperation between two or more persons with the intention to deceive or harm others or to distort or harm competition; and
- (b) may involve any form of anti-competitive behaviour that undermines the integrity of the market, such as price-fixing, bid-rigging, market allocation, or other actions that restrict competition,

and cognate terms shall be construed accordingly.

27.2 Modern Slavery

The Contractor:

- (a) shall not use, nor allow its subcontractors to use forced, bonded or involuntary prison labour;
- (b) shall not require any Contractor Personnel or the personnel of any subcontractors to lodge deposits or identity papers with their employer and shall be free to leave their employer after reasonable notice;
- (c) warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world;
- (d) warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offences anywhere around the world;

- (e) shall make reasonable enquires to ensure that its officers, employees and subcontractors have not been convicted of slavery or human trafficking offences anywhere around the world;
- (f) shall have and maintain throughout the Term its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and include in its contracts with its subcontractors anti-slavery and human trafficking provisions;
- (g) shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under this Agreement;
- (h) shall prepare and deliver to the Authority, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business;
- (i) shall not use, nor allow its employees or subcontractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or subcontractors;
- (j) shall not use or allow child or slave labour to be used by its subcontractors; and
- (k) shall report the discovery or suspicion of any slavery or trafficking by it or its subcontractors to the Authority and the Modern Slavery Helpline.

27.3 Bribery

27.3.1 The Contractor represents and warrants that neither it, nor to the best of its knowledge any Contractor Personnel, have at any time prior to the Agreement Date:

- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

27.3.2 The Contractor shall not during the Term of this Agreement:

- (a) commit a Prohibited Act or engage in any collusive behaviour or activity in relation to the Spares Framework or the award of any Order; and/or
- (b) do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, subcontractors or agents to commit any Prohibited Act or engage in any collusive behaviour or activity in relation to the Spares Framework or the award of any Order or to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

27.3.3 The Contractor shall during the Term of this Agreement:

- (a) establish, maintain and enforce, and require that its subcontractors establish, maintain and enforce, policies and procedures which are adequate to ensure

compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;

- (b) have in place reasonable prevention measures (as defined in sections 45(3) and 46(4) of the Criminal Finance Act 2017) to ensure that associated persons of the Contractor do not commit tax evasion facilitation offences as defined under that Act;
- (c) keep appropriate records of its compliance with its obligations under Clause 27.3.3(a) and make such records available to the Authority on request; and
- (d) take account of any guidance about preventing facilitation of tax evasion offences which may be published and updated in accordance with Section 47 of the Criminal Finances Act 2017.

27.3.4 The Contractor shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 27.3.1 and/or 27.3.2, or has reason to believe that it has or any of the Contractor Personnel have:

- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act or collusion;
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
- (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.

27.3.5 If the Contractor makes a notification to the Authority pursuant to Clause 27.3.4, the Contractor shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation, in accordance with Clause 16 (*Audit and record keeping*).

27.3.6 Without prejudice to the Authority's rights under Clause 27.3.8, if the Contractor is in default under Clauses 27.3.1 and/or 27.3.2, the Authority may by notice:

- (a) require the Contractor to remove from performance of this Agreement any Contractor Personnel whose acts or omissions have caused the default; or
- (b) immediately terminate this Agreement in accordance with Clause 26.3(i).

27.3.7 Any notice served by the Authority under Clause 27.3.6 shall specify the nature of the Prohibited Act, the identity of the party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Agreement shall terminate).

27.3.8 In addition to the Authority's right to terminate under Clause 26.3, if the Contractor, its employees, agents or any subcontractor (or anyone acting on their behalf or any of their employees) are in breach of this Clause 27, with or without the knowledge or authority of the Contractor in relation to this Agreement or any other contract with the Crown, the Authority shall also be entitled to:

- (a) recover from the Contractor the amount or value of any gift, consideration, or commission it has gained under committing a Prohibited Act, where applicable; and
- (b) recover from the Contractor any other loss sustained in consequence of any breach of this Clause 27, where this Agreement has not been terminated.

28 Miscellaneous Provisions

28.1 VAT

- 28.1.1 If there is any supply made or referred to under this Agreement that is or becomes chargeable to VAT, then the person receiving the supply (**Receiver**) shall, in addition, pay the person making the supply (**Provider**) the amount of the VAT, against receipt by the Receiver from the Provider of a proper VAT invoice for the supply.
- 28.1.2 In this Clause, **VAT** means value added tax chargeable under the Value Added Tax Act 1994, and any similar or equivalent tax imposed in the United Kingdom or any other jurisdiction.

28.2 Costs

Each party shall pay its own costs for the negotiation, preparation, execution and implementation of this Agreement and any Call-Off Contract.

28.3 Notices

28.3.1 A Notice served under this Agreement shall be:

- (a) in writing in the English language;
- (b) authenticated by signature or such other method as may be agreed between the Parties;
- (c) sent for the attention of the other Party's representative, and to the address set out in Clause 28.3.3; and
- (d) delivered by hand, prepaid post (or airmail), facsimile transmission or, if agreed by the Parties in writing, by electronic mail.

28.3.2 Notices shall be deemed to have been received:

- (a) if delivered by hand, on the day of delivery if it is the recipient's Business Day and otherwise on the first Business Day of the recipient immediately following the day of delivery;
- (b) if sent by prepaid post, on the fourth Business Day (or the tenth Business Day in the case of airmail) after the day of posting;

- (c) if sent by facsimile or 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 Business Day (recipient's time) following the completion of receipt by the sender of verification of transmission from the receiving instrument.

28.3.3 Any notice or communication given to a Party under or in connection with this Agreement (**Notice**) shall be sent for the attention of the contact and at the address specified below or to the email address set out below:

- (a) If to Contractor: **[Note to bidders: Details to be provided for inclusion]**

Attention: **
Address: **
Email address: **

- (b) If to the Authority: **[Note to bidders: To be populated by the Authority prior to signing]**

Attention: **
Address: **
Email address: **

28.3.4 Either Party may amend the addresses specified in Clause 28.3.3 on providing written notice to that effect to the other Party.

28.4 Dispute Resolution

28.4.1 The Parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this Agreement through negotiations between the respective representatives of the Parties having authority to settle the matter, which attempts may include the use of any alternative dispute resolution procedure on which the Parties may agree.

28.4.2 In the event that the dispute or claim is not resolved pursuant to Clause 28.4.1 the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this Clause 28.4.2 shall be governed by the Arbitration Act 1996. For the purposes of the arbitration, the arbitrator shall have the power to make provisional awards pursuant to Section 39 of the Arbitration Act 1996.

28.4.3 For the avoidance of doubt, anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential between the Parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise.

28.5 Governing law and jurisdiction

28.5.1 This Agreement shall be considered as a contract made in England and subject to English law.

28.5.2 Subject to Clause 28.4 (*Dispute Resolution*) and without prejudice to the dispute resolution process set out therein, each Party submits and agrees to the exclusive jurisdiction of the

Courts of England to resolve, and the laws of England to govern, any actions proceedings, controversy or claim of whatever nature arising out of or relating to this Agreement or breach thereof.

- 28.5.3 Any dispute arising out of or in connection with this Agreement shall be determined within the English jurisdiction and to the exclusion of all other jurisdictions save that other jurisdictions may apply solely for the purpose of giving effect to this Clause 28.5 and for the enforcement of any judgment, order or award given under English jurisdiction.
- 28.5.4 Each Party warrants to each other that entry into this Agreement does not, and the performance of this Agreement will not, in any way violate or conflict with any provision of law, statute, rule, regulation, judgement, writ, injunction, decree or order applicable to it. Each Party also warrants that this Agreement does not conflict with or result in a breach or termination of any provision of, or constitute a default under, any mortgage, contract or other liability, charge or encumbrance upon any of its properties or other assets.
- 28.5.5 Each Party agrees with each other Party that the provisions of this Clause 28.5 shall survive any termination of this Agreement for any reason whatsoever and shall remain fully enforceable as between the Parties notwithstanding such a termination.
- 28.5.6 [Where the Contractor's place of business is not in England or Wales, the Contractor irrevocably appoints the solicitors or other persons in England and Wales detailed in Clause 28.5.7 as their agents to accept on their behalf service of all process and other documents of whatever description to be served on the Contractor in connection with any litigation or arbitration within the English jurisdiction arising out of or relating to this Agreement or any issue connected therewith.
- 28.5.7 The Contractor's appoints the following individuals to act as their agents to accept on their behalf service of all process and other documents of whatever description:

[Note to bidders: Details to be provided for inclusion]]⁴

28.6 Amendments to this Agreement

- 28.6.1 This Agreement may only be amended by the written agreement of the Parties (or their duly authorised representatives acting on their behalf).
- 28.6.2 Where required by the Authority in connection with any such amendment, the Contractor shall (as so required) confirm that any existing Credit Support Document is sufficiently comprehensive so as to cover and support all of the Contractor's liabilities and obligations under and in connection with this Agreement (as amended by such amendment) or provide a revised Credit Support Document to achieve the same purposes.

28.7 Restrictions on transfer and subcontracting

- 28.7.1 Subject to Clause 28.7.2 neither Party shall be entitled to assign, novate, transfer, mortgage, charge, subcontract or otherwise deal in any other manner with or dispose of any or all of its rights and obligations under this Agreement.

⁴ **Note to bidders: Clauses 28.5.6 and 28.5.7 will only be included in the event that the Contractor's place of business is not in England or Wales.**

28.7.2 The Authority shall be entitled to novate this Agreement to any other body which substantially performs any of the functions that previously had been performed by the Authority.

28.8 No partnership or agency

Nothing in this Agreement, and no action taken under this Agreement:

- (a) creates a partnership;
- (b) creates a relationship of principal and agent between any of the Parties; or
- (c) otherwise authorises any Party to bind any other Party.

28.9 Entire agreement

This Agreement, together with any Call-Off Contract and any Schedules, sets out the entire agreement between the Parties. No other term, express or implied, forms part of this Agreement. No usage, custom or course of dealing forms part of or affects this Agreement.

28.10 Representations and reliance

28.10.1 The only claim, right or remedy available to a Party for a representation expressly set out in this Agreement shall be damages for breach of contract.

28.10.2 Each Party waives all claims, rights and remedies for all representations made to it by

- (a) any person before entering into this Agreement; and
- (b) not set out in this Agreement or the Call-Off Contract.

Each Party acknowledges that, in deciding to enter into this Agreement, it has not relied on any such representation.

28.10.3 This Clause does not exclude or restrict liability for fraudulent misrepresentation or fraudulent concealment.

28.11 Order of precedence

28.11.1 In the event of any conflict between any documents entered into by the Parties, it shall be resolved by applying the documents in the following order of precedence (prevailing document first): (i) this Agreement; (ii) the Order Form; (iii) the Call-Off Terms and (iv) any ancillary documents or documents incorporated by reference into this Agreement.

28.11.2 If either Party becomes aware of any inconsistency within or between the documents referred to in Clause 28.11.1 such Party shall notify the other Party forthwith and the Parties will seek to resolve that inconsistency on the basis of the order of precedence set out in Clause 28.11.1. Where the Parties fail to reach agreement, and if either Party considers the inconsistency to be material to its rights and obligations under this Agreement, then the matter will be referred to the dispute resolution procedure in accordance with Clause 28.4 (*Dispute Resolution*).

28.12 Severability and statutory invalidity

If any provision of this Agreement shall be declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement.

28.13 Third party rights

A person who is not party to this Agreement may not enforce any term of this Agreement under the Contracts (Rights of Third Parties) Act 1999. The Parties may rescind or change any term of this Agreement without the consent of a person who is not party to this Agreement.

28.14 Waiver

A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

28.15 Further assurance

Each Party must, at its own expense, take any action which the other Party reasonably requests to:

- (a) carry out the intended purpose of this Agreement; or
- (b) perfect, preserve, protect or enforce the other Party's rights under this Agreement;
and
- (c) ensure that third parties do the same.

28.16 Counterparts

The Parties may execute this Agreement in any number of counterparts, each of which is an original. A set of counterparts, executed by the Parties, together forms one and the same document.

Signed by the parties or their duly authorised representatives

For and on behalf of the Contractor:

Name and Title	
Signature	
Date	

For and on behalf of the Authority:

Name and Title	
Signature	
Date	

Schedule 1 – Scope Table

[Note to bidders: Scope Table has been uploaded separately and will be incorporated in due course.]

Schedule 2 – Statement of Requirements

[Note to bidders: SOR has been uploaded separately and will be incorporated in due course.]

Schedule 3 – Call-Off Award Process

1 Introduction

- 1.1 This Schedule sets out the call off award procedure to be used by the Authority to award any Call-Off Contract in accordance with the Spares Framework.
- 1.2 The Authority will award any Call-Off Contract in accordance with the procedure in this Schedule, the applicable provisions of the Order Form and the requirements of the Regulations.

2 Interpretation

In this Schedule 3:

- (a) **Competition Contact** means in respect of each Party, the person(s) identified in Paragraph 3 (*Competition Contact*) as recipients for communications relating to award processes;
- (b) **MoD Portal** means the Defence Sourcing Portal or other sourcing portal notified by the Authority to the Contractor from time to time;
- (c) **Registered Portal Contact** means, in respect of a Party, the person(s) registered on the MoD Portal from time to time as a contact for that Party.

3 Competition Contact

Communications to a Party relating to the award processes set out in this Schedule 3 shall be sent either to the address for Notices for that Party concerned under Clause 28.3 (*Notices*), or to a Registered Portal Contact for that Party.

4 Call Off Award Procedure

4.1 The Authority

- 4.1.1 The Authority may award a Call-Off Contract:
- (a) by reopening competition (**Mini-Competition**) in accordance with Paragraph 4.2 below; or
- (b) without reopening competition in accordance with Paragraph 4.3 below (a **Direct Award**).
- 4.1.2 When the Authority awards a Call-Off Contract in accordance with this Schedule, it shall:
- (a) ensure that the Call-Off Contract is awarded in accordance with the terms of this Agreement and all Applicable Law;
- (b) ensure that it does not include in the terms of any Call-Off Contract terms that are substantially amended from the terms laid down in this Agreement; and

- (c) only invite to tender in a call off award procedure Framework Contractors that are Capable Contractors in respect of the relevant Order in accordance with Clauses 4.3 and 5.

4.1.3 The Authority may award one or more Call-Off Contracts in accordance with this Schedule at the conclusion of a Mini-Competition or Direct Award.

4.1.4 The Authority will indicate in respect of a Mini Competition or a Direct Award whether the Authority intends to award one or more than one contract at the conclusion of the Mini Competition or Direct Award.

4.2 Mini-Competition

4.2.1 The Authority shall run all Mini-Competitions through the MoD Portal or other suitable means of administering the competition.

4.2.2 The invitation to participate in a Mini Competition (the **Call-Off ITT**) shall include a draft order form (the **Draft Order Form**) which shall set out:

- (a) the unique reference number;
- (b) the priority categorisation (Urgent, Routine or Intermediate) of the proposed Call-Off Contract(s);
- (c) whether the proposed Call-Off Contract(s) is or are for Core Scope, Safety Critical Scope or Asset Availability Scope;
- (d) the list of required National Stock Numbers (NSNs), including descriptions, Manufacturer Part Numbers (MPN) and packaging levels and standards;
- (e) where the scope is not codified, items will be identified at Order Form Serial (1), Item Description (6) and OEM Part Number (7) only;
- (f) any relevant safety critical items;
- (g) any additional quality assurance requirements applicable to the proposed Call-Off Contract;
- (h) whether the conditions for the application of the Social Value Model are satisfied; and
- (i) any additional terms that shall apply to the proposed Call-Off Contract(s).

4.2.3 Framework Contractors that are, in accordance with Clauses 4.3 and 5 (*Capability in respect of Additional Scope*), deemed Capable Contractors in respect of the Order concerned (each an **Invited Contractor**), will receive a notification that a new Mini-Competition has been initiated.

4.2.4 The Call-Off ITT:

- (a) shall invite all Invited Contractors to submit a Supplemental Tender, in accordance with the requirements in Paragraph 4.5;
- (b) may contain the Draft Order Form or refer the Invited Contractors to the Draft Order Form submitted via the MoD Portal;

- (c) shall specify in writing the time limit within which a Supplemental Tender must be submitted; and
- (d) shall ensure that the time limit referred to in (c) corresponds to the priority categorisation of the relevant Call-Off Contract, being:
 - (i) for Urgent Orders: 1-10 Business Days;
 - (ii) for Intermediate Orders: 10-39 Business Days; and
 - (iii) for Routine Orders: 40-60 Business Days.

4.2.5 When awarding a Call-Off Contract in accordance with this Paragraph 4.2, the Authority shall:

- (a) keep any Supplemental Tender confidential until the expiry of the time limit for the receipt of Supplemental Tenders;
- (b) award the Call-Off Contract to the Framework Contractor that submits the most economically advantageous Supplemental Tender with reference to the award criteria specified in the Call-Off ITT;
- (c) ensure that the award criteria referred to in (b) correspond to the award criteria as set out in the Annex to this Schedule;
- (d) notify Invited Contractors who submitted a Supplemental Tender in response to the Call-Off ITT of the outcome of the Mini-Competition; and
- (e) proceed to award with the successful Framework Contractor.

4.2.6 The Authority may request clarification of tenders submitted during a Mini-Competition in accordance with the Regulations.

4.3 Direct Award

4.3.1 The Authority may award a Call-Off Contract by Direct Award in accordance with this Schedule if the following conditions are met:

- (a) the In Scope Spare is required to respond to an Operational Defect (OPDEF) category A1, B1 and/or C1 as defined in BRd 3001 Fleet Engineering Orders (Surface Ships) (March 2018, Version 2) as amended from time to time;
- (b) the Authority does not have the In Scope Spare easily accessible (in the sole opinion of the Authority and whether held by the Authority or any other party, including a Framework Contractor, on behalf of the Authority) and/or current forecast delivery of the In Scope Spare will not satisfy the immediate rectification requirement as described in (a); and
- (c) following the shortest time limit for a Mini-Competition (as indicated in Paragraph 4.2.4(d)) will not satisfy the immediate rectification requirement as described in (a).

4.3.2 If Paragraph 4.3.1 applies, the Authority shall determine the Framework Contractor to be awarded the Call-Off Contract with reference to such Framework Contractor's capability, availability and cost to meet the immediate rectification requirement as described in Paragraph 4.3.1(a).

4.4 Framework Contractor Capability

- 4.4.1 Before the Authority invites a Framework Contractor to participate in a call off award procedure, the Authority shall determine whether a Framework Contractor is capable of delivering the requirements of the proposed Call-Off Contract in accordance with Clauses 4.3 and 5 (*Capability in respect of Additional Scope*).
- 4.4.2 Subject to and in accordance with Clauses 4.3 and 5 (*Capability in respect of Additional Scope*) and the other provisions of this Agreement, a Framework Contractor may be determined to be capable of delivering requirements falling within any one or more of the following In Scope Spare categories:
- (a) Core Scope;
 - (b) Additional Scope:
 - (i) Safety Critical Scope, comprising safety critical and specific submarine (first level) products; and/or
 - (ii) Asset Availability Scope.

4.5 Obligations on the Framework Contractors

- 4.5.1 If a Framework Contractor submits a Supplemental Tender it shall:
- (a) comply with any Call-Off ITT instructions and the Authority's requirements listed in the Draft Order Form;
 - (b) complete the relevant sections of the Draft Order Form in accordance with the instructions contained therein;
 - (c) identify to the Authority any work that is to be sub-contracted;
 - (d) return a Supplemental Tender within the time and date specified in the Call-Off ITT;
 - (e) submit a Supplemental Tender with a price that has been calculated with a profit rate that is equal to or less than the Maximum Profit Rate ("**MPR**") for the Framework Contractor;
 - (f) permit the Authority to audit the compliance of its Supplemental Tender with the MPR;
 - (g) accepts that its Supplemental Tender may be rejected as non-compliant if the audit under (f) above establishes non-compliance with the MPR;
 - (h) hold its Supplemental Tender open for acceptance for such period as indicated in the Call-Off ITT;
 - (i) submit a Supplemental Tender in good faith;
 - (j) certify that it has not communicated with any other person in the preparation and submission of its Supplemental Tender other than where required for preparation of the Supplemental Tender.

4.6 No requirement to award

- 4.6.1 Even if the Authority has followed a call off award procedure in accordance with this Schedule, the Contractor acknowledges and agrees that the Authority shall be entitled at all times to decline to make an award for its requirements and that nothing in this Agreement shall oblige the Authority to award any Call-Off Contract.
- 4.6.2 Should the Authority decline to make an award in accordance with Paragraph 4.6.1, it will notify the Capable Contractors of its decision in writing.

4.7 Awarding and creating a Call-Off Contract

- 4.7.1 Until such time by which a Call-Off Contract has been created in accordance with this Paragraph 4.7, unless notified in writing by the Authority, no work shall be undertaken by the Contractor on behalf of the Authority.
- 4.7.2 Once the successful Framework Contractor(s) is/are identified, the Authority shall make all necessary amendments to the Draft Order Form (including amending the scope to reflect the awarding of multiple Call-Off Contracts) and shall within twenty (20) days issue a final version of such Draft Order Form (the **Final Order Form**) to the successful Framework Contractor(s) via the MoD Portal.
- 4.7.3 On receipt of a Final Order Form as described in Paragraph 4.7.2 above from the Authority, the successful Framework Contractor shall accept the proposed Call Off Contract by promptly signing and returning (including by electronic means) a copy of the Final Order Form (including any additional necessary documentation requested by the Authority) to the Authority.
- 4.7.4 On receipt of the signed Final Order Form from the Framework Contractor, the Authority shall, if it intends to proceed with the Order:
- (a) countersign the Final Order Form, and upon such countersigning the Final Order Form shall, for the purposes of this Agreement, be the Order Form in respect of the Order concerned; and
 - (b) send (whether by electronic means or hard copy) a copy of the signed Order Form to the Contractor,

and the Call Off Contract shall be formed with effect from the Call-Off Start Date stated in the Order Form so signed by the Authority.

- 4.7.5 The Parties agree that any document or communication (including any document or communication in the apparent form of a Call-Off Contract) which is not as described in this Paragraph 4.7 shall not constitute a Call-Off Contract.

Annex 1 – Award Criteria

Award Serial	Award Parameters					
	Cost		Delivery		Technical Compliance	
	Price	Profit Rate Compliance	Authority Delivery Agreed	Supplier Proposed Delivery Acceptable	Framework Agreement	Order Form
Routine / Intermediate / Urgent Procurement						
141-A	Lowest Qualifying Price Consignment Line	Mandatory Pass/Fail	Priority 1 Pass/Fail	Priority 2 Pass/Fail	Mandatory Pass/Fail	Mandatory Pass/Fail
141-B	Lowest Qualifying Price Total Order	Mandatory Pass/Fail	Priority 1 Pass/Fail	Priority 2 Pass/Fail	Mandatory Pass/Fail	Mandatory Pass/Fail
Direct Award Procurement						
141-C	Acceptable Price	Mandatory Pass/Fail	Priority 1 Pass/Fail	Priority 2 Pass/Fail	Mandatory Pass/Fail	Mandatory Pass/Fail
<p>Delivery Priority Scoring of Delivery which may lead to a Call-off Contract award will be applied in such a way that a contractor who is scored a Priority 1 Pass will be deemed successful above a contractor scoring a Priority 2 Pass. Contractors Passing Priority 2 may only be awarded a Call-off contract when no other contractor is successful as the Lowest Qualifying Price (or Acceptable Price) and has achieved a Delivery Priority 1 Pass. Priority 1: The supplier can achieve the Authority specified delivery date (within KPI 1 Green tolerance). Priority 2: Priority 1 has not been met. Priority 2 Pass may be awarded.</p>						

Schedule 4 – Contractor's Sensitive Information

[Note to bidders: To include any Contractor Sensitive Information, if relevant, as per instructions in DF 47]

Schedule 5 – Template Order Form

ORDER FORM

[Note to bidders: Template Order Form has been uploaded separately and will be incorporated in due course.]

Schedule 6 – Call-Off Terms

[Note to bidders: Call-Off Terms have been uploaded separately and will be incorporated in due course.]

Schedule 7 – Template Parent Company Guarantee

Dated

From

- (1) [Note to bidders: to include details of guarantor as agreed between the Parties] (the **Guarantor**);

in favour of

- (2) THE SECRETARY OF STATE FOR DEFENCE (the **Authority**)

Recitals

- A The Authority proposes to award certain Contracts to the Contractor.
- B Pursuant to the terms of the Framework Agreement, the Guarantor must execute and deliver this Deed of Guarantee and Indemnity to the Authority.
- C The Guarantor has agreed to give this Guarantee to the Authority to guarantee the Guaranteed Liabilities.

It is agreed

1 Definitions and interpretation

1.1 Definitions

In this Guarantee:

Authorisation means an authorisation, consent, permission, approval, resolution, licence, exemption, filing, notarisation or registration.

Business Day means a day (other than a Saturday or Sunday) on which banks are open for general business in London.

Call-Off Contract has the meaning given to it in the Framework Agreement.

Contractor means [Note to bidders: To include Framework Contractor details].

Contracts means the Framework Agreement and any Call-Off Contract entered into from time to time between the Contractor and the Authority.

Default Rate means, at any time:

- (a) in respect of any amount payable pursuant to Clause 2 (*Guarantee and indemnity*), the rate of interest expressed to be payable at that time under the Guaranteed Liabilities to which that amount relates; and
- (b) in respect of any other amount, [Note to bidders: Due to changing interest rates, rate to be agreed by the Parties at the point of entry into this Guarantee] percent above the Bank of England Base Rate at that time.

Framework Agreement means the MaST Multi-Supplier Framework Agreement for MSS Supported Spares entered into between the Authority and the Contractor on **[insert date]**.

Guaranteed Liabilities means all present, future, actual or contingent liabilities of the Contractor owed to the Authority arising at any time or from time to time out of or in connection with any of the Relevant Contracts.

Liability Period means the period starting on the date of this Guarantee and ending on the date on which the Authority is satisfied that all of the Guaranteed Liabilities are irrevocably discharged in full.

Obligor means any party who has guaranteed the obligations of any obligor of the Authority.

Original Jurisdiction means, in relation to the Guarantor, the jurisdiction under whose laws the Guarantor is incorporated as at the date of this Guarantee.

Relevant Contracts means a Contract entered into during the Term (and shall not, for the avoidance of doubt, include any Contract entered into before the Term).

Relevant Jurisdiction means, in relation to the Guarantor:

- (a) its Original Jurisdiction; and
- (b) any jurisdiction where it conducts its business.

Repeating Representations means each of the representations and warranties set out in Clauses 3.1 to 3.6 and 3.10 to 3.15 (inclusive).

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.

Tax means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

Term means the period from and including the date of this Guarantee to and including the date this Guarantee is terminated by a notice in accordance with Clause 4 (*Termination*).

1.2 Construction

1.2.1 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) **indebtedness** includes any obligation, whether incurred as principal or as surety, for the payment or repayment of money, whether present or future, actual or contingent and whether owed jointly or severally or in any other capacity;
- (e) **liabilities** includes 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;
- (f) the words **other** and **otherwise** shall not be construed ejusdem generis with any preceding words where a wider construction is possible;
- (g) 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);
- (h) 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;
- (i) 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;
- (j) any agreement or instrument is a reference to that agreement or instrument as amended, restated, varied, novated, supplemented, extended, restated or replaced from time to time; and
- (k) a time of day is a reference to London time.

1.2.2 Section and clause headings are for ease of reference only.

2 Guarantee and indemnity

2.1 Guarantee and indemnity

The Guarantor irrevocably and unconditionally:

- (a) guarantees to the Authority punctual performance by the Contractor of the Guaranteed Liabilities;
- (b) undertakes with the Authority that whenever the Contractor does not pay any amount when due under or in connection with the Guaranteed Liabilities, it shall immediately on demand pay that amount as if it were the Contractor; and
- (c) agrees with the Authority that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify the Authority immediately on demand against any cost, loss or liability it incurs as a result of the Contractor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under or in connection

with the Guaranteed Liabilities on the date when it would have been due. The amount payable by the Guarantor 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. Any references in this Guarantee to a "guarantee" or a "Guarantor" 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 nature of the Guarantor's obligations under this paragraph (c).

2.2 Limitation of Guarantee

The liability of the Authority in respect of any Contract under Clause 2.1 (*Guarantee and indemnity*) in aggregate shall not exceed the liability of the Contractor arising out that Contract.

3 Representations and warranties

The Authority has entered into this Guarantee in reliance on the representations of the Guarantor set out in this Clause 3, and the Guarantor warrants to the Authority on the date of this Guarantee as set out in this Clause 3.

3.1 Status

3.1.1 It is a limited liability corporation, duly incorporated and validly existing under the law of its Original Jurisdiction.

3.1.2 It has the power to sue and be sued in its own name and to own its assets and carry on its business as that business is being and will be conducted.

3.2 Binding obligations

The obligations expressed to be assumed by it in this Guarantee are legal, valid, binding and enforceable obligations.

3.3 Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, this Guarantee do not and will not conflict with or breach:

- (a) any law or regulation applicable to it or binding on its assets;
- (b) its constitutional documents; or
- (c) any agreement or instrument binding on it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument.

3.4 Power and authority

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 and the transactions contemplated by it.

3.5 Validity and admissibility in evidence

All Authorisations required or desirable:

- (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in this Guarantee;
 - (b) to make this Guarantee admissible in evidence in each Relevant Jurisdiction; and
 - (c) to enable it to carry on its business, trade and ordinary activities,
- have been obtained or effected and are in full force and effect.

3.6 Governing law and enforcement

- 3.6.1 The choice of English law as the governing law of this Guarantee will be recognised and enforced in its Relevant Jurisdictions.
- 3.6.2 Any judgment obtained in England in relation to this Guarantee will be recognised and enforced in its Relevant Jurisdictions.

3.7 Deduction of Tax

It is not required to make any deduction for or on account of Tax from any payment it may make under this Guarantee.

3.8 No filing or stamp taxes

Under the law of its Relevant Jurisdictions it is not necessary that this Guarantee be filed, recorded or enrolled with any court or other authority in that jurisdiction, or that any stamp, registration or similar tax be paid on or in relation to any of this Guarantee or any of the transactions contemplated by it.

3.9 Compliance with Tax laws

It has complied with all Tax laws in all jurisdictions in which it is subject to Tax and has paid all Taxes due and payable by it and no claims are being asserted against it in respect of Taxes except in relation to Tax liabilities arising in the ordinary course of its day-to-day trading activities or claims contested in good faith and in respect of which adequate provision has been made and disclosed in information delivered to the Authority under this Guarantee.

3.10 No default

No event or circumstance is outstanding which constitutes (or would do so with the expiry of a grace period, the giving of notice, the making of any determination, the satisfaction of any other condition or any combination of any of the foregoing) a default or termination event (however described) under any other agreement or instrument which is binding on it or to which its assets are subject in a manner or to an extent which might have a material adverse effect on:

- (a) its ability to perform its obligations under this Guarantee; or
- (b) the operations, assets, condition (financial or otherwise) or prospects of the Guarantor taken as a whole.

3.11 No material adverse change

There has been no material adverse change in the business, financial condition, assets or prospects of the Guarantor.

3.12 Pari passu ranking

Any unsecured and unsubordinated claims of the Authority against it under this Guarantee rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors, except for those creditors whose claims are mandatorily preferred by laws applying to companies generally.

3.13 No proceedings pending or threatened

No litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency have (to the best of its knowledge and belief (having made due and careful enquiry)) been started or threatened against it, nor is there subsisting any unsatisfied judgment or award given against any of them by any court, arbitrator or other body.

3.14 Insolvency

It has not taken any action nor (to the best of its knowledge and belief) have any steps been taken or legal proceedings been started or threatened against it for its winding-up, dissolution or re-organisation, for the enforcement of any Security over its assets or for the appointment of a liquidator, supervisor, receiver, administrator, administrative receiver, compulsory manager, trustee or other similar officer of it or in respect of any of its assets.

3.15 No Security created

The execution by it of this Guarantee and the exercise of its rights and the performance of its obligations under it will not result in the creation of, or any obligation to create, any Security over or in respect of any of its assets other than in favour of the Authority.

3.16 Repetition

The representations and warranties set out in this Clause 3 shall survive the execution of this Guarantee and the Repeating Representations are deemed to be repeated by reference to the facts and circumstances then existing on each date during the Liability Period.

4 Termination

4.1 The Guarantor may by written notice to the Authority terminate this Guarantee as a continuing security, with prospective effect only (and not in respect of Relevant Contracts), from the close of 30 (thirty) business days after the Authority receives that notice.

4.2 If, by this Clause or otherwise, this Guarantee ceases to be a continuing guarantee, it shall guarantee all Guaranteed Liabilities as at the date of cessation, together with any Guaranteed Liabilities incurred after that date pursuant to a Relevant Contract, obligation or commitment of the Authority entered into before that date (together the **Continuing Guaranteed Liabilities**).

- 4.3 Any termination or expiry of this Guarantee shall not adversely affect any rights or obligations that may have accrued by the Parties prior to the date of such termination or after the date of such termination arising as a result of Clause 4.2.
- 4.4 The provisions of this Guarantee shall, notwithstanding termination under Clause 4.1, continue in full force and effect in respect of the Continuing Guaranteed Liabilities.

5 Preservation of Guarantee

5.1 Continuing guarantee

This Guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by the Contractor to the Authority under or in connection with the Guaranteed Liabilities, regardless of any intermediate payment or discharge in whole or in part.

5.2 Reinstatement

If any discharge, release, accounting or arrangement (whether in respect of the obligations of the Contractor or any Security for those obligations or otherwise) is made by the Authority in whole or in part on the basis of any payment, security, recovery or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of the Guarantor under this Guarantee shall continue or be reinstated as if the discharge, release, accounting or arrangement had not occurred.

5.3 Waiver of defences

The obligations of the Guarantor 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 Authority) 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 Contractor or any other person;
- (e) any amendment, novation, supplement, extension (however fundamental and whether or not more onerous), or replacement, assignment, avoidance or termination of any document, Contract or Security including any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any document, Contract or Security;
- (f) any unenforceability, illegality or invalidity of any obligation of, or any Security created by, any person under this Guarantee, any other document; or

- (g) any insolvency or similar proceedings.

5.4 Immediate recourse

The Guarantor waives any right it may have of first requiring the Authority (or any trustee or agent on its behalf) to proceed against or enforce any other rights or Security or claim payment from any person before claiming from the Guarantor under this Guarantee. This waiver applies irrespective of any law or any provision of any document to the contrary.

5.5 Appropriations

During the Liability Period, the Authority may:

- (a) refrain from applying or enforcing any other moneys, Security or rights held or received by it (or any trustee or agent on its behalf) in respect of amounts which may be or become payable by the Contractor to the Authority under or in connection with the Guaranteed Liabilities, or apply and enforce them in such manner and order as it sees fit (whether against those amounts or otherwise) and the Guarantor shall not be entitled to the benefit of them; and
- (b) hold in an interest-bearing suspense account any moneys received from the Guarantor or on account of the Guarantor's liability under this Guarantee.

5.6 Deferral of Guarantor's rights

During the Liability Period, and unless the Authority otherwise directs, the Guarantor will not exercise any rights which it may have by reason of performance by it of its obligations under this Guarantee or any other document 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 of the Guaranteed Liabilities;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Authority under any document relating to the Guaranteed Liabilities or of any guarantee or Security taken pursuant to, or in connection with, them by the Authority;
- (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 Guarantor has given a guarantee, undertaking or indemnity under Clause 2.1 (*Guarantee and indemnity*);
- (e) to exercise any right of set-off against any Obligor; and/or
- (f) to claim or prove as a creditor of the Contractor in competition with the Authority.

5.7 Additional Security

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 Authority.

5.8 No Security from Contractor

During the Liability Period, the Guarantor shall not take, or retain, any Security from the Contractor or other person in connection with any of the Guarantor's liabilities under this Guarantee.

5.9 Trust

If the Guarantor is in breach of Clause 5.6 (*Deferral of Guarantor's rights*) or 5.8 (*No Security from Contractor*), the Guarantor shall hold on trust the payment, contribution, benefit, right or Security to transfer or pay it to the Authority to the extent necessary to satisfy any of the Guarantor's liabilities under this Guarantee.

6 Payment mechanic

6.1 Payments

Any payment which the Guarantor is required to make to the Authority under this Guarantee, will be made by electronic transfer to the account notified to the Guarantor by the Authority from time to time.

6.2 No set-off by the Guarantor

All payments to be made by the Guarantor under this Guarantee shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

6.3 Interest

If the Guarantor 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 Guarantor on demand by the Authority.

6.4 Payments without deduction

6.4.1 In this Clause, **Tax Deduction** means a deduction or withholding for or on account of Tax from a payment under this Guarantee.

6.4.2 The Guarantor shall make all payments to be made by it under this Guarantee without any Tax Deduction, unless a Tax Deduction is required by law.

6.4.3 If a Tax Deduction is required by law to be made by the Guarantor, the amount of the payment due from the Guarantor shall be increased to the amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.

7 Currency

7.1 Currency indemnity

If any sum due from the Guarantor under this Guarantee (a **Sum**), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the **First Currency**) in which that Sum is payable into another currency (the **Second Currency**) for the purpose of:

- (a) making or filing a claim or proof against the Guarantor; or
- (b) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

the Guarantor shall, as an independent obligation, within three Business Days of demand, indemnify the Authority against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (i) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (ii) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

7.2 Currency of payment

The Guarantor waives any right it may have in any jurisdiction to pay any amount under this Guarantee in a currency or currency unit other than that in which it is expressed to be payable.

8 Costs and expenses

8.1 Transaction expenses

The Guarantor shall promptly on demand pay the Authority the amount of all costs and expenses (including legal fees) reasonably incurred by it in connection with the negotiation, preparation, printing and execution of this Guarantee.

8.2 Amendment costs

If the Guarantor requests an amendment, waiver, consent or release of or in relation to this Guarantee, the Guarantor shall, within three Business Days of demand, reimburse the Authority 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.

8.3 Enforcement costs

The Guarantor shall, within three Business Days of demand, pay to the Authority the amount of all costs and expenses (including legal fees) incurred by the Authority in connection with the enforcement of, or the preservation of any rights under, this Guarantee and any proceedings instituted by or against the Authority as a consequence of taking and holding the Guarantee or enforcing these rights.

9 Transfer

- 9.1 The Authority may assign all or any of its rights and benefits under this Guarantee to any person to whom it assigns or transfers any of the Guaranteed Liabilities.
- 9.2 The Guarantor may not assign or transfer any of its rights or obligations under this Guarantee.

10 Disclosure of information

The Authority may disclose to any person to whom it assigns (or may potentially assign) any of its rights or benefits under this Guarantee any information it thinks fit in relation to the Guarantor or the Guaranteed Liabilities.

11 Set-off

The Authority may set off any matured obligation due from the Guarantor under this Guarantee (to the extent beneficially owned by the Authority) against any matured obligation owed by the Authority to the Guarantor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Authority may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

12 Notices

12.1 Communications in writing

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 fax or letter.

12.2 Addresses

12.2.1 The address and fax number (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, fax number or department or officer as either party may notify to the other by not less than five Business Days' notice.

12.2.2 The addresses referred to in Clause 12.2.1 are:

(a) for the Guarantor: **[Note to bidders: Details to be provided for inclusion]**

Attention: **
Address: **
Email address: **

(b) for the Authority: **[Note to bidders: To be populated by the Authority prior to signing]**

Attention: **
Address: **
Email address: **

12.3 Delivery

12.3.1 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 fax, when received in legible form; or
- (b) if by way of letter, (i) when it has been left at the relevant address or (ii) two Business Days (or, in the case of airmail, five 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 12.2 (*Addresses*), if addressed to that department or officer.

- 12.3.2 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 12.2.2 (or any substitute department or officer as the Authority shall specify for this purpose).
- 12.3.3 Any communication or document which becomes effective in accordance with Clauses 12.3.1 and 12.3.2 after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

12.4 English language

- 12.4.1 Any notice given under or in connection with this Guarantee must be in English.
- 12.4.2 All other documents provided under or in connection with this Guarantee must be:
- (a) in English; or
 - (b) if not in English, and if so required by the Authority accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

13 Calculations and certificates

13.1 Accounts

In any litigation or arbitration proceedings arising out of or in connection with this Guarantee, the entries made in the accounts maintained by the Authority are *prima facie* evidence of the matters to which they relate.

13.2 Certificates and determinations

Any certification or determination by the Authority of a rate or amount under this Guarantee is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

14 Partial invalidity

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.

15 Remedies and waivers

No failure to exercise, nor any delay in exercising, on the part of the Authority, any right or remedy under this Guarantee shall operate as a waiver of any such right or remedy or constitute an election to affirm the Guarantee. No election to affirm the Guarantee on the part of the Authority shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall 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.

16 Amendments and waivers

Any term of this Guarantee may be amended or waived only with the written consent of the Guarantor and the Authority.

17 Counterparts

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.

18 Governing law and enforcement

18.1 Governing law

English law governs this Guarantee, its interpretation and any non-contractual obligations arising from or connected with it.

18.2 Jurisdiction

18.2.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Guarantee (including a dispute relating to the existence, validity or termination of this Guarantee) or any non-contractual obligation arising out of or in connection with this Guarantee (a **Dispute**).

18.2.2 The parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no party will argue to the contrary.

18.2.3 Notwithstanding Clause 18.2.1, the Authority shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Authority may take concurrent proceedings in any number of jurisdictions.

18.3 [Service of Process

18.3.1 Where the Contractor's place of business is not in England or Wales, the Contractor irrevocably appoints the solicitors or other persons in England and Wales detailed in Clause 18.3.2 as their agents to accept on their behalf service of all process and other documents of whatever description to be served on the Contractor in connection with any litigation or arbitration within the English jurisdiction arising out of or relating to this Agreement or any issue connected therewith.

18.3.2 The Contractor's appoints the following individuals to act as their agents to accept on their behalf service of all process and other documents of whatever description:

[Note to bidders: Details to be provided for inclusion]]⁵

⁵ **Note to bidders: Clause 18.3 will only be included in the event that the Guarantor's place of business is not in England or Wales**

Executed as a deed and delivered on the date appearing at the beginning of this Guarantee.

Executed as a deed by)
[Note to bidders: to include Guarantor details])
acting by two Directors or)
one Director and its Secretary)

Director

Director/Secretary

Schedule 8 – Draft Quality Plan

[Note to bidders: Contractor's draft Quality Plan to be inserted.]

Schedule 9 – Key Performance Indicators

1 Interpretation

In this Schedule 9:

- (a) terms defined in a Call-Off Contract shall have the same meaning when used herein, unless the context otherwise requires; and
- (b) the following terms shall have the following meanings:
 - (i) **Call-Off Amber Rating** means an Amber rating assigned to the Contractor under any Call-Off Contract;
 - (ii) **Call-Off Red Rating** means a Red rating assigned to the Contractor under any Call-Off Contract;
 - (iii) **Draft Performance Improvement Plan** has the meaning given to it Paragraph 3.1;
 - (iv) **KPI Point** shall have the meaning given to in Paragraph 2;
 - (v) **Improvement Plan Threshold**, in respect of KPI Points, means an accumulated total of 8 (eight) KPI Points; and
 - (vi) **Performance Improvement Plan** has the meaning given to it Paragraph 3.4.

2 Totting Up

2.1 Subject to Paragraph 2.2, **KPI Points** shall be accumulated by the Contractor as follows:

- (a) for each Call-Off Red Rating allocated under a Call-Off Contract at any time, 2 (two) KPI Points shall accumulate; and
- (b) for each Call-Off Amber Rating allocated under a Call-Off Contract at any time, 1 (one) KPI Point shall accumulate.

2.2 When the accumulated total of KPI Points reaches the Improvement Plan Threshold:

- (a) the total accumulated KPI Points under Paragraph 2.1 shall be reset to zero; and
- (b) (without prejudice to Paragraph 3) only KPI Points accumulated after that time shall count towards the accumulated total under Paragraph 2.1.

2.3 There is no limit on the number of times the total accumulated KPI Points under Paragraph 2.1 can be reset to zero in accordance with Paragraph 2.2.

3 Performance Remedial Plan

3.1 Each time the Improvement Plan Threshold is reached under Paragraph 2, the Contractor shall prepare in accordance with Good Industry Practice and submit to the Authority a draft plan setting out:

- (a) corrective and remedial actions designed to improve its performance under Call-Off Contracts and avoid the recurrence of failures under the Call-Off Contracts that led to KPI Points reaching the Improvement Plan Threshold; and
- (b) a reasonable timetable for implementing those actions,

a Draft Performance Improvement Plan.

- 3.2 The Authority shall be entitled to comment on a Draft Performance Improvement Plan within 14 (fourteen) days of receiving it.
- 3.3 The Contractor shall (acting reasonably and in accordance with Good Industry Practice) amend the Draft Performance Improvement Plan taking into consideration the Authority's comments under Paragraph 3.2. Such amended plan shall be a **Performance Improvement Plan**.
- 3.4 The Contractor shall perform each Performance Improvement Plan in accordance with its terms.
- 3.5 Authority shall (without prejudice to their other rights under this Agreement or any Call-Off Contract), at their discretion, be permitted to exclude the Contractor from any Mini-Competition or Direct Award in respect of an Order that it would otherwise be a Capable Contractor in respect of from the time that the Improvement Plan Threshold is reached until the Contractor has both prepared a Performance Improvement Plan in accordance with this Paragraph 3, and performed the corrective and remedial actions it contains.

4 Termination events

- 4.1 If any of the following occur (without prejudice to Paragraph 3.4) the:
 - (a) Contractor fails to comply with Paragraph 3.1 or 3.3;
 - (b) the Contractor fails to comply with Paragraph 3.4; or
 - (c) accumulated KPI Points reach the Improvement Plan Threshold:
 - (i) before any existing Performance Improvement Plan has been implemented;
or
 - (ii) within 12 (twelve) months of the last occasion accumulated KPI Points reach the Improvement Plan Threshold,

a **KPI Default** shall be deemed to have occurred. The Authority shall be entitled to terminate this Contract in accordance with Clause 26.

Schedule 10 – Statement Relating to Good Standing

[Note to bidders: Contractor's Statement Related to Good Standing to be inserted.]

Schedule 11 – Change Control Procedure

1 Interpretation

Affected Framework Contractor means a Framework Contractor that is party to an Affected Spares Framework Agreement;

Affected Spares Framework Agreement means a Spares Framework Agreement that the Authority proposes to be the subject of a Framework Change;

Framework Change means an alteration to this Agreement that is also made or to be made all other Spares Framework Agreements or a subset of them;

Impact Assessment an assessment of the impact of a Change proposed by the Authority completed in good faith, including:

- (a) details of the impact of the proposed variation on the Services and the Supplier's ability to meet its other obligations under this Agreement or any Call-Off Contract;
- (b) details of the cost of implementing the proposed Change;
- (a) a timetable for the implementation, together with any proposals for the testing of the Change; and
- (b) such other information as the Authority may reasonably request in (or in response to) the Change proposal.

Change means any change to this Agreement.

2 Spares Framework Changes

2.1 The Authority may (subject to and in accordance with this Paragraph 2) make a Change to this Agreement that is also a Framework Change:

2.2 A Change under this Paragraph 2 shall not:

- (a) be reasonably likely to materially alter the costs or risk of the Contractor must bear under:
 - (i) this Agreement;
 - (ii) any existing or future Call-Off Contract;
- (b) be inconsistent with the Contract Notice or the DEFFORM 47;
- (c) materially change the nature of the Spares Framework;

2.3 Where the Authority proposes to make a Change pursuant to Paragraph 2.1:

- (a) the Authority shall give notice to the Contractor and each other Affected Framework Contractor:
 - (i) setting out the proposed Framework Change, the reasons for it and the date from which it is proposed to be effective; and

- (ii) inviting representations in respect of the proposal (including the financial impact of the proposal on Framework Contractors, and the feasibility of its implementation by the proposed effective date) within such period as the Authority (having regard to the urgency of the case and any prior informal consultation on the proposal with Framework Contractors) shall decide;
 - (b) the Authority may publicise the proposal in such other manner as the Authority decides;
 - (c) the Authority shall consider any representations from any Framework Contractor that are notified to the Authority within the period specified in the notice (as well as representations received from other persons);
 - (d) following such consideration, the Authority may modify this Agreement and the other Affected Framework Agreements on the basis of the original proposal or (subject to paragraph (e)) such variation of it as the Authority decides;
 - (e) if the Authority considers that such a variation of the proposal departs materially from the original proposal, so that Framework Contractors should have a further opportunity to make representations in respect of it, the Authority will give a further notice pursuant to paragraph (a).
- 2.4 When (following a notice of proposed modification under Paragraph 2.3(a)) the Authority has decided whether or not to modify this Agreement, the Authority shall notify the Affected Framework Contractors (no later than the notice under Paragraph 2.5, where applicable) of the decision together with the reasons for the decision and the conclusions the Authority reached in respect of representations received under Paragraph 2.3(c).
- 2.5 The modification of this Agreement pursuant to this Paragraph 2 shall be made by notice given by the Authority either attaching the modified Agreement or setting out the modification of the Agreement and stating the date on which it is effective; and the Agreement is hereby modified in accordance with such notice.
- 2.6 The Parties shall be bound pursuant Agreement as modified from time to time modified under this Paragraph 2.

3 Other Changes

- 3.1 The Authority can propose any Change in accordance with this Paragraph 3 by providing a Change Proposal in writing.
- 3.2 Without prejudice to the Authority's rights under Paragraph 2, a Change proposed under this Paragraph 3 shall only become effective if agreed in writing and signed by both Parties.
- 3.3 The Supplier must provide an Impact Assessment either as soon as reasonably practicable after receipt of a Change Proposal and in any event within 10 (ten) Business Days or such longer period as is reasonable, having regard to the nature and complexity of the Authority's proposal.

4 General

If a Court declares any Change ineffective, the Parties agree that their mutual rights and obligations will be regulated by the terms of the Agreement as they existed immediately prior to that Change and as if the Parties had never entered into that Change.

Schedule 12 – Financial Standing

1 Definitions

In this Schedule 12, the following definitions shall apply:

Accounting Reference Date means the dates to which the Relevant Party prepares its audited financial statements.

Alternative Instrument has the meaning given to it Paragraph 6.1.

Authority Conditions has the meaning given to it Paragraph 6.2.

Financial Indicators in respect of each Relevant Party, means each of the financial indicators set out in the table in Appendix A (*Financial Indicators*) of this Schedule 12.

Guarantee Conditions has the meaning given to it in Appendix B (*Guarantee Conditions*) the Annex to this Schedule 12.

Indicator Level means the level for each of the Financial Indicators set out set out in column headed "*Target standard*" of the table in Appendix A (*Financial Indicators*) of this Schedule 12.

Indicator Shortfall has the meaning given to it Paragraphs 3.1(a) and (b).

Mandatory Remediation Amendments has the meaning given to it Paragraph 6.3.

Relevant Party means each of:

- (a) the Contractor; and
- (b) the Guarantor (if any).

Suspension Circumstances has the meaning given to it in Paragraph 3.1(d).

2 Duty to Monitor and Report

2.1 The Contractor shall report to the Authority in writing:

- (a) on each Relevant Party's performance against the Financial Indicators.
 - (i) whenever requested by the Authority;
 - (ii) within one hundred and twenty (120) calendar days after each Accounting Reference Date; and
 - (iii) whenever it believes that there is an Indicator Shortfall;
- (b) (without prejudice to (a)), whenever it considers that Suspension Circumstances exist;
- (c) if Suspension Circumstances exist, on any steps taken or to be taken with a view to curing such Suspension Circumstances; and

- (d) if Suspension Circumstances have been cured, on the relevant steps taken and/or circumstances that have arisen.

2.2 Each report submitted by the Contractor pursuant to Paragraph 2.1(a) shall (in each case as applicable):

- (a) be a single report;
- (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 most up-to-date financial data (including audited accounts or unaudited management accounts, as applicable) ; 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 Consequences of Indicator Shortfalls

3.1 For the purposes of this Paragraph 3:

- (a) if any one or more of the Indicator Levels is not met in respect of either the Contractor or the Guarantor there is an **Indicator Shortfall** in respect of that party;
- (b) without prejudice to Clause 26.3(g) (*When Authority can end the Agreement*), there is also an **Indicator Shortfall** in respect of the Guarantor if a breach of Clause 9 (*Parent Company Guarantee*) is subsisting;
- (c) a Contractor is **Guaranteed** if it is required under Clause 9.2 (*Parent Company Guarantee*) to maintain a Parent Company Guarantee (whether such Parent Company Guarantee was provided in accordance with Clause 9.1 or Paragraph 5 of this Schedule 12); and
- (d) **Suspension Circumstances** exist if any of the following apply:
 - (i) the Contractor is Guaranteed and there is an Indicator Shortfall in respect of both:
 - (A) the Contractor; and
 - (B) the Guarantor; or
 - (ii) the Contractor is not Guaranteed and there is an Indicator Shortfall in respect of the Contractor;
 - (iii) any Alternative Instrument approved by the Authority is no longer in full force and effect in accordance with the Authority's conditions).

3.2 If Suspension Circumstances exist the Authority shall (without prejudice to their other rights under this Agreement or any Call-Off Contract and to Paragraph 5 (*Provision of Guarantee*)),

at their discretion, be permitted to exclude the Contractor from any Mini-Competition or Direct Award in respect of an Order that it would otherwise be a Capable Contractor for until such Suspension Circumstances no longer exist.

- 3.3 The Parties acknowledge and agree that (without prejudice to Paragraphs 5 (*Provision of Guarantee*) and 6.4), Suspension Circumstances shall be deemed no longer to exist if the Indicator Shortfall that caused such Suspension Circumstances to exist is cured.

4 Notice

- 4.1 Each Party shall notify the other as soon as it becomes aware that Suspension Circumstances exist.
- 4.2 If Suspension Circumstances exist, the Contractor will provide such relevant information relating to the Contractor and (if the Contractor is Guaranteed) the Guarantor as the Authority may reasonably require in order to understand the risk to the Services as a result of the Indicator Shortfall, 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 Indicator Shortfall.

5 Provision of Guarantee

For the purposes of Paragraph 3.2, Suspension Circumstances shall be deemed no longer to exist if the Contractor:

- (a) has an ultimate parent company with no Indicator Shortfall;
- (b) provides a Parent Company Guarantee from such ultimate parent company; and
- (c) satisfies the Guarantee Conditions in respect of such Guarantee.

6 Alternative Remediation

- 6.1 If the Contractor is unable to remedy Suspension Circumstances or provide a Parent Company Guarantee in accordance with Paragraph 5 (*Provision of Guarantee*) it may offer to provide the Authority (at the Contractor's sole cost and risk) another form of third party bond or guarantee (an **Alternative Instrument**) to provide assurance to the Authority as to the economic and financial standing of the Contractor to provide services of the technical scope and scale of the Services.
- 6.2 The Authority may (in each case in its sole discretion):
- (a) accept or reject an Alternative Instrument proposed by the Contractor as providing sufficient assurance as to the economic and financial standing of the Contractor to provide services of the technical scope and scale of the Services;
 - (b) make its approval of an Alternative Instrument proposed by the Contractor subject to conditions (**Authority Conditions**).
- 6.3 Authority Conditions may include the making of those alterations to this Agreement and any Call-Off Contract (**Mandatory Remediation Amendments**) that (in the Authority's sole discretion) they consider necessary to ensure the Alternative Instrument proposed by the Contractor provides sufficient assurance about its economic and financial standing.

- 6.4 For the purposes of Paragraph 3.2, Suspension Circumstances shall be deemed no longer to exist if the Authority has approved an Alternative Instrument, and:
- (a) such Alternative Instrument is provided; and
 - (b) the Authority Conditions in respect of that Alternative Instrument, including the making of any Mandatory Remediation Amendments, are satisfied in full.

Appendix A – Financial Indicators

Assessment	Methodology	Target standard
Net Asset Value	All of the Relevant Party's net assets minus all of its liabilities. The net asset value provides a view of whether an entity's assets exceed its liabilities and its overall solvency.	Positive net asset value.
Liquidity ratios	The Relevant Party's current assets are divided by current liabilities to establish if there are sufficient assets to cover all of the Relevant Party's liabilities as they fall due over the course of one year.	Current ratio of 1.0 or better; and Acid test ratio of 0.8 or better.
Company Watch	Company Watch "H-Score" (an overall measure of a business' financial health – for more information, see www.companywatch.net/analytics-insight/h-score).	Score of 20 or above.

Appendix B – Guarantee Conditions

Each of the following is a **Guarantee Condition** in respect of a Parent Company Guarantee:

1. Receipt by the Authority of a legal opinion in respect of that Parent Company Guarantee, in form and substance satisfactory to the Authority;
2. Receipt by the Authority (in each case in form and substance satisfactory to it) of the following in respect of the Guarantor:
 - a. copies, certified by an officer of the Guarantor to be true, complete and up-to-date copies, of its constitutional documents;
 - b. copies, certified by an officer of the Guarantor to be true copies, and as being in full force and effect and not amended or rescinded, of resolutions duly passed by the board of directors of the Guarantor:
 - i. approving the terms of, and the transactions contemplated by the Parent Company Guarantee; and
 - ii. authorising a specified person or persons to sign and deliver on behalf of the Guarantor the Parent Company Guarantee;
 - c. a copy, certified by an officer of the Guarantor to be a true copy, and as being in full force and effect and not amended or rescinded, of the list of authorised signatories of the relevant party's and evidence of the relevant party's authorised signatories' signatures.

Schedule 13 – Required Insurance

Policies of insurance to be taken out and maintained by the Contractor and / or for the Contractor to procure the taking out and maintenance of.

1 Interpretation

- 1.1 Reference in this Schedule to a Call Off Contract includes each Call-Off Contract entered into during the Term.

2 Third Party Public Liability Insurance

2.1 Insured

Contractor.

2.2 Interest

To indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay as damages, including claimant's costs and expenses, in respect of accidental:

- (a) death or bodily injury to or sickness, illness or disease contracted by any person;
- (b) loss of or damage to property,

happening during the period of insurance in Paragraph 2.4 and arising out of or in connection with each Call-Off Contract.

2.3 Limit of Indemnity

Not less than fifty million pounds (£50,000,000) in respect of any one occurrence, the number of occurrences being unlimited, but fifty million pounds (£50,000,000) any one occurrence but in the aggregate per annum in respect of products and pollution liability (to the extent covered by the policy). Where any limit is provided in the annual aggregate, Clause 25.5 shall apply.

2.4 Period of Insurance

From the date of any Call-Off Contract for the duration of that Call-Off Contract and renewable on an annual basis unless agreed otherwise.

2.5 Principal Cover Features and Extensions

- (a) Indemnity to principals clause (or equivalent),
- (b) Legal defence costs.

2.6 Principal Exclusions

- (a) War and related perils.
- (b) Nuclear and radioactive risks.
- (c) Liability for death, illness, disease or bodily injury sustained by employees of the Insured during the course of their employment.

- (d) Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles.
- (e) Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.
- (f) 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.
- (g) Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- (h) Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

2.7 **Maximum Deductible**

Not to exceed *[Note to bidders: Maximum Deductible threshold to be included as part of Tender submission. See Part 1 of DF47 Annex B: Tender Evaluation Strategy & Criteria]* in respect of each and every third party property damage claim (personal injury claims to be paid in full).

3 **Property Damage "All Risks" Insurance –**

3.1 **Overseas property**

If the property is outside of the United Kingdom, cover to be taken out to the extent available in the prevailing insurance market where the Insured Property is held (where confirmed as required in any Call-Off Contract).

3.2 **Insureds**

- (a) Contractor;
- (b) Authority,

each for their separate interests.

3.3 **Insured property**

Any property owned by the Authority in the care, custody or control of the Contractor which they are responsible for in connection with any Call-Off Contract (the **Insured Property**).

3.4 **Basis of coverage**

"All Risks" of physical loss or damage to the Insured Property from any cause not excluded.

3.5 **Sum insured**

At all times an amount not less than the total reinstatement or replacement value of the Insured Property plus provision to include other cover features and extensions, as appropriate.

3.6 **Period of insurance**

From the date of any Call-Off Contract and for the duration of any Call Off Contract (to the extent that there is relevant Insured Property) and renewable on an annual basis unless agreed otherwise.

3.7 Principal Cover Features and Extensions

- (a) Terrorism.
- (b) Automatic reinstatement of sum insured.
- (c) Capital additions clause.
- (d) Seventy-two (72) hour clause.
- (e) Local authorities clause.
- (f) Professional fees.
- (g) Debris removal.
- (h) Repair/reinstatement basis of claims settlement with cash option for non-reinstatement.
- (i) Plans and documents.
- (j) Temporary off-site storage.
- (k) Authority co-insured status with attendant non vitiation, waiver of subrogation and notice of cancellation clause.

3.8 Principal exclusions

- (a) War and related perils.
- (b) Nuclear/radioactive risks.
- (c) Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds.
- (d) Wear, tear and gradual deterioration, latent defect, defective design, materials and workmanship but not excluding consequential damage resulting therefrom.
- (e) Consequential financial losses.
- (f) Cyber risks.

3.9 Maximum deductible threshold

Not to exceed **[Note to bidders: Maximum Deductible threshold to be included as part of Tender submission. See Part 1 of DF47 Annex B: Tender Evaluation Strategy & Criteria]** each and every claim.

4 Goods in Transit Insurance - United Kingdom transits

4.1 Insured

Contractor

4.2 Insured Property

All property and interest of every description for all transits by road or air within the United Kingdom that are in the care, custody or control or are otherwise the responsibility of the Contractor in connection with any Call-Off Contract.

4.3 Coverage

Primary property damage perils in respect of physical loss or damage to the Insured Property unless otherwise excluded.

4.4 Limit of Indemnity

Not less than the replacement value in respect of any one transit / conveyance unless specified by the Authority.

4.5 Periods of Insurance

From the commencement of the relevant transits until the delivery to the site including loading and unloading.

4.6 Maximum deductible threshold

Not to exceed *[Note to bidders: Maximum Deductible threshold to be included as part of Tender submission. See Part 1 of DF47 Annex B: Tender Evaluation Strategy & Criteria]* each and every claim.

5 Cargo Insurance - for transits commencing or terminating outside of the United Kingdom

5.1 Insured

Contractor

5.2 Insured Property

Any property, equipment or other cargos including specie, cash and others that are in the care, custody or control or are otherwise the responsibility of the Contractor in connection with each Call-Off Contract.

5.3 Interest

All risks of physical loss or damage to any such cargo including third party liabilities as a result thereof.

5.4 Coverage

London Institute Cargo Clauses (A) including Institute War and Strikes Clauses or their equivalent.

5.5 Limit of Indemnity

Not less than the replacement value in respect of any one transit / conveyance unless specified by the Authority.

5.6 Territorial Limits

Worldwide subject to any applicable standard London Institute Trading Warranties or their equivalent.

5.7 Period of Insurance

From the commencement of the relevant transits until the delivery to the site including loading and unloading.

5.8 Maximum deductible threshold

Not to exceed [Note to bidders: Maximum Deductible threshold to be included as part of Tender submission. See Part 1 of DF47 Annex B: Tender Evaluation Strategy & Criteria] each and every claim.

6 Marine General Third Party Public and Products Liability Insurance

6.1 Insured

Contractor

6.2 Interest

To indemnify the Insured in respect of all sums which the insured shall become legally liable to pay as damages, including claimant's costs and expenses, in respect of accidental:

- (a) death or bodily injury to or sickness, illness or disease contracted by any person;
- (b) loss of or damage to property,

happening during the period of insurance set out in Paragraph 5.4 and arising out of or in connection with each Call-Off Contract and not more specifically insured under the Third Party Public Liability Insurance set out in this Schedule 14 (*Required Insurance*).

6.3 Limit of Indemnity

Not less than fifty million pounds (£50,000,000) in respect of any one occurrence, or series of occurrences arising out of one event, the number of occurrences being unlimited in any annual policy period but any one occurrence and in the aggregate per annum in respect of products and pollution liability. Where any limit is provided in the annual aggregate, Clause 25.5 shall apply.

6.4 Period of Insurance

From the commencement date of any Call-Off Contract and for the duration of any Call Off-Contract and renewable on an annual basis unless agreed otherwise.

6.5 Principal Cover Features and Extensions

- (a) Indemnity to principals clause (or equivalent).
- (b) Legal defence costs.
- (c) Professional liability arising out delivery of the services subject to a Limit of Indemnity of £5,000,000 any one occurrence or series of occurrences arising out of one event and in the annual aggregate.

6.6 Maximum Deductible

- 6.7 Not to exceed *[Note to bidders: Maximum Deductible threshold to be included as part of Tender submission. See Part 1 of DF47 Annex B: Tender Evaluation Strategy & Criteria]* in respect of each claim.

7 Compulsory insurances

- 7.1 The Contractor is required to meet its United Kingdom and all other statutory or insurances required by Applicable Law worldwide in full. Insurances are required to comply with all statutory requirements including, but to limited to, United Kingdom employers' liability insurance and motor third party liability insurance.

Schedule 14 – Security Aspects Letter

[Note to bidders: Form of Security Aspects Letter has been uploaded separately and will be incorporated in due course.]

Schedule 15 – Draft Anti-Counterfeiting Management Plan

[Note to bidders: Contractor's draft Anti-Counterfeiting Management Plan to be inserted.]

Schedule 16– Safety and Environmental Management Plan

[Note to bidders: Contractor's Safety and Environmental Management Plan to be inserted.]