

[xxx]

DATED _____ **2023**

THE SECRETARY OF STATE FOR (1)
DEFENCE

and

QINETIQ LIMITED (2)

BATCM/0288
BATCIS PRIVATE SECTOR SUPPORT



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THIS CONTRACT is made on

2023

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR DEFENCE** (the “**Authority**”); and
- (2) **QINETIQ LIMITED**, registered in England (**number:** 3796233), whose registered office is [xxx].

BACKGROUND:

- (A) The Authority aspires to deliver the MORPHEUS System and, in furtherance of such aspiration, has instigated (and is in the process of instigating) a series of concurrent, interconnected and interdependent procurements (known as the MORPHEUS Programme), each requiring the Authority to, amongst other things, assess, scope, prepare for, negotiate and conclude contractual arrangements with Other Contractors to reflect the Authority’s detailed technical, commercial and legal requirements for the successful delivery of the MORPHEUS System on time and to budget.
- (B) As a result of previous and/or other future procurement activities undertaken or to be undertaken by the Authority and not connected to the MORPHEUS Programme, the Authority also monitors, manages, operates and supports (and/or may need to assess, scope, prepare for, negotiate and conclude detailed technical, commercial and legal requirements in) contractual arrangements with Other Contractors for the successful delivery of other goods and/or services on time and to budget and as required by the Authority (including the BATCIS Activities).
- (C) On 12 July 2017 the Authority advertised in the Official Journal of the European Union (reference 2017/S 133-273453) (the “**OJEU Notice**”), inviting prospective suppliers to submit proposals for the provision of technical support services comprising project and programme management support, engineering support and other ancillary support services (including strategy development and governance, internal and external approvals processes, cost estimation, benefits and change management, training and integrated logistic support) in connection with the delivery of the MORPHEUS Programme and, subject to the provisions of this Contract, other BATCIS Activities.]
- (D) On the basis of the Contractor’s response to the advertisement and a subsequent tender process, the Authority selected the Contractor as its preferred supplier and entered into a Contract with the Contractor on 23 July 2018, as subsequently amended by Amendments 1 to 5 agreed by the Parties (together the “**Original Contract**”). The Original Contract was not a Qualifying Defence Contract.
- (E) The Parties have agreed to enter into a further amendment to the Original Contract which will take effect on 1st June 2023 (“**Amendment 6**”).

PART 1 - DEFINITIONS AND INTERPRETATION

1 Definitions and Interpretation

- 1.1 In this Contract (unless the context otherwise requires):

- 1.1.1 the terms and phrases defined in Schedule 1 (*Definitions and Acronyms*) shall have the meanings given to them in that Schedule;
- 1.1.2 the acronyms set out in Schedule 1 (*Definitions and Acronyms*) shall have the meanings given to them in that Schedule;
- 1.1.3 the masculine includes the feminine and vice versa, and words importing the neuter include the masculine and the feminine and vice versa;
- 1.1.4 the singular includes the plural and vice versa;
- 1.1.5 the words "include", "includes", "including" and "included" shall be construed as if they were immediately followed by the words "without limitation" except where explicitly stated otherwise;
- 1.1.6 the expression "person" means any individual, firm, body corporate, unincorporated association or partnership, government, state or agency of a state or joint venture and includes their successors and permitted assignees or transferees;
- 1.1.7 unless stated to the contrary, any reference to this Contract or to any other document shall include any variation, amendment or supplement to such document;
- 1.1.8 references to any enactment, order, regulation, or other similar instrument (including any EU instrument) shall be construed as a reference to the enactment, order, regulation or instrument (including any EU instrument) as amended, supplemented, replaced or consolidated by any subsequent enactment, order, regulation or instrument (including any EU instrument);
- 1.1.9 the heading to any provision in this Contract shall not affect the interpretation of that provision;
- 1.1.10 any decision, act, or thing which the Authority is required or authorised to take or do under this Contract may be taken or done only by any person authorised, either generally or specifically, by the Authority to take or do that decision, act, or thing on behalf of the Authority as set out in the table contained in Part 2 of Schedule 8 (*Governance and Management*);
- 1.1.11 unless excluded within the terms of this Contract or where otherwise required by law:
 - (i) references to submission of documents in writing shall include electronic submission; and
 - (ii) any requirement for a document to be signed or references to signatures shall be construed to include electronic signature, provided that a formal method of authentication as previously agreed between the Parties is employed and such agreed method is recorded in this Contract; and
 - (iii) a reference in this Contract to any Clause, part, paragraph, Schedule, Appendix or Annex, is, except where expressly stated to

the contrary, a reference to such Clause, part, paragraph or Schedule of or Appendix or Annex to this Contract;

- 1.1.12 references to a document being in the “Agreed Form” means (unless otherwise stated) in the form of a draft of such document contained on a disk initialled for the purpose of identification by or on behalf of the Parties; and
- 1.1.13 references to a “holding company” “or “parent undertaking” shall have the meanings and be construed in accordance with section 1159 and section 1162 of CA 2006 and for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), a company shall be treated as a member of another company even if its shares in that other company are registered in the name of:
- (i) another person (or its nominee), by way of security or in connection with the taking of security; or
 - (ii) its nominee.

2 Precedence

- 2.1 If there is any inconsistency between the provisions of the main body of this Contract and the Schedules, the Appendices and/or the Annexes, or between any of the Schedules, the Appendices and/or the Annexes, the conflict shall be resolved according to the following descending order of priority:
- 2.1.1 the main body of this Contract, Schedule 1 (*Definitions and Acronyms*), Schedule 9 (*Pricing and Payment*), Schedule 10 (*Task Order Approval Process*), Schedule 11 (*Change Procedure*) and Schedule 14 (*IPR*);
 - 2.1.2 Schedule 2 (*Statement of Requirements*), Schedule 4 (*Assurance and Acceptance Process*) and Schedule 5 (*Acceptance Procedures*), and their respective Appendices and Annexes; and
 - 2.1.3 the remaining Schedules and their respective Appendices and Annexes.
- 2.2 If there is any conflict or inconsistency between the provisions of this Contract and the provisions of any document referred to in this Contract (including any other document referred to in that or any subsequent document), then the provisions of this Contract shall prevail.
- 2.3 If a Party becomes aware of any conflict or inconsistency within or between the documents referred to in Clauses 2.1 and/or 2.2 (*Precedence*) such Party's Representative shall notify the other Party's Representative forthwith and the Parties will seek to resolve such inconsistency and if either Party considers the inconsistency to be material, then the matter shall be determined in accordance with the Dispute Resolution Procedure.

PART 2 - CORE OBLIGATIONS

3 The Contractor's Obligations

- 3.1 The Contractor shall:

- 3.1.1 provide the Contractor Deliverables and/or shall ensure that the Contractor Deliverables are provided in accordance with and, in each case, having due regard to:
- (i) Good Industry Practice;
 - (ii) all Necessary Consents;
 - (iii) Law;
 - (iv) British Standards which are appropriate and relevant to the provision of the Contractor Deliverables;
 - (v) the Contractor's approved quality assurance systems in accordance with Clause 68 (*Quality Assurance*); and
 - (vi) the documents referred to in Schedule 15 (*Ancillary Documents*) and the Statement of Requirements;
- 3.1.2 deliver the Contractor Deliverables using efficient business processes and ways of working having regard to the Authority's obligation to ensure value for money; and
- 3.1.3 continue to perform all of its obligations under this Contract and shall not suspend the performance of the Contractor Deliverables, notwithstanding:
- (i) any withholding by the Authority in accordance with this Contract and/or the application of any Deductions pursuant to Schedule 6 (*Incentivisation*) and paragraph 4 of Part 1 of Schedule 9 (*Pricing and Payment*);
 - (ii) the existence of an unresolved Dispute; and/or
 - (iii) any failure by the Authority to pay any sums due.

3.2 The Contractor shall perform the Contractor Deliverables:

- 3.2.1 so as to procure satisfaction of the Statement of Requirements and in accordance with the Product Descriptions;
- 3.2.2 in accordance with the Contractor's Proposals; and
- 3.2.3 in accordance with this Contract.

To avoid doubt, the obligations in Clauses 3.2.1, 3.2.2 and 3.2.3 are independent obligations. In particular:

- (i) the fact that the Contractor has complied with the Contractor's Proposals shall not be a defence to an allegation that the Contractor has not satisfied the Statement of Requirements; and
- (ii) the fact that the Contractor has satisfied the Statement of Requirements shall not be a defence to an allegation that the Contractor has failed to comply with the Contractor's Proposals.

- 3.3 Without prejudice to Clause 3.2.1 (*The Contractor's Obligations*), if it shall be found that the Contractor's Proposals as at the Effective Date do not fulfil the Statement of Requirements, the Contractor shall (at its own expense) amend the Contractor's Proposals and rectify the Contractor Deliverables to ensure that they meet the Statement of Requirements.
- 3.4 Notwithstanding any other provisions of this Contract, nothing in Schedule 3 (*Contractor's Proposals*) shall in any way limit or reduce any of the Contractor's obligations under this Contract nor shall the provisions of Schedule 3 (*Contractor's Proposals*):
- 3.4.1 impose upon the Authority any obligation or any other requirement which is greater than the obligations and/or requirements contained in the remaining provisions of this Contract;
 - 3.4.2 limit or reduce the Authority's rights and remedies contained in the remaining provisions of this Contract; and/or
 - 3.4.3 otherwise have an adverse impact on the Authority.
- 3.5 The Contractor acknowledges that the Statement of Requirements requires a number of outputs and that the tasks and activities that are required to be carried out by the Contractor to achieve the outputs are described to be "as a minimum" and/or utilising similar wording and that such wording signifies that the relevant tasks and activities are non-exclusive and that other related and/or additional tasks and activities are likely to be required to be carried out in order to achieve completion of the required obligations and/or the full required output of the Statement of Requirements. The Contractor further acknowledges that during the Contract Period the Authority is relying on the Contractor's expertise, experience and skill in identifying any such related and/or additional tasks and activities in order that the Contractor is able to carry out the required tasks and activities and achieve the full required outputs of the Statement of Requirements. Accordingly, during the Contract Period, the Contractor shall, having due regard to the provisions of Clauses 3.2 to 3.4 (inclusive), use its expertise, experience and skill to identify and carry out and perform any such related and/or additional tasks and activities to achieve the successful and timely completion of all of its obligations and tasks referred to in the Statement of Requirements and elsewhere in this Contract and the Contractor further acknowledges and confirms that it shall not be entitled to any increase in the Contract Price and/or any Monthly Payment in connection with the carrying out of such related and/or additional tasks and activities and the costs to the Contractor in carrying out such tasks and/or activities will not be Accepted Costs.

Competition/Alternative Sourcing

- 3.6 The Contractor accepts that:
- 3.6.1 subject to Clauses 3.6.2 and 3.6.3 (Competition/Alternative Sourcing), the Authority may invite competitive quotations from the Contractor and/or others and, as appropriate, place orders elsewhere, appointing Third Parties or carrying out work itself for any or all of the Contractor Deliverables during the Contract Period;
 - 3.6.2 other than in the circumstances set out in Clause 3A.9 (*Third Party/Authority to provide Contractor Deliverables*) (and Clause 3.6.3

(*Competitive/Alternative Sourcing*) in respect of the right for the Authority to carry out work itself or elect that certain work forming part of the Contractor Deliverables is no longer required to be performed), the Authority shall not have the right to invite competitive quotations from the Contractor and others and, as appropriate, to place orders elsewhere, appointing Third Parties in respect of:

- (i) any of the Core Contractor Deliverables to be performed prior to the Expiry Date; and
- (ii) not used; and
- (iii) any Contractor Deliverables which are the subject of a Task Order which has been approved in accordance with Schedule 10 (Task Order Approval Process);

3.6.3 provided always that nothing in this Clause 3.6 shall prevent the Authority (at any time) from reducing the amount of and/or amending the scope of any of the Contractor Deliverables through a Task Order Proposal or a Change:

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

Delivery of Parent Company Guarantee

3.7 The Parties acknowledge that on the date of this Contract the Contractor has delivered to the Authority an original, duly executed Parent Company Guarantee in the form set out in Schedule 18 (*Parent Company Guarantee*) together with a certified copy of the board minutes under which the Parent Company Guarantee is executed.

3A Task Orders

Task Order 1 and Pricing and Payment

3A.1 The Contractor Deliverables in respect of Task Order 1 are to be performed in accordance with this Contract for the Task Order 1 Firm Price (which has been calculated in accordance with the Unit Rates and the Price List as more particularly referred to in paragraph 3 of Part 2 of Schedule 9 (*Pricing and Payment*)).

3A.2 The Task Order 1 Firm Price is more particularly described in paragraph 1 of Part 2 of Schedule 9 (*Pricing and Payment*) and may be amended through the commencement of an Active Task Order in accordance with the provisions of Schedule 10 (*Task Order Approval Process*) and/or in accordance with the procedures in Schedule 11 (*Change Procedure*).

3A.3 The Task Order 1 Payment for each Contract Month is calculated in accordance with paragraph 2 of Part 1 of Schedule 9 (*Pricing and Payment*).

Approval of Task Order Proposals

- 3A.4 The provisions of Schedule 10 (*Task Order Approval Process*) shall apply in relation to the proposal, review and, where applicable, approval of Task Order Proposals in relation to adjustments to Task Order 1.
- 3A.5 All Task Order Proposals shall be prepared and delivered by the Contractor in accordance with the provisions of Schedule 10 (*Task Order Approval Process*).
- 3A.6 Where a Task Order Proposal has been approved by the Authority pursuant to Schedule 10 (*Task Order Approval Process*), then the Proposed Additional Contractor Deliverables to be carried out and performed by the Contractor as set out in the approved Task Order shall be deemed to become part of the Contractor Deliverables and the Contractor shall update the relevant parts of this Contract to reflect the agreed changes to this Contract as permitted in accordance with Schedule 10 (*Task Order Approval Process*) and the Contractor and the Authority shall each sign a copy of the updated Contract and exchange the signed copies as evidence of agreement to the proposed changes.
- 3A.7 The Authority makes no representations regarding the level of Additional Contractor Deliverables it will require from the Contractor and, for the avoidance of doubt:
- 3A.7.1 the Authority shall not be obliged:
- (i) to place any Task Orders with the Contractor for any Additional Contractor Deliverables; or
 - (ii) to accept or approve any Task Order Proposal; and
- 3A.7.2 the provisions of Clause 3.6 (*Competition/Alternative Sourcing*) shall apply in relation to the rights of the Authority to require others to carry out (or carry out by itself) certain of the Contractor Deliverables. The Contractor shall only be granted exclusivity for the provision of those Contractor Deliverables which are Core Contractor Deliverables and only for the period until the Original Expiry Date and shall not be granted any exclusivity in relation to the performance of the other Contractor Deliverables.
- 3A.8 The Parties shall, on an annual basis during the Contract Period, create a conformed copy of this Contract incorporating all changes agreed under Clause 3A.6 in the previous twelve (12) months and enter into a deed of variation (and/or take such further steps) to record such changes ("**Conformed Copy**"), except where the Parties have entered into a deed of variation to amend this Contract in accordance with paragraph 2.1 of Schedule 11 (*Change Procedure*) in the period since the last Conformed Copy was produced, in which case, that deed of variation shall:
- 3A.8.1 record all changes arising under Clause 3A.6 since creation of the last Conformed Copy; and
- 3A.8.2 the next Conformed Copy shall be created (and deed of variation in respect of such entered into) at the end of the twelve (12) month period during which such deed of variation was entered into in accordance with Schedule 11 (*Change Procedure*) and recording only the changes agreed under

Clause 3A.6 since the date on which the deed of variation was entered into.

Third Party/Authority to provide the Contractor Deliverables

3A.9 The Authority may appoint a Third Party and/or the Authority to provide the whole or any part of the Contractor Deliverables where the Contractor:

3A.9.1 is in breach of its obligations under this Contract; and/or

3A.9.2 confirms that it does not intend to submit a Task Order Proposal or fails to submit a Task Order Proposal following receipt of a Task Order Request within the time period specified in and in accordance with the provisions of Schedule 10 (*Task Order Approval Process*);

3A.10 Without prejudice to the provisions of Schedule 10 (*Task Order Approval Process*), the Contractor shall not be entitled to any payment, compensation, damages, costs, losses and/or expenses arising out of or in connection with the circumstances set out in Clause 3A.9 (*Third Party to provide the Contractor Deliverables*).

Consequences of appointing a Third Party

3A.11 Where the Authority exercises its rights pursuant to Clause 3A.9 (*Third Party to provide the Contractor Deliverables*), then:

3A.11.1 the Contractor shall, at its own cost, comply with the provisions of Clause 3A.11 (*Consequences of appointing a Third Party*) (insofar as such Clause is relevant); and

3A.11.2 where the reason for the Authority exercising such rights is due to a breach of the Contractor of its obligations under this Contract, the Contractor shall indemnify the Authority against all of the Authority's Losses arising out of or in connection with the exercise of such rights (including all internal costs and all additional costs, liabilities, losses and/or expenses over and above those which the Authority would reasonably have incurred under this Contract (in respect of the delivery of the whole or the relevant part (as the case may be) of the Additional Contractor Deliverables) had the Contractor complied with its obligations under this Contract).

3A.12 Where the Authority exercises its rights pursuant to Clause 3A.9 (*Third Party to provide the Contractor Deliverables*), then, the Authority shall notify the Contractor in writing of the following:

3A.12.1 the action it wishes to take;

3A.12.2 the reason for such action;

3A.12.3 the date it wishes to commence such action; and

3A.12.4 to the extent practicable, the effect on the Contractor and its obligation to provide the whole or part of the Contractor Deliverables.

3A.13 Following service of notice pursuant to clause 3A.12 (*Consequences of appointing a Third Party*), the Authority shall, either by itself or by engaging others, take such

action as notified under Clause 3A.12 (*Consequences of appointing a Third Party*), and any consequential additional action as it reasonably believes is necessary and the Contractor shall give all reasonable assistance to the Authority or such others identified by the Authority (as the case may be) and the Contractor shall not be entitled to claim a GFA Failure and/or shall not be entitled to any increase in the Task Order 1 Firm Price and/or any additional payment and/or compensation of whatever nature and whosoever arising in connection with the giving of such assistance.

4 Contract Period

Contract Period

- 4.1 Subject to Clause 4.2, this Contract and the rights and obligations of the Parties shall take effect on the Effective Date and, except as set out in Clause 73 (*Continuing Obligations*), shall terminate on the earlier of:

4.1.1 the Expiry Date; and

4.1.2 the Termination Date.

- 4.2 Amendment 6 to this Contract shall take effect from 1 June 2023 (the “**Effective Date for Amendment 6**”).

5 Contractor Warranties and Undertakings

Contractor Warranties

- 5.1 The Contractor warrants and represents to the Authority that:

5.1.1 it has the corporate power to enter into and to exercise its rights and perform its obligations under this Contract and any Sub-Contracts;

5.1.2 it is validly incorporated, organised and subsisting in accordance with the law of its place of incorporation;

5.1.3 this Contract is executed by its duly authorised representative;

5.1.4 it has all necessary consents and regulatory approvals to enter into this Contract;

5.1.5 at the date of the Contract the entire share capital in the Contractor is legally and beneficially owned by QinetiQ Group Holdings Limited [xxx] and that no arrangements are in place or are contemplated that have or may have or result in any sale, transfer or disposal of any legal, beneficial, equitable or other interest in any or all of the shares in the Contractor;

5.1.6 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunals pending or to its knowledge, threatened against it or any of its Contractor Related Parties that might affect its ability to perform its obligations under this Contract;

5.1.7 its execution, delivery and performance of its obligations under this Contract will not constitute a breach of any Law, other law (in any

jurisdiction), or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;

- 5.1.8 its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar law affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
- 5.1.9 all written statements and representations in any written submissions made by the Contractor as part of the procurement process, including without limitation its response to the DPQQ and Tender Documentation, its tender and any other documents submitted, remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Contract or to the extent that the Contractor has otherwise disclosed to the Authority in writing prior to the date of this Contract;
- 5.1.10 it is not subject to any contractual obligation, compliance with which shall or is likely to have a material adverse effect on the ability of the Contractor to perform its obligations under this Contract;
- 5.1.11 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;
- 5.1.12 it shall not commit, and in entering into this Contract it has not committed, any Prohibited Act and for this purpose only the words "or without" in the introduction of the definition of Prohibited Act shall be deleted;
- 5.1.13 it, nor to the best of its knowledge any Contractor Related Party nor any of the Contractor's employees, consultants, contractors, sub-contractors or agents, have at any time prior to the Effective Date:
- (i) 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
 - (ii) 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;
- 5.1.14 it shall:
- (i) establish, maintain and enforce, and require that its Sub-Contractors 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; and

- (ii) keep appropriate records of its compliance with its obligations under Clause 5.1.14(i) and make such records available to the Authority on request.
- 5.1.15 it shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 5.1.13, or has reason to believe that it has or any of the Contractor Related Party or any of the Contractor's employees, consultants, contractors, sub-contractors or agents have:
- (i) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - (ii) 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
 - (iii) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act;
- 5.1.16 so far as it is aware, there is not, nor has there been, any infringement or alleged infringement of any Third Party's Intellectual Property Rights in connection with this Contract;
- 5.1.17 it has all necessary rights in and to the Contractor Background IPR, the Vesting IPR and any other materials (including the Third Party IPR) made available by the Contractor (and/or any Sub-Contractor) to the Authority which are necessary for the performance of the Contractor's obligations under this Contract and/or the receipt of the Contractor Deliverables by the Authority; and
- 5.1.18 it has used and will continue to use the degree of skill, care, diligence, best up-to-date practice and foresight in the performance of each of the Contractor Deliverables that would reasonably be expected of a fully qualified and competent professional contractor and/or consultant experienced in carrying out activities of a similar nature, scope, size, timescale and complexity to those comprised in the Contractor Deliverables,

and the Authority relies upon each of the individual warranties and individual representations in Clause 5 (*Warranties and Undertakings*).

Contractor Undertakings

- 5.2 The Contractor undertakes that for so long as this Contract remains in full force the Contractor shall:
- 5.2.1 give the Authority notice of any litigation, arbitration, administrative or adjudication or mediation proceedings before or of any court, arbitrator, administrator or adjudicator or mediator or Relevant Authority ("**Dispute Forum**") against itself or a Sub-Contractor which would adversely affect,

to an extent which is material in the context of this Contract, the Contractor's ability to perform its obligations under this Contract, unless such notice is precluded by the rules of the Dispute Forum, provided that notice shall be given within twenty (20) Working Days of the Contractor becoming aware such proceedings may be threatened or pending, and immediately after the commencement thereof;

- 5.2.2 not undertake the performance of its obligations under this Contract otherwise than through itself or a Sub-Contractor;
- 5.2.3 at all times allocate sufficient resources with the appropriate technical expertise to supply the Contractor Deliverables in accordance with this Contract;
- 5.2.4 save to the extent that obtaining and maintaining the same are Authority responsibilities and subject to Clause 75 (*Change*), obtain, and maintain throughout the duration of this Contract, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Contract Deliverables;
- 5.2.5 ensure that:
 - (i) it shall continue to have all necessary rights in and to the Contractor Background IPR, the Vesting IPR and any other materials (including the Third Party IPR) made available by the Contractor (and/or any Sub-Contractor) to the Authority which are necessary for the performance of the Contractor's obligations under this Contract and/or the receipt of the Contractor Deliverables by the Authority;
 - (ii) any products or services recommended or otherwise specified by the Contractor for use by the Authority in conjunction with the Contractor Deliverables shall enable the Contractor Deliverables to meet the requirements of the Authority; and
 - (iii) without prejudice to Clause 3.1.1(i) (*The Contractor's Obligations*), any documentation and training provided by the Contractor to the Authority are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- 5.2.6 co-operate with the Authority and any Other Contractor and provide reasonable information (including any documentation), advice and assistance in connection with the Contractor Deliverables to any Other Contractor to:
 - (i) enable such Other Contractor to create and maintain technical or organisational interfaces with the Contractor Deliverables and, on the expiry or termination of this Contract for any reason, to enable the timely transition of the Contractor Deliverables to the Authority and/or to any Follow-On Contractor; and

- (ii) ensure compatibility between the Contractor Deliverables and the works, services and/or goods being provided by such Other Contractors;
- 5.2.7 to the extent it is legally able to do so, hold on trust for the sole benefit of the Authority, all warranties and indemnities provided by Third Parties or any Sub-Contractor in respect of any Contractor Deliverables and, where any such warranties are held on trust, at its cost enforce such warranties in accordance with any reasonable directions that the Authority may notify from time to time to the Contractor;
 - 5.2.8 unless it is unable to do so, assign to the Authority on the Authority Representative's written request and at the cost of the Contractor any such warranties and/or indemnities as are referred to in Clause 5.2.7;
 - 5.2.9 provide the Authority with such assistance as the Authority may reasonably require during the Contract Period in respect of the supply of the Contractor Deliverables;
 - 5.2.10 gather, collate and provide such information and co-operation as the Authority's Representative may reasonably request for the purposes of ascertaining the Contractor's compliance with its obligations under this Contract; and
 - 5.2.11 ensure that neither it, nor any of its Affiliates, embarrasses the Authority or otherwise brings the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Contractor's obligations under this Contract.

Status of Contractor Warranties and Undertakings

- 5.3 None of the warranties, representations, undertakings, indemnities and other obligations made, given or undertaken by the Contractor in this Contract shall be given a limited construction by reference to any other.

6 Decoupling

- 6.1 If the Contractor enters into or has entered into any contract with the Crown relating in any way to the subject matter of this Contract, then no breach by the Crown of that other contract, nor any other act or omission, nor any written or oral statement nor any representation whatsoever of or by the Crown, its servants or agents, or other contractors relating to or connected with any such other contract shall, regardless of any negligence on its part or their part:
 - 6.1.1 give the Contractor any right under this Contract to an extension of time or additional payment or damages or any other relief or remedy whatsoever against the Authority;
 - 6.1.2 affect, modify, reduce or extinguish either the obligations of the Contractor under this Contract or the rights or remedies of the Authority under this Contract; or

6.1.3 be taken to amend, add to, delete or waive any term or condition of this Contract.

6.2 This Clause 6 (*Decoupling*) shall not affect the rights of the Contractor under Clause 31 (*Authority Performance Failures*) or Schedule 7 (*Authority Obligations*).

7 Interdependent Contracts

7.1 If, as a result of any default, negligence and/or breach by the Contractor or any Contractor Related Party of any of its or their obligations under or pursuant to any direct contracts between the Authority and the Contractor, the Authority is unable to comply with any or all of its obligations under Schedule 7 (*Authority Obligations*) then, notwithstanding any other provision of this Contract:

7.1.1 such failure by the Authority to comply with those obligations shall not be treated as a GFA Failure for the purposes of this Contract, provided that the Authority has used its reasonable endeavours to mitigate such failure;

7.1.2 the Contractor shall not be entitled to any relief and/or compensation of whatever nature (including any adjustment to the Contract Price) and howsoever arising in respect of such failure by the Authority to comply; and

7.1.3 nothing shall affect the Authority's rights under Schedule 9 (*Pricing and Payment*).

8 Co-operation and Partnering

8.1 Each Party agrees to co-operate with the other Party in the fulfilment of the purposes and intent of this Contract. Neither Party shall be under any obligation to perform any of the other's obligations under this Contract.

8.2 The Parties shall work together in an open and honest environment with the aim of achieving successful partnering and continuous improvement in:

8.2.1 value for money for the Authority; and

8.2.2 the quality and standard of service to the Authority,

in relation to this Contract.

Value for Money

8.3 The Contractor shall support the Authority in demonstrating that any proposed Changes in accordance with Clause 75 (*Change*) will provide value for money.

9 Contract Management and Meetings

9.1 The Parties shall give effect to the provisions of Schedule 6 (*Incentivisation*) and Schedule 8 (*Governance and Management*) throughout the Contract Period.

Compliance with the Contract Programme

9.2 The Contractor shall ensure that:

- 9.2.1 each Programmed Contractor Deliverable achieves Acceptance by the corresponding Review Date specified for that Contractor Deliverable in the Contract Programme; and
- 9.2.2 each Unprogrammed Contractor Deliverable achieves Acceptance by the relevant Review Date as notified by the Authority to the Contractor in accordance with the provisions of paragraph 1.4.2 of part 1 of Schedule 4 (*Assurance and Acceptance Process*).
- 9.3 Any Contract Programme submitted in accordance with the provisions set out below shall be prepared in accordance with Good Industry Practice and shall be in sufficient detail so as to enable the Authority's Representative to monitor (as a minimum), the Contractor's progress against the delivery of the Programmed Contractor Deliverables (including the proposed timing for and carrying out and completion of Acceptance) in respect of the relevant Programmed Contractor Deliverable, as contemplated in Schedule 4 (*Assurance and Acceptance Process*) and progress against any other important dates relating to any other Contractor Deliverables, in each case including its or their interface with the Authority's obligations set out in Schedule 7 (*Authority Obligations*) and/or its or their impact on any contract with any Third Party entered into (or proposed to be entered into) by the Authority and/or any procurements being undertaken by or on behalf of the Authority in connection with this Contract, the MORPHEUS Programme and/or the MORPHEUS System.
- 9.4 The Contract Programme is set out at Schedule 2 (*Statement of Requirements*). Any change to the Contract Programme shall only be made where expressly permitted in accordance with this Contract (including this Clause 9 (*Compliance with the Contract Programme*)).
- 9.5 The Contractor shall promptly submit to the Authority's Representative a copy of any version of the Contract Programme varied in accordance with this Clause 9 (*Compliance with the Contract Programme*).
- 9.6 If it appears to the Authority's Representative at any time that the actual progress of the delivery of the whole or any part of the Programmed Contractor Deliverables has fallen behind the Contract Programme or the Contract Programme is otherwise delayed, then the Authority's Representative shall be entitled to require the Contractor to submit to the Authority's Representative a report identifying the reasons for the delay and, unless the event causing the delay is still subsisting and it is not possible to predict with any certainty when the delay might come to an end, require the Contractor (at the Authority's option):
 - 9.6.1 to produce and submit to the Authority's Representative for approval a revised Contract Programme showing the manner and the periods in which the Programmed Contractor Deliverables and all other relevant matters concerning other Contractor Deliverables will be carried out to ensure Acceptance of each such Programmed Contractor Deliverable by the corresponding Review Date for that Contractor Deliverable in the Contract Programme and the due and timely performance of all other Contractor Deliverables; and/or
 - 9.6.2 to produce and submit to the Authority's Representative for approval a revised Contract Programme showing the steps which are to be taken to eliminate or reduce the delay.

- 9.7 The Contractor shall notify the Authority's Representative if at any time the actual progress of the whole or any part of the Contractor Deliverables is significantly ahead of the Contract Programme so that the Contractor anticipates:
- 9.7.1 that Acceptance of a Programmed Contractor Deliverable may be capable of being achieved earlier than the corresponding Review Date for that Contractor Deliverable in the Contract Programme; and/or
 - 9.7.2 delivery of the relevant part of the Contractor Deliverables may be capable of being achieved earlier than the corresponding date for such delivery.
- 9.8 If the Contractor notifies the Authority's Representative pursuant to Clause 9.7 (*Compliance with the Contract Programme*) that the actual progress of the whole or any part of the Contractor Deliverables is significantly ahead of the Contract Programme, the Authority's Representative shall be entitled to require the Contractor to produce and submit to the Authority's Representative for approval a revised Contract Programme showing the manner and the periods in which the Contractor Deliverables will be carried out and what the revised anticipated dates for Submission Dates and/or Review Dates would be to enable the Authority to consider (in its absolute discretion):
- 9.8.1 whether to agree a change to the Contract Programme to accommodate such earlier Submission Dates and/or Review Dates; and
 - 9.8.2 what modifications (if any) will be required to this Contract in order to accommodate such earlier Submission Dates and/or Review Dates.
- 9.9 For the avoidance of doubt, the Contractor confirms that:
- 9.9.1 It shall be responsible for the consequences of any change to the Contract Programme (unless such change is as the result of any failure by the Authority to perform its obligations under this Contract giving rise to the requirement for the Authority to give relief, including a change to the Contract Programme pursuant to Clause 31 (*Authority Performance Failures*));
 - 9.9.2 It shall be responsible for complying with the Contract Programme as at the date of this Contract (or as varied in accordance with Schedule 11 (*Change Procedure*)) subject to any variations to such Contract Programme as may be permitted by the Authority in accordance with this Clause 9 (*Contract Management and Meetings*) or otherwise as expressly permitted in this Contract; and
 - 9.9.3 It shall not be entitled to any relief from any of its other obligations under this Contract as a result of the Authority identifying any Submission Dates and/or Review Dates in relation to Unprogrammed Contract Deliverables and, as a consequence, the Contractor being required to undertake additional Reviews in relation to any such Unprogrammed Contract Deliverables.

Changes to Key Dates

9.10 The Authority's Representative shall notify the Contractor if at any time during the performance and delivery of the whole or any part of the Contractor Deliverables there is any proposal to:

9.10.1 change any Key Date and/or the whole or part of the Contractor Deliverables that are to be delivered on that Key Date; and/or

9.10.2 add an additional date on which another part of the Contractor Deliverables are to be delivered (and where such additional date is agreed in accordance with the following provisions of this Clause 9, then such additional date shall become a Key Date for the purposes of this Contract),

and such notification shall be deemed to be an Authority Change Notice.

9.11 The Contractor shall, (notwithstanding paragraphs 4.1.2 and 5.1.1 of Schedule 11 (*Change Procedure*)) within five (5) Working Days (or such longer period as is agreed between the Parties) of receipt of the Authority Change Notice issued in accordance with Clause 9.10, acting reasonably and having regard to all relevant circumstances provide the Authority's Representative with an Estimate, such Estimate to include (without prejudice and in addition to the requirements of paragraph 5.2 of Schedule 11 (*Change Procedure*)) a revised Contract Programme and full details of the anticipated impact of such proposal on the Contractor's obligations under this Contract, including details of the likely impact of such proposal:

9.11.1 on the Contractor's progress against the delivery of the Contractor Deliverables, and completion of Acceptance in respect of all relevant Contractor Deliverables, as contemplated by Schedule 4 (*Assurance and Acceptance Process*);

9.11.2 on any of the Authority's obligations under this Contract (including as set out in Schedule 7 (*Authority Obligations*)) and/or any contract with any Third Party entered into (or proposed to be entered into) by the Authority and/or any procurements being undertaken by or on behalf of the Authority in any such case, in connection with this Contract, the MORPHEUS Programme and/or the MORPHEUS System (and of which the Contractor is aware (or ought reasonably to have been aware) and on which the provision of the Contractor Deliverables in the manner contemplated by this Contract prior to such proposal is dependent);

9.11.3 on the Contract Price; and

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

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

9.12 The provisions of paragraphs 6 to 10 (inclusive) of Schedule 11 (*Change Procedure*) shall apply in relation to the progression of the proposed Authority Change arising as a result of the provisions of Clauses 9.10 and 9.11, provided always that the provisions of paragraph 6.2 of Schedule 11 (*Change Procedure*) shall be construed such that the Contractor shall (without the requirement for the Authority to issue a

modified Authority Change Notice) be required to make such amendments to the Estimate as are required to reflect any discussions undertaken and/or agreements reached by the Parties pursuant to paragraph 6.1 of Schedule 11 (*Change Procedure*) and provide such amended Estimate to the Authority's Representative within such time period as the Authority's Representative shall reasonably specify having regard to all relevant circumstances, including:

- 9.12.1 the nature and extent of any required amendments to the Estimate arising as a result of the discussions pursuant to paragraph 6.1 of Schedule 11 (*Change Procedure*); and
- 9.12.2 the timing implications of any unnecessary delay by the Contractor in providing any amended Estimate on the Authority's obligations under this Contract and/or any contract with any Third Party entered into (or proposed to be entered into) by the Authority and/or any procurements being undertaken by or on behalf of the Authority in any such case, in connection with this Contract, the MORPHEUS Programme and/or the MORPHEUS System (and of which the Contractor is aware (or ought reasonably to have been aware)).

10 Necessary Consents

10.1 The Contractor shall, without prejudice to its obligations under Clause 18 (*Import and Export Licences*):

- 10.1.1 obtain, maintain, renew and amend (in each case, as required) all Necessary Consents which may be required for the provision of the Contractor Deliverables under this Contract, including the entering into of any legally binding agreements necessary for the grant of the Necessary Consents;
- 10.1.2 use all reasonable endeavours to assist the Authority to obtain all Necessary Consents:
 - (i) that as a matter of law, only the Authority is eligible to obtain; and
 - (ii) in connection with:
 - (A) an Authority GFA obligation to provide an item to the Contractor and where such GFA obligation is expressly set out in Schedule 7 (*Authority Obligations*); and
 - (B) an item of Discretionary GFA which the Authority has agreed to provide to the Contractor subject to and in accordance with Clauses 31.8 to 31.13 (inclusive) (*Discretionary GFA*).
- 10.1.3 be responsible for implementing each Necessary Consent (save to the extent that only the Authority is, as a matter of law, able to implement the whole or the relevant part of such Necessary Consent) within the period of its validity in accordance with its terms and relevant law;
- 10.1.4 provide to the Authority, when required, a copy of:

- (i) any application for a Necessary Consent or any variation, relaxation or waiver (with a copy of all accompanying drawings and other documents);
- (ii) any Necessary Consent; and
- (iii) any legally binding agreement entered in to for the purposes of obtaining a Necessary Consent,

where such agreement permits such disclosure;

- 10.1.5 comply with the conditions attached to any Necessary Consents and the terms of any associated legally binding agreement and procure that no such Necessary Consent or associated legally binding agreement is breached by it or any Contractor Related Party; and
 - 10.1.6 use all reasonable endeavours to preserve the Necessary Consents, and procure, where it is able to do so, that such Necessary Consents are not revoked or quashed and that all Necessary Consents continue in full force and effect for such time as is necessary for the Contractor to provide the Contractor Deliverables to the Authority.
- 10.2 References in this Contract to Necessary Consents shall be construed as referring to the Necessary Consents as from time to time varied, relaxed or waived.
- 10.3 The Authority shall, subject to the Contractor's compliance with Clause 10.1.2 (*Necessary Consents*), use all reasonable endeavours to obtain all Necessary Consents:
- 10.3.1 that as a matter of law, only the Authority is eligible to obtain; and
 - 10.3.2 in connection with:
 - (i) an Authority GFA obligation to provide an item to the Contractor and where such GFA obligation is expressly set out in Schedule 7 (*Authority Obligations*); and
 - (ii) an item of Discretionary GFA which the Authority has agreed to provide to the Contractor subject to and in accordance with Clauses 31.8 to 31.13 (inclusive) (*Discretionary GFA*).
- 10.4 The Contractor shall indemnify and keep indemnified the Authority against all Losses, claims, damages, liabilities, costs and expenses (including reasonable legal costs) incurred by the Authority in respect of any breach of Clause 10.1 (*Necessary Consents*) by the Contractor and/or any act or omission of any Sub-Contractor that results in such breach.

11 Contractor Related Parties

Responsibility for Contractor Related Parties

- 11.1 Subject to Clauses 7 (*Interdependent Contracts*), 31 (*Authority Performance Failures*) and 52 (*The Contractor's Property and Personnel at Government Establishments*), the Contractor shall be responsible and liable for the acts and

omissions of the Contractor Related Parties as if they were the acts and omissions of the Contractor.

- 11.2 The Contractor shall ensure and/or procure that all Contractor Related Parties employed and/or engaged in connection with this Contract are appropriately qualified, trained and experienced.

Key Personnel

- 11.3 The Contractor shall ensure that the Key Personnel fulfil the Key Roles during the Contract Period.
- 11.4 Schedule 20 (*Key Personnel*) lists the Key Roles and the names of the persons who the Contractor shall appoint to undertake those Key Roles as at the Effective Date.
- 11.5 The Authority may identify any further roles as being Key Roles and the relevant person selected to undertake those Key Roles shall be included on the list of Key Personnel in Schedule 20 (*Key Personnel*) or the relevant Task Order.
- 11.6 The Contractor shall not remove or replace any Key Personnel (including when carrying out Exit Management) unless:
- 11.6.1 requested to do so by the Authority's Representative; or
 - 11.6.2 the person concerned resigns, retires or dies or is on parental or long-term sick leave; or
 - 11.6.3 the person's employment or contractual arrangement with the Contractor or a Sub-Contractor is terminated for material breach of contract by the employee; and
 - 11.6.4 (in any case) the Contractor has obtained the prior written consent of the Authority's Representative (which he shall be entitled to withhold in his absolute discretion) in respect of any proposed replacement,

and where the Contractor fails to comply with the provisions of this Clause 11.6 then, without prejudice to the provisions of Clause 48.10 (*Personnel Security*), the Authority's Representative shall be entitled:

- (i) to refuse any proposed replacement Key Personnel admission to any Authority Site and/or any Other Contractor's Premises (as applicable) and the provisions of Clauses 48.11 and 48.12.1 (*Personnel Security*) shall be deemed to apply; and/or
- (ii) to issue a notice to the Contractor requiring compliance with the provisions of Clauses 11.3 to 11.7 (inclusive) (including, in particular, Clause 11.6.4) in respect of the removal and/or any proposed replacement of such Key Personnel and where the Contractor fails to comply with the provisions of Clauses 11.3 to 11.7 (inclusive) following receipt of such notice from the Authority's Representative, such continued non-compliance shall be deemed to be a Persistent Breach in respect of which (and notwithstanding limb (c) of the definition of Persistent Breach) the Authority's Representative shall be entitled to issue further and additional

Warning Notices in respect of each subsequent twenty (20) Working Day period (commencing on the date of the issue of the initial notice) during which such continued non-compliance persists.

11.7 The Contractor shall:

- 11.7.1 notify the Authority promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Contractor shall ensure appropriate temporary cover for that Key Role);
- 11.7.2 ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
- 11.7.3 without prejudice to Clauses 11.6 and 11.7.5, give as much notice as is reasonably practicable of:
 - (i) the need to replace any member of Key Personnel; and
 - (ii) the identity of the proposed replacement of such member of Key Personnel, together with details of the qualifications and experience of the proposed replacement of such member of Key Personnel,and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least sixty (60) Working Days' notice;
- 11.7.4 ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Contractor Deliverables; and
- 11.7.5 ensure that any proposed replacement Key Personnel for a Key Role:
 - (i) has a level of qualifications and experience appropriate to the relevant Key Role; and
 - (ii) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

12 **Approval by the Authority**

- 12.1 Except for a confirmation of a Change pursuant to Clause 75 (*Change*) which expressly changes the Contractor's obligations or liabilities or the Authority's rights under this Contract and/or save as expressly stated in this Contract, no review, comment or approval by the Authority shall operate to exclude or limit the Contractor obligations or liabilities or the Authority's rights under this Contract.

PART 3 - SUB-CONTRACTING

13 Sub-Contracting

- 13.1 Sub-Contracting any part of this Contract shall not relieve the Contractor of any obligation or duty attributable to the Contractor under this Contract.
- 13.2 The Contractor shall exercise due skill and care in the selection and appointment of any Sub-Contractors to ensure that the Contractor is able to:
- 13.2.1 manage any Sub-Contractors in accordance with Good Industry Practice;
 - 13.2.2 comply with its obligations under this Contract in the delivery of the Contractor Deliverables; and
 - 13.2.3 assign, novate or otherwise transfer to the Authority or any Follow-On Contractor any of its rights and/or obligations under each Sub-Contract that relates exclusively to this Contract.

Termination of Sub-Contracts

- 13.3 The Contractor shall inform the Authority immediately it becomes aware of any breach by any Sub-Contractor of any of the requirements set out or referred to in Clause 47.7 (*Security – Secret Matters*), Clause 57.11 (*Supply of Hazard Data*), Clause 69 (*Termination for Contractor Default*) (as it applies to Prohibited Acts (including any breach of (and/or the occurrence of the circumstances contemplated in) Clauses 5.1.13, 5.1.14 and/or 5.1.15 (*Contractor Warranties*)), Clause 80 (*Change of Ownership*) and/or Clause 86 (*Tax Compliance*) and (without prejudice to any other rights of the Authority under this Contract) if requested to do so by the Authority, shall terminate the relevant Sub-Contract.
- 13.4 The Authority may, at its sole discretion, require the Contractor to terminate the provision by a Sub-Contractor of the whole or part (as the case may be) of the Contractor Deliverables:
- 13.4.1 where:
 - (i) the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to the Authority's right of termination pursuant to Clause 69 (*Termination for Contractor Default*) or Clause 70 (*Break*);
 - (ii) the relevant Sub-Contractor and/or any of its Affiliates have embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-Contractor's obligations in relation to the Contractor Deliverables or otherwise;
 - (iii) the relevant Sub-Contractor fails to comply in the performance of its Sub-Contract with legal obligations in the fields of environmental, social or labour law; and/or

- (iv) the Authority has found grounds for exclusion of the Sub-Contractor in accordance with Clause 13.4 (*Exclusion of Sub-Contractors*); and
- 13.4.2 where there is a Change of Ownership of the relevant Sub-Contractor, unless:
- (i) the Authority has given its prior written consent to the particular Change of Ownership, which subsequently takes place as proposed; or
 - (ii) the Authority has not served its notice of objection within six (6) months of the later of the date the Change of Ownership took place or the date on which the Authority was given notice of the Change of Ownership.

Exclusion of Sub-Contractors

- 13.5 Where the Authority considers there are grounds for the exclusion of a Sub-Contractor under Regulation 57 of the Public Contracts Regulations 2015, then:
- 13.5.1 if the Authority finds there are compulsory grounds for exclusion, the Contractor shall replace or shall not appoint the Sub-Contractor; or
- 13.5.2 if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Contractor to replace or not to appoint the Sub-Contractor and the Contractor shall comply with such a requirement. Sub-Contracting any part of this Contract shall not relieve the Contractor of any obligation or duty attributable to the Contractor under this Contract.

Advertising Sub-Contracts

- 13.6 In Clauses 13.6 to 13.9 (inclusive), the following words and expressions shall have the following meaning given to them:
- 13.6.1 “**Defence Sourcing Portal**” means the Defence Sourcing Portal accessible at <https://www.contracts.mod.uk/> or any replacement thereof for the government procurement opportunities in the defence sector;
- 13.6.2 “**Regulations**” means the Defence and Security Public Contracts Regulations (SI 2011/1848) as amended, extended, re-enacted or replaced from time to time and “**Regulation**” means any one of them or (as the case may be) any specified provision of the Regulations; and
- 13.6.3 “**Sub-Contract**” means any sub-contract entered into or to be entered into by the Contractor or any purchase order placed or to be placed by the Contractor in connection with this Contract where the aggregate price and/or any other consideration (in each case excluding VAT and before the application of any deduction, set-off or other remedy) payable by the Contractor under that sub-contract or purchase order is or is reasonably estimated to be greater than the sum of £200,000 (two hundred thousand pounds sterling) and “Sub-Contractor” shall be construed accordingly.

- 13.7 These Clauses 13.6 to 13.9 (inclusive) shall not apply:

- 13.7.1 where pursuant to Regulation 37(3) the Authority obliges the Contractor to apply the provisions set out in Part 7 of the Regulations to all sub-contracts which the Contractor intends to award to third parties in connection with this Contract after the Effective Date for Amendment 6; or
- 13.7.2 in relation to any Sub-Contract or Sub-Contracts which the Contractor intends to award to any third party or third parties after the Effective Date for Amendment 6, where pursuant to Regulation 37(3) the Authority obliges the Contractor to apply the provisions set out in Part 7 of the Regulations to the award of that or those Sub-Contract(s).
- 13.8 Subject to Clause 13.7, where the Contractor, after the Effective Date for Amendment 6, elects to advertise the subject matter of any Sub-Contract with the view to appointing one or more Sub-Contractors, it shall (unless the Authority otherwise agrees in writing):
- 13.8.1 promptly notify the Authority if the Contractor intends to award a Sub-Contract;
- 13.8.2 publish an advertisement on (and provide all information required by) the Defence Sourcing Portal in respect of each and any Sub-Contract opportunity;
- 13.8.3 within thirty (30) days after the date on which such Sub-Contract shall have been awarded, update the relevant advertisement on the Defence Sourcing Portal in respect of such Sub-Contract, identifying the name and registered office address details of the Sub-Contractor so appointed under such Sub-Contract and providing a description of the subject matter and the value (excluding VAT) of such Sub-Contract;
- 13.8.4 provide reports to the Authority's Representative if so requested, on the number, type and value of Sub-Contract opportunities placed on the Defence Sourcing Portal and awarded in its supply chain during the Contract Period; and
- 13.8.5 promote the Defence Sourcing Portal to all Sub-Contractors and encourage those operators to register on it.
- 13.9 The Authority may issue guidance to the Contractor on how to advertise sub-contract opportunities on the Defence Sourcing Portal from time to time and (where the Contractor elects to advertise the subject matter of any Sub-Contract after the Effective Date for Amendment 6 with the view to appointing one or more Sub-Contractors after that date) the Contractor shall comply with such guidance so issued in relation to the advertisement of any Sub-Contract pursuant to these Clauses 13.6 to 13.9 (inclusive).

14 Matters to be included in Sub-Contracts

- 14.1 Without prejudice to the provisions of Clause 17 (*Competition in Sub-Contracts*), the Contractor shall ensure that all Sub-Contracts which it enters into after the Effective Date shall at all times include:
- 14.1.1 provisions that the Authority's rights referred to in this Clause 14 (*Matters to be included in Sub-Contracts*), which are otherwise enforceable under

the Contracts (Rights of Third Parties) Act 1999, are not rendered unenforceable;

- 14.1.2 a provision requiring the Sub-Contractor to include a clause to the same effect as this Clause 14.1 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract;
- 14.1.3 provisions which will enable the Contractor to discharge its obligations under this Contract;
- 14.1.4 a requirement that either party to the Sub-Contract may release to the Authority any of those parts of the Sub-Contract as are necessary to be sufficient to demonstrate compliance with the provisions of this Clause 14 (*Matters to be included in Sub-Contracts*) and that any such release shall not amount to a breach of any provision of confidentiality contained within the Sub-Contract;
- 14.1.5 a provision restricting the ability of the Sub-Contractor to sub-contract all or any part of the Contractor Deliverables provided to the Contractor under the Sub-Contract without first seeking the written consent of the Authority;
- 14.1.6 a provision requiring the Sub-Contractor to provide or obtain information equivalent to the information the Contractor is required to provide under Clause 17.4;
- 14.1.7 a provision enabling the Contractor, the Authority or any other person on behalf of the Authority to step-in on substantially the same terms as are set out in Clause 36 (*Authority Step-in*);
- 14.1.8 a provision that where any Sub-Contractor submits an invoice to the Contractor, the Contractor will consider and verify that invoice in a timely fashion and that where there is an undue delay in considering and/or verifying that invoice, that such invoice shall be regarded as valid and undisputed for the purposes of Clause 14.1.9 (*Matters to be included in Sub-Contracts*);
- 14.1.9 a provision which requires payment to be made to the Sub-Contractor by the Contractor within a specified period not exceeding thirty (30) Calendar Days from receipt of a valid, undisputed invoice as defined by the Sub-Contract requirements;
- 14.1.10 a provision giving the Authority a right to publish the Contractor's compliance with its obligation to pay undisputed invoices within the specified payment period;
- 14.1.11 a provision enabling the Authority or any other person on behalf of the Authority and the Contractor to exercise the same rights in relation to the Sub-Contractors and their Employees as the Authority is entitled to exercise pursuant to Clause 48 (*Personnel Security*);
- 14.1.12 a provision enabling the Contractor to assign, novate or otherwise transfer any of its rights and/or obligations under the Sub-Contract to the Authority

or any Follow-On Contractor without restriction (including any need to obtain any consent or approval) or payment by the Authority;

- 14.1.13 the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute as set out in Clause 5.2.11 (*Contractor Warranties and Undertakings*);
- 14.1.14 a provision giving the Contractor a right to terminate the Sub-Contract if the Sub-Contractor fails to comply in the performance of the Sub-Contract with legal obligations in the fields of environmental, social or labour law;
- 14.1.15 a provision giving the Contractor a right to exclude the Sub-Contract or where the circumstances in Clause 13.5 (*Exclusion of Sub-Contractors*) exist; and
- 14.1.16 where relevant to the deliverables under the particular Sub-Contract (and where all such provisions shall be presumed to be relevant unless the Contractor can satisfy the Authority that such provisions are not relevant and the Authority's Representative has notified the Contractor in writing that any such provisions shall not be required to be included in any identified Sub-Contract), the provisions of:
 - (i) Clause 15 (*QDC: Open Book on Sub-Contracts that are not Qualifying Sub-Contracts*);
 - (ii) Clause 16 (*Sub-Contracting to SMEs*);
 - (iii) Clause 18 (*Import and Export Licences*);
 - (iv) Clause 37 (*Authority Data*);
 - (v) Clause 38 (*Authority Disclosed Data*);
 - (vi) Clause 39 (*The Contractor's Records*);
 - (vii) Clause 40 (*Financial Management Information*);
 - (viii) Clause 41 (*Disclosure of Information*);
 - (ix) Clause 42 (*QDC: Confidentiality of Single Source Contract Regulations Information*);
 - (x) Clause 43 (*Transparency*);
 - (xi) Clause 45 (*Protection of Personal Data (Where Personal Data is not being processed on behalf of the Authority)*);
 - (xii) Clause 45A (*Official-Sensitive Security Requirements*);
 - (xiii) Not Used;
 - (xiv) Clause 46 (*Intellectual Property Rights*);
 - (xv) Clause 47 (*Security – Secret Matters*);

- (xvi) Clause 48 (*Personnel Security*);
- (xvii) Clause 49 (*Co-operation for Security Investigation*);
- (xviii) Clause 50 (*Access to the Contractor's Premises*);
- (xix) Clause 51 (*The Contractor's Conduct on Authority Sites and Other Contractor's Premises*);
- (xx) Clause 52 (*The Contractor's Property and Personnel at Government Establishments*);
- (xxi) Clause 54 (*Child Labour and Employment Law*);
- (xxii) Clause 55 (*Equality*);
- (xxiii) Clause 57 (*Supply of Hazard Data*);
- (xxiv) Clause 58 (*Issued Property*);
- (xxv) Clause 60 (*Accounting for the property of the Authority*);
- (xxvi) Clause 63 (*Special Jigs, Tooling and Test Equipment*);
- (xxvii) Clause 68 (*Quality Assurance*);
- (xxviii) Clause 69 (*Termination for Contractor Default*);
- (xxix) Clause 70 (*Break*);
- (xxx) Clause 80 (*Change of Ownership*);
- (xxxi) Clause 81 (*Disruption*);
- (xxxii) Clause 86 (*Tax Compliance*);
- (xxxiii) Clause 91 (*Conflicts of Interest and Impartiality*);
- (xxxiv) Clauses 94.3.2 and 94.10 (*IR35 Rules*); and
- (xxxv) such provisions as are required to enable the Contractor to perform its obligations under Schedule 2 (*Statement of Requirements*) and Schedule 21 (*Transfer Regulations*) and to acquire the rights and benefits for the Authority set out in paragraph 6 of Schedule 14 (*IPR*).

14.2 The Contractor shall ensure that all Sub-Contracts include the power to determine the Sub-Contract in accordance with the terms which apply to any termination of this Contract, pursuant to Clause 70 (*Break*), provided that:

14.2.1 references in the provisions of Clause 70 (*Break*) to "Authority", "Contractor" and "Contract" shall be construed (as appropriate) as references to "Contractor", "Sub-Contractor" and "Sub-Contract"

(respectively) for the purposes of the corresponding Sub-Contract provisions;

- 14.2.2 the period of notice to determine such Sub-Contract shall be such period as is specified in this Contract as the appropriate period of notice to determine a Sub-Contract, or, if no period is specified, twenty (20) Working Days; and
- 14.2.3 the Contractor shall not exercise the power taken in those Sub-Contracts until the Authority has exercised its power under Clause 70 (*Break*) and each such Sub-Contract shall restrict the Contractor's right to exercise that power in the manner described in this Clause 14.2.3 (*Matters to be included in Sub-Contracts*) by including in such provision the words "Provided that this power shall not be exercised unless the main contract shall have been determined by the Secretary of Defence pursuant to the provisions of clause 70 of that contract".
- 14.3 If any Sub-Contractor refuses to accept the requirements of Clauses 14.1 and/or 14.2 (*Matters to be included in Sub-Contracts*) then the Contractor shall forthwith report the matter to the Authority and, without prejudice to the Contractor's obligations to deliver the Contract Deliverables, the Contractor shall not enter into the relevant Sub-Contract until the Authority confirms in writing to the Contractor that the matter has been resolved.
- 14.4 Notwithstanding any other provisions of this Contract, if the Contractor notifies the Authority that the Contractor has failed to pay a Sub-Contractor's undisputed invoice within the period specified in accordance with Clause 14.1.9 (*Matters to be included in Sub-Contracts*), or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

15 QDC: Open Book on Sub-Contracts that are not Qualifying Sub-Contracts

- 15.1 In this Clause 15 (*QDC: Open Book on Sub-Contracts that are not Qualifying Sub-Contracts*), the following words and expressions shall have the following meaning given to them, except where the context requires a different meaning:
- 15.1.1 "**Group Undertaking**" has the meaning given by section 1161 of the Companies Act 2006.
- 15.1.2 "**Material Single Source Sub-Contract (Non-Qualifying)**" means a Sub-Contract entered into by the Contractor where:
- (i) the Sub-Contract is entered into at the same time as, or after, this Contract was entered into; and
 - (ii) the Sub-Contract is entered into for the purposes of this Contract;
 - (iii) the award of the Sub-Contract is not the result of a "competitive process" as defined in Regulation 59 of the Single Source Contract Regulations 2014 ("**SSCR**") for Qualifying Sub-contracts ("**QSC**");
 - (iv) the value of the Sub-Contract is of, or above one million pounds (£1,000,000);

- (v) at least fifty per cent (50%) of the Sub-Contract (by value) is required either to enable performance of this Contract or to enable the combined performance of this Contract and any other Qualifying Defence Contract, or prospective contract, under the SSCR, to which the Contractor or any Group Undertaking of the Contractor is a party, or might become a party; and
 - (vi) the Sub-Contract is not a QSC as defined in the SSCR.
- 15.2 Except where the Authority expressly agrees otherwise in writing, the Contractor shall use reasonable endeavours to include in any Material Single Source Sub-contract (Non-Qualifying) the terms specified in the Appendix to DEFCON 802 (Edition 12/14) (inserting relevant party names and/or definitions where appropriate).
- 15.3 Before entering into a Material Single Source Sub-contract (Non-Qualifying) the Contractor shall promptly notify the Authority where it is unable to include the terms specified in the Appendix to DEFCON 802 (Edition 12/14), or where it believes that the inclusion of those terms will prevent the achievement of a fair and reasonable price for that Sub-contract.

16 Subcontracting to SMEs

- 16.1 The Contractor shall maximise the use of SMEs in the performance of the Contractor Deliverables, where doing so will not adversely affect cost, technical performance or programme timescales.
- 16.2 The Contractor shall aim to make open to competition by SMEs at least twenty-five percent (25%) of Sub-Contract spend.
- 16.3 If the Contractor reasonably believes that the use of an SME would adversely affect cost, technical performance or programme timescales, the Contractor shall seek advice from the Authority and shall take such steps as may be required by the Authority.
- 16.4 The Contractor shall undertake activities which encourage SME involvement (either individually or collectively), including SME supplier days and advertising of possible requirements in the appropriate publications (e.g. MoD Contracts Bulletin).
- 16.5 The Contractor shall provide to the Authority details of spend with SMEs on an annual basis, the first such spend details to be provided on or before the last day of the thirteenth (13th) month following the Effective Date and then in each subsequent year during the Contract Period on or before the anniversary of such date.

17 Competition in Sub-Contracts

- 17.1 The Parties acknowledge that:
 - 17.1.1 the Contractor has selected Sub-Contractors for the provision of the Contractor Deliverables in accordance with a sub-contracting plan (in this Clause 17 (*Competition in Sub-Contracts*) the “**Sub-Contracting Plan**”) in the Agreed Form; and
 - 17.1.2 the provisions contained in the Sub-Contracting Plan do not limit or otherwise effect the Contractor’s other obligations contained in this

Contract (including Clause 14 (*Matters to be included in Sub-Contracts*) and this Clause 17 (*Competition in Sub-Contracts*)).

- 17.2 Where the Contractor (and/or any Sub-Contractor) proposes to change a Sub-Contractor, engage an additional Sub-Contractor, change, modify, vary and/or extend a current Sub-Contract and/or let an additional Sub-Contract, the Contractor shall, without prejudice to and in addition to its obligations under Clauses 17.7 and 17.8 (*Competition in Sub-Contracts*), submit to the Authority's Representative its proposed plan for the work to be performed or for the supplies to be provided under that Sub-Contract (or proposed Sub-Contract (as the case may be)), including, in the case of an additional Sub-Contract, information about the proposed Sub-Contractor equivalent to the information the Contractor is required to provide under Clause 17.4 (*Competition in Sub-Contracts*). Where the Sub-Contract is intended to be placed on a fixed or firm price basis agreed at the outset following single tender action the plan shall be that information submitted in support of the Contractor's price proposals and referenced in a contract pricing statement.
- 17.3 Where the Sub-Contracting Plan identified a requirement to compete, the Sub-Contracting Plan should identify each sub-system, package of work, service and/or purchase of components and/or raw materials etc. for which the Contractor intends to seek (or require the relevant Sub-Contractor to seek) competitive tenders which are expected to lead to an order, or orders, in excess of two hundred thousand pounds (£200,000) under that Sub-Contract (or proposed Sub-Contract (as the case may be)) (each a "**Tender Requirement**"). The Contractor shall provide to the Authority's Representative details of the approximate value of each Tender Requirement, together with the proposed list of tenderers involved in each case and information about each of the proposed tenderers equivalent to the information the Contractor is required to provide under Clause 17.4 (*Competition in Sub-Contracts*), for approval before any Sub-Contract is entered into by the Contractor and/or any Sub-Contractor (as the case may be) and/or any order or orders are issued by the Contractor and/or any Sub-Contractor (as the case may be). Within ten (10) Working Days of receipt of this element of the plan, or as otherwise agreed, the Authority's Representative will notify the Contractor whether there are any special circumstances which might require, for example, the employment of a wider or narrower field of tenderers or for the Authority to oversee the conduct of the competitive tender and to approve the selection of the Sub-Contractor concerned.
- 17.4 The Sub-Contracting Plan should also identify each sub-system, package of work, service and/or purchase of components and/or raw materials etc. for which the Contractor does not intend to seek competitive tenders or for which the Contractor does intend to seek competitive tenders but the value of the Sub-Contract or order is not expected to be in excess of two hundred thousand pounds (£200,000) (including work and supplies etc. it intends to undertake or provide). In each of these cases, the Sub-Contracting Plan shall provide the following information:
- 17.4.1 the name and address of the proposed Sub-Contractor or own facility concerned;
 - 17.4.2 the country of origin of the Sub-Contractor;
 - 17.4.3 whether the Sub-Contractor is an SME;
 - 17.4.4 the sub-system, package of work, services, components and/or raw materials being purchased under the Sub-Contract or order;

- 17.4.5 the approximate value of the Sub-Contract or order;
 - 17.4.6 the means by which prices are to be determined as fair and reasonable;
 - 17.4.7 the delivery programme;
 - 17.4.8 other relevant factors; and
 - 17.4.9 where the Contractor does intend to seek competitive tenders but the value of the Sub-Contract or orders is not expected to be in excess of two hundred thousand pounds (£200,000), an indication of its reasons for not seeking competition (i.e. competition is not practicable or not reasonable for other reasons which must be stated).
- 17.5 Within twenty (20) Working Days of receipt of the information referred to in Clause 17.4 (*Competition in Sub-Contracts*) or Clause 17.8 (*Competition in Sub-Contracts*), or as otherwise agreed, the Authority's Representative will advise whether the Contractor's proposals are accepted. Where the proposals are not accepted, further consultation will take place so as to enable the Contractor to elaborate further but in the event of continued disagreement, the Authority's decision on whether the relevant sub-system, package of work, service and/or purchase of components and/or raw materials etc. is to be placed with a Sub-Contractor shall be final. The Authority's Representative will also notify the Contractor whether and in what manner it wishes to be associated with the pricing of the Sub-Contract or order.
- 17.6 Not Used.
- 17.7 The Contractor shall notify the Authority in writing if it wishes to replace a Sub-Contractor or contract with additional Sub-Contractors after the Effective Date by submitting an updated version of the Sub-Contracting Plan (as contemplated by Clause 17.2 (*Competition in Sub-Contracts*)) showing the proposed changes, such updated Sub-Contracting Plan shall provide the information and details referred to in 17.4.1 to 17.4.8 (*Competition in Sub-Contracts*) (inclusive) in relation to the proposed replacement Sub-Contractor or additional Sub-Contractors to the Authority for approval, and the Contractor shall not replace such Sub-Contractor and/or contract with additional Sub-Contractors without the prior written approval of the Authority.
- 17.8 If requested by the Authority within ten (10) Working Days of receipt of the Contractor's notice issued pursuant to Clause 17.7 (*Competition in Sub-Contracts*), the Contractor shall also provide any further information reasonably requested by the Authority.

18 Import and Export Licences

UK Import and Export Licences

- 18.1 If, in the performance of this Contract, the Contractor needs to import into the UK or export out of the UK anything not supplied by or on behalf of the Authority and for which a UK import or export licence is required, the responsibility for applying for the licence shall rest with the Contractor. The Authority shall provide the Contractor with sufficient information, certification, documentation and other reasonable assistance in obtaining any necessary UK import or export licence.

Obtaining a licence or authorisation from a foreign government – Contractor obligations

- 18.2 When an export licence or import licence or authorisation either singularly or in combination is required from a foreign government for the performance of this Contract, the Contractor shall as soon as reasonably practicable consult with the Authority on the licence requirements and, where the Contractor or any Contractor Related Party is the applicant for the licence or authorisation the Contractor shall:
- 18.2.1 ensure that when end use or end user restrictions, or both, apply to all or part of any Contractor Deliverable (which for the purposes of this Clause 18 (*Import and Export Licences*) shall also include information, technical data and software), unless otherwise agreed with the Authority, identify in the application:
- (i) the end user as: His Britannic Majesty's Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter "**HM Government**"); and
 - (ii) the end use as: For the Purposes of HM Government; and
- 18.2.2 include in the submission for the licence or authorisation a statement that "information on the status of processing this application may be shared with the Ministry of Defence of the United Kingdom".
- 18.3 If the Contractor or any Sub-Contractor in the performance of this Contract needs to export materiel not previously supplied by or on behalf of the Authority for which an export licence or import licence or authorisation from a foreign government is required, the responsibility for instituting expeditious action to apply for and obtain the licence shall rest with the Contractor or that Sub-Contractor, provided always that for the purposes of this Clause 18 (*Import and Export Licences*) "materiel" shall mean information, technical data and items, including Articles, components of Articles and software.
- 18.4 Where this Contract performance requires the export of materiel for which a foreign export licence or import licence or authorisation is required, the Contractor shall include the dependencies for the export licence or import licence or authorisation application, grant and maintenance in the risk register for this Contract and in the risk management plan for this Contract, with appropriate review points. Where there is no requirement under this Contract for a risk management plan the Contractor shall submit this information to the Authority's Representative.
- 18.5 During the Contract Period and for a period of up to two (2) years from the end of the Contract Period, however extended in accordance with the terms of this Contract, the Authority may make a written request to the Contractor to seek a variation to the conditions to a foreign export licence or import licence or authorisation to enable the Authority to re-export or re-transfer a licensed or authorised item or licensed or authorised information from the UK to a non-licensed or unauthorised Third Party. If the Authority makes such a request, it will consult with the Contractor before making a determination of whether the Authority or the Contractor is best placed in all the circumstances to make the request. Where subsequent to such consultation the Authority notifies the Contractor that the Contractor is best placed to make such request:

- 18.5.1 the Contractor shall, or procure that the Sub-Contractors shall, expeditiously consider whether or not there is any reason why it should object to making the request and, where it has no objection, file an application to seek a variation of the applicable export licence or import licence or authorisation in accordance with the procedures of the licensing authority. Where the Contractor has an objection, the Parties shall meet within five (5) Working Days to resolve the issue and, should they fail to resolve the issue, the matter shall be escalated to an appropriate level within both Parties' organisations, to include their respective export licensing, import licensing or authorisation (as the case may be) subject matter experts; and
- 18.5.2 the Authority shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the application for the requested variation.
- 18.6 Where the Authority determines that it is best placed to make such request, the Contractor shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the Authority to make the application for the requested variation.
- 18.7 Where compliance with Clauses 18.5 and 18.6 (*Obtaining a licence or authorisation from a foreign government – Contractor obligations*) requires an amendment to this Contract, such amendment will be made and any subsequent price variation will be determined in accordance with Schedule 11 (*Change Procedure*) as an Authority Change unless the Authority, at its option, elects to require the Contractor to carry out some or all of the matters required to comply with Clauses 18.5 and 18.6 (*Obtaining a licence or authorisation from a foreign government – Contractor obligations*) in accordance with Schedule 10 (*Task Order Approvals Process*).
- 18.8 Where the Authority invokes Clauses 18.5 and 18.6 (*Obtaining a licence or authorisation from a foreign government – Contractor obligations*) the Authority will pay the Contractor's fair and reasonable costs for such service based on the cost of providing it calculated by reference to the Unit Rates, such costs to form part of the Contract Price.
- 18.9 Where the Contractor subcontracts work under this Contract, which is likely to be subject to foreign export control, import control or both, the Contractor shall use reasonable endeavours to incorporate in each Sub-Contract equivalent obligations to those set out in this Clause 18 (*Import and Export Licences*). Where it is not possible to include equivalent obligations to those set out in this Clause 18 (*Import and Export Licences*), the Contractor shall report that fact and the circumstances to the Authority.

Obtaining a licence or authorisation from a foreign government – Authority obligations

- 18.10 Without prejudice to HM Government's position on the validity of any claim by a foreign government to extra-territoriality, the Authority shall provide the Contractor with sufficient information, certification, documentation and other reasonable assistance to facilitate the granting of export licences or import licences or authorisations by a foreign Government in respect of the performance of this Contract.

- 18.11 The Authority shall provide such assistance as the Contractor may reasonably require in obtaining any UK export licences necessary for the performance of this Contract.

Contractor obligation to provide information

- 18.12 The Contractor shall use reasonable endeavours to identify whether any Contractor Deliverable is subject to:

18.12.1 a non-UK export licence, authorisation or exemption; or

18.12.2 any other related transfer or export control,

that imposes or will impose end use, end user or re-transfer or re-export restrictions, or restrictions on disclosure to individuals based upon their nationality. For the avoidance of doubt, this does not include the Intellectual Property specific restrictions of the type referred to in Schedule 14 (*IPR*).

- 18.13 If at any time during the Contract Period the Contractor becomes aware that all or any part of the Contractor Deliverables are subject to Clause 18.12.1 or 18.12.2 (*Contractor obligation to provide information*), it shall notify the Authority of this as soon as reasonably practicable by providing details in the DEFFORM 528 or other mutually agreed alternative format. Such notification shall be no later than thirty (30) days of knowledge of any affected Contractor Deliverable and in any event such notification shall be not less than thirty (30) days prior to delivery of the Contractor Deliverables.

- 18.14 If the information to be provided under Clause 18.13 (*Contractor obligation to provide information*) has been provided previously to the Authority by the Contractor under this Contract, the Contractor may satisfy these requirements by giving details of the previous notification and confirming they remain valid and satisfy the provisions of Clause 18.13 (*Contractor obligation to provide information*).

- 18.15 During the Contract Period, the Contractor shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under Clause 18.13 or 18.14 (*Contractor obligation to provide information*) of which it becomes or is aware that would affect the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those Clauses by issuing an updated DEFFORM 528 to the Authority.

- 18.16 For a period of up to two (2) years from the end of the Contract Period however extended in accordance with the terms of this Contract, and in response to a specific request by the Authority's Representative, the Contractor shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under Clause 18.13 or 18.14 (*Contractor obligation to provide information*) of which it becomes aware that would affect the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those Clauses by issuing an updated DEFFORM 528 to the Authority.

- 18.17 Where following receipt of materiel from a Sub-Contractor or any of its other suppliers, restrictions are notified to the Contractor by that Sub-Contractor, supplier or other Third Party or are identified by the Contractor, the Contractor shall immediately inform the Authority by issuing an updated DEFFORM 528. Within ten (10) Working Days of such notification, the Contractor shall propose to the Authority

actions to mitigate the impact of such restrictions. Such proposals may include, where appropriate, mutually supported attempts to obtain removal or modification to the restrictions or to obtain appropriate authorisations from the relevant foreign government. The Authority shall notify the Contractor within ten (10) Working Days of receipt of a proposal whether it is acceptable and where appropriate this Contract shall be modified in accordance with its terms to implement the proposal.

- 18.18 If the restrictions prevent the Contractor from performing its obligations under this Contract and have not been removed, modified or otherwise satisfactorily managed within a reasonable time, the Authority may at its absolute discretion elect to amend this Contract in accordance with Clause 75 (*Change*) and/or 76 (*Amendments to Contract*) or as otherwise may be provided by this Contract or to terminate this Contract. Except as set out in Clause 18.19 (*Contractor Obligation to provide Information*), in the event of termination in these circumstances termination shall be on fair and reasonable terms having regard to all the circumstances including payments already made and payments that would otherwise be due under this Contract for work successfully carried out prior to such termination, costs incurred by the Contractor and benefits received by the Authority. The Parties, acting in good faith, will use all reasonable endeavours to agree such fair and reasonable terms failing which either Party may refer the matter to Dispute Resolution Procedure.
- 18.19 In the event that the restrictions notified to the Authority pursuant to Clause 18.13 (*Contractor obligation to provide information*) were known or ought reasonably have been known by the Contractor (but were not disclosed) at Contract Award or if restrictions notified to the Authority pursuant to Clause 18.15 or 18.17 (*Contractor obligation to provide information*) were known or ought reasonably to have been known by the Contractor at the date of submission of the most recent DEFFORM 528 submitted to the Authority in accordance with Clause 18.13 (*Contractor obligation to provide information*), termination under Clause 18.18 (*Contractor obligation to provide information*) will be in accordance with Clause 69 (*Termination for Contractor Default*) and the provisions of Clause 18.23 (*Interim Position*) will not apply.

Authority obligation to provide information

- 18.20 The Authority shall use reasonable endeavours to identify any export control restrictions applying to materiel to be provided to the Contractor as GFA. Where the Authority is to provide materiel necessary to enable the Contractor to perform this Contract or in respect of which the Contractor Deliverables are to be provided, and that materiel is subject to a non-UK export licence, authorisation, exemption or other related transfer or export control as described in the provisions of Clause 18.12 (*Contractor obligation to provide information*) above, the Authority shall provide a completed DEFFORM 528 or will provide a new or updated DEFFORM 528 to the Contractor within thirty (30) days of the date of knowledge and in any case not later than thirty (30) days prior to the delivery of such materiel to the Contractor.
- 18.21 In the event that the Authority becomes aware that the DEFFORM 528 disclosure was incomplete or inaccurate or in the event additional such materiel is identified, then the Authority shall provide, as soon as reasonably practicable a new or revised DEFFORM 528. In the event that the Authority becomes aware that a prior disclosure included in DEFFORM 528 submitted to the Contractor was incomplete or inaccurate less than thirty (30) days prior to the delivery to the Contractor of any material to which the updated or new disclosure relates, the Parties will meet as soon as reasonably practicable to discuss how to mitigate the impact of the incomplete or inaccurate disclosure.

18.22 Where:

- 18.22.1 restrictions are advised by the Authority to the Contractor in a DEFFORM 528 provided pursuant to Clause 18.20 or 18.21 (*Authority obligation to provide information*); or
- 18.22.2 any of the information provided by the Authority in any DEFFORM 528 proves to be incorrect or inaccurate,

the Authority and the Contractor shall act promptly to mitigate the impact of such restrictions or incorrect or inaccurate information. Such mitigation shall include, where appropriate, mutually supported attempts to obtain removal or modification to the restrictions or to obtain appropriate authorisations from the relevant foreign government. If the restrictions or incorrect or inaccurate information adversely affect the ability of the Contractor to perform its obligations under this Contract, the matter shall be handled under the terms of Clause 75 (*Change*) and/or 76 (*Amendments to Contract*) or as may otherwise be provided by this Contract as appropriate and if no alternative solution satisfies the essential terms of this Contract and the restrictions have not been removed, modified or otherwise satisfactorily managed within a reasonable time the Authority may terminate this Contract. Termination under these circumstances will be under the terms of Clause 70 (*Break*).

Interim Position

- 18.23 Pending agreement of any amendment of this Contract as set out in Clause 18.18 (*Contractor obligation to provide information*) or 18.22 (*Authority obligation to provide information*), provided the Contractor takes such steps as are reasonable to mitigate the impact, the Contractor shall be relieved from its obligations to perform those elements of this Contract directly affected by the restrictions or provision of incorrect or incomplete information.

PART 4 - PRICE/COSTS/PAYMENT**19 Qualifying Defence Contract and QDC Reporting****Qualifying Defence Contract**

19.1 The Parties acknowledge that:

- 19.1.1 the Original Contract was not a Qualifying Defence Contract for the purposes of the DRA and SSCR;
- 19.1.2 the Parties agree that, with effect from the Effective Date for Amendment 6, this Contract is a Qualifying Defence Contract for the purposes of the DRA and the SSCR;
- 19.1.3 all payments due to the Contractor in respect of work carried out under the Original Contract on or before 31 May 2023 (whether paid or payable before, on or after 1 June 2023) shall not be subject to the rules on pricing applicable to Qualifying Defence Contracts as set out in the DRA and the SSCR (including any assessment as to whether the costs incurred in performance of the Original Contract are allowable costs as defined under such legislation) and shall be disregarded in making any 'final price

adjustment' in respect of this Contract pursuant to section 21 of the DRA and regulations 16 and 17 of SSCR.

QDC Reporting

- 19.2 The Contractor shall comply with the reporting obligations set out in the DRA and SSCR and shall utilise the DefCARS when submitting reports mandated by the DRA and associated regulations and the SSCR. The Contractor shall be deemed to have complied with the reporting obligations set out in the DRA and SSCR in respect of work carried out under the Original Contract on or before 31 May 2023.
- 19.3 Without prejudice to Clause 19.2 above and/or the Contractor's reporting obligations set out in Schedule 8 (*Governance and Management*), the Contractor shall with one (1) month of the award of this Contract submit to the SSRO and the Authority via DefCARS:
- 19.3.1 a Contract Pricing Statement (**CPS**);
 - 19.3.2 a Contract Reporting Plan (**CRP**); and
 - 19.3.3 a Contract Notification Report (**CNR**),
- and the reports set out in Clauses 19.3.1 to 19.3.3 (inclusive) shall be labelled the "**Contract Initiation Report**" (but each such report may be viewed separately).
- 19.4 Pursuant to and in accordance with the SSCR and/or the DRA in relation to the provision of contract reports relating to a QDC, the Contractor shall submit to the SSRO and the Authority via DefCARS Quarterly Contract Reports (**QCR**) for the duration of this Contract.
- 19.5 The Contractor shall submit the following mandatory SSCR end of contract reports to the SSRO and the Authority via DefCARS:
- 19.5.1 Contract Completion Report (**CCR**) within six (6) months of the expiry or sooner determination of this Contract; and
 - 19.5.2 Contract Costs Statement (**CCS**) within twelve (12) months of the expiry or sooner determination of this Contract.
- 19.6 The Contractor shall ensure that the format of all price breakdown and costs reports referred to in Clauses 19.2 to 19.5 (*QDC Reporting*) shall be in line with the format of the costs model submitted by the Contractor with its final tender submission.

20 Payment Under CP&F

- 20.1 In consideration of the Contractor performing the Contractor Deliverables, the Authority shall pay the Contract Price to the Contractor in accordance with Schedule 9 (*Pricing and Payment*) and the following provisions of this Clause 20 (*Payment Under CP&F*).
- 20.2 Payment under this Contract of the Contract Price will be made by electronic transfer and prior to submitting any invoices under Clause 20.3 (*Payment Under CP&F*) the Contractor will be required to register their details (Supplier on-boarding) on the

Contracting, Purchasing and Finance (“**CP&F**”) electronic procurement tool via the current supported CP&F gateway.

- 20.3 Where the Contractor submits an invoice to the Authority in accordance with Clause 20.2 (*Payment Under CP&F*), the Authority will consider and verify that invoice in a timely fashion.
- 20.4 The Authority shall, subject to Clause 24 (*Disputed Amounts*), pay the Contractor any sums due under such an invoice no later than a period of thirty (30) Calendar Days from the date on which the Authority has determined that the invoice is valid and undisputed.
- 20.5 Where the Authority fails to comply with its obligations in Clause 20.3 (*Payment Under CP&F*) and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of Clause 20.4 (*Payment Under CP&F*) only (and not further or otherwise) after a reasonable time has passed.
- 20.6 Neither:
- 20.6.1 the approval for payment of a valid and undisputed invoice by the Authority; or
 - 20.6.2 a failure by the Authority to comply with its obligations in Clause 20.3 (*Payment Under CP&F*) which ultimately results in an invoice being regarded as valid and undisputed (for the purposes of and in the circumstances described in Clause 20.5 (*Payment Under CP&F*)),

shall be construed as acceptance by the Authority of the performance of the Contractor's obligations or as a waiver of its rights and remedies either under this Contract or otherwise.

21 Not Used.

22 Unique Identifiers

- 22.1 Having regard to and subject to Clause 20 (*Payment under CP&F*), the Authority and the Contractor shall comply with the provisions of this Clause 22 (*Unique Identifiers*).
- 22.2 For CP&F purchase orders, the Contract or an order issued under a framework agreement will reference UOIs or URRIs, or both. The application of UOIs and URRIs is at the line item level. The Contractor must quote the applicable Unique Identifier in any communication concerning a line item.
- 22.3 For EBC contractor logistic support contracts, the Contractor will generate EUPIs in fulfilling demands raised under a contractor logistic support contract. An EUPI applies for each package and the Contractor must quote it in any communication concerning a package. Where a delivery includes more than one package, each package must have a separate EUPI.
- 22.4 Confirmation of a receipt of deliveries by Unique Identifiers shall not be construed as an acceptance of the Articles for the purposes of Clause 58 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*) or any other term of this Contract relating to acceptance by the Authority.

23 [xxx]

24 **Disputed Amounts**

24.1 The Authority may withhold payment of any amount it believes, acting reasonably, the Contractor is not entitled to pursuant to this Contract ("**Disputed Amount**") pending agreement or determination of the Contractor's entitlement in relation to the Disputed Amount. The Authority shall notify the Contractor of the reasons for withholding the Disputed Amount (together with supporting evidence) on or before the day on which the Disputed Amount would (but for this Clause 24.1 (*Disputed Amounts*)) otherwise fall due.

24.2 The Authority shall pay any undisputed amounts on or before the day on which they fall due.

24.3 Within ten (10) Working Days following receipt by the Contractor of any notice served by the Authority pursuant to Clause 24.1 (*Disputed Amounts*) (or such other notice regarding the existence of a Disputed Amount as may be served by the Authority pursuant to this Contract), the Contractor shall respond by notifying the Authority as to whether or not it agrees with the statements made in that notice and the grounds for such agreement or disagreement. If the Contractor indicates that it does agree, the Authority shall be entitled:

24.3.1 to retain on a permanent basis any amounts withheld pursuant to Clause 24.1 (*Disputed Amounts*); and

24.3.2 to reclaim from the Contractor the amount of any over-payment which may have been made to the Contractor, and reserves the right to claim interest on any such amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which the over-payment was made until that amount has been paid in full and whether before or after judgment.

24.4 If the Contractor responds pursuant to Clause 24.3 (*Disputed Amounts*) that it does not agree with all or any of the statements made in any notice served by the Authority pursuant to Clause 24.1 (*Disputed Amounts*) (or such other notice regarding the existence of a Disputed Amount as may be served by the Authority pursuant to this Contract), the matter or matters in question shall be determined under the Dispute Resolution Procedure.

24.5 If the determination of any Dispute conducted pursuant to Clause 24.4 (*Disputed Amounts*) shows that:

24.5.1 the Authority has withheld any amount which the Contractor was entitled to be paid; or

24.5.2 the Contractor has claimed under Clause 20 (*Payment under CP&F*) any amount which it was not entitled to be paid,

the Authority shall pay such amount to the Contractor or the Contractor shall repay such amount to the Authority (as relevant) with interest (if applicable) in each case on that amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which payment should have been made (in the case of a failure to pay by the Authority) or from the date on which the over payment was made

(in the case of excessive claims by the Contractor) until all relevant monies have been paid in full and whether before or after judgment.

25 Payment of Bills Using The Bankers Automated Clearing Service System

- 25.1 The Authority shall make payment to the Contractor of all valid claims submitted for payment in accordance with Clause 20 (*Payment under CP&F*) by means of the Bankers Automated Clearing Service ("**BACS**") directly into the Contractor's nominated bank account. To facilitate payment by means of the BACS system, the Contractor shall provide the Authority in advance of the submission of valid claims, if he has not already done so, details of the name and address of his bank, the sort code and account number.

26 Not Used.

27 Recovery of Sums Due

- 27.1 Whenever, under this Contract, any sum of money shall be recoverable from or payable by the Contractor, the same may be deducted from any sum then due, or which at any time thereafter may become due, to the Contractor under this Contract, or under any other contract with the Authority or with any Government Department.
- 27.2 Without prejudice to any other right or remedy, the Authority reserves the right to set off any amount owing at any time from the Contractor to the Authority against any amount payable by the Authority to the Contractor under the Contract or under any other contract with the Authority, or with any other Government Department.

28 VAT and Other Taxes and Plastic Packaging Tax

VAT and Other Taxes

- 28.1 All sums payable under this Contract exclude any UK output VAT and any similar EU (or non EU) taxes chargeable on the provision of the Contractor Deliverables by the Contractor to the Authority.
- 28.2 If the Contractor is required by UK VAT Law to be registered for UK VAT (or has registered voluntarily for UK VAT purposes) in respect of its business activities at the time of any provision, and the circumstances of any provision are such that the Contractor is liable to pay the tax due to HM Revenue and Customs ("**HMRC**"), the Authority shall pay to the Contractor, in addition to the Contract Price (or any other sum due to the Contractor), a sum equal to the output VAT chargeable on the tax value of the provision of the Contractor Deliverables, and all other payments under this Contract according to the law at the relevant tax point.
- 28.3 The Contractor is responsible for the determination of VAT liability. The Contractor is to consult its customer compliance manager or the HMRC enquiries desk (and not the Authority's Representative) in cases of doubt. The Contractor shall notify the Authority's Representative of the Authority's VAT liability under this Contract and any changes to it within twenty (20) Working Days of becoming aware the liability is other than at the standard rate of VAT. In the event of any doubt about the applicability of the tax in such cases, the Authority's Representative may require the Contractor to obtain and pass to the Authority a formal opinion from HMRC. The Contractor shall promptly comply with any such Authority requirement. Where the Contractor obtains an opinion from HMRC, it shall supply a copy to the Authority within three (3)

Working Days of receiving such opinion unless it proposes to challenge such opinion. Where the Contractor challenges such opinion it shall supply to the Authority a copy of the final opinions issued by HMRC on completion of the challenge within three (3) Working Days of receiving such opinion.

- 28.4 Where the provision of the Contractor Deliverables comes within the scope of UK VAT, but the Contractor is not required by UK VAT Law to be registered for UK VAT (and has not registered voluntarily), the Authority shall be responsible for assessing and paying over directly to HMRC any UK output VAT due in respect of the Contractor Deliverables. The Contractor shall be responsible for ensuring that it takes into account any changes in VAT Law and VAT Law regarding registration.
- 28.5 Where the Contractor Deliverables are deemed to be provided to the Authority outside the UK, the Contractor may be required by the laws of the country where the supply takes place to register there for EU (or non-EU) turnover or similar tax. In that event, the Authority shall pay to the Contractor, in addition to the Contract Price (and any other sum due to the Contractor under this Contract) a sum equal to the tax the Contractor is liable to pay to the tax authorities of the country in question in relation to the Contractor Deliverables within thirty (30) Working Days of a written request for payment of any such sum by the Contractor.
- 28.6 In relation to the Contractor Deliverables supplied under the Contract the Authority shall not be required to pay any sum in respect of the Contractor's input VAT (and/or similar EU and non-EU input taxes). However, these input taxes will be allowed where it is proven to the Authority that, despite the Contractor having taken all reasonable steps to recover them, it has not been possible to do so. Where there is any doubt that the Contractor has complied with this requirement either Party may resolve this matter by reference to the Dispute Resolution Procedure.
- 28.7 Should HMRC assess that the Contractor has incorrectly determined the VAT liability, in accordance with Clause 28.2(VAT), the Authority will pay the VAT assessed by HMRC or the Contractor shall credit any VAT paid by the Authority over and above the HMRC assessment (as applicable). In the event that HMRC so determines, the Contractor shall pay any interest charged on any assessment and/or penalties directly to HMRC. Such interest or penalties or both shall not be recoverable from the Authority under this Contract or any other contract. The Contractor shall supply the Authority with a copy of all correspondence between HMRC and the Contractor's advisors regarding the VAT assessment within three (3) Working Days of a written request from the Authority's Representative for such correspondence.
- 28.8 Where the Contractor is a qualifying company or qualifying partnership for the purposes of any UK tax legislation the Contractor shall notify the Authority's Commercial Officer, in writing, where it has notified HMRC that a return it has delivered to HMRC includes an uncertain amount that relates to a contract it has entered into with the Authority. The Contractor shall notify the Authority within twenty (20) Working Days of the notification it has provided to HMRC and provide the Authority with a copy of the notification. The Contractor shall continue to keep the Authority informed of any correspondence and/or discussions with HMRC in relation to the uncertain tax treatment within a reasonable time frame or upon request by the Authority.
- 28.9 In the event that HMRC notifies the Contractor of any change to the tax treatment of a previously notified uncertain amount, the Contractor shall notify the Authority and

provide a copy of HMRC's notification and assessment within twenty (20) Working Days of receiving such notification and assessment.

- 28.10 The Authority shall not be liable for any interest and/or penalty that the Contractor is required to pay to HMRC for a failure to notify HMRC of an uncertain amount.

Plastic Packaging Tax

- 28.11 For the purposes of Clauses 28.11 to 28.20, the following words and expressions shall have the meaning set out below:

28.11.1 "**PPT Legislation**" means the legislative provisions set out in Part 2 and Schedules 9-15 of the Finance Act 2021 together with any secondary legislation made under powers contained in Part 2 of the Finance Act 2021. This includes, but is not limited to, The Plastic Packaging Tax (Descriptions of Products) Regulations 2021 and The Plastic Packaging Tax (General) Regulations 2022;

28.11.2 "**PPT**" means a tax called "plastic packaging tax" charged in accordance with Part 2 of the Finance Act 2021;

28.11.3 "**Plastic Packaging Component(s)**" shall have the same meaning as set out in Part 2 of the Finance Act 2021 together with any associated secondary legislation.

- 28.12 The Contractor shall ensure that any PPT due in relation to this Contract is paid in accordance with the PPT Legislation.

- 28.13 The Contract Price includes any PPT that may be payable by the Contractor in relation to this Contract.

- 28.14 On reasonable notice being provided by the Authority, the Contractor shall provide and make available to the Authority details of any PPT it has paid that relates to this Contract.

- 28.15 The Contractor shall notify the Authority, in writing, in the event that there is any adjustment required to the Contract Price in accordance with section 70 of the Finance Act 2021 and, on reasonable notice being provided by the Authority, the Contractor shall provide any such information that the Authority requires in relation to any such adjustment.

- 28.16 In accordance with Clause 39 (*The Contractor's Records*) the Contractor (and its Sub-Contractors) shall maintain all records relating to PPT and make them available to the Authority when requested on reasonable notice for reasons related to this Contract.

- 28.17 Where the Contractor manufactures, purchases or imports into the UK any Plastic Packaging Component in relation to this Contract the Contractor shall, on reasonable notice being given, provide the Authority with such information and documentation that it requires to enable the Authority to carry out due diligence checks and satisfy itself that the Contractor has complied with the requirements of the PPT Legislation. This shall include, but is not limited to the Contractor providing:

28.17.1 confirmation of the tax status of any Plastic Packaging Component;

- 28.17.2 documents to confirm that PPT has been properly accounted for;
 - 28.17.3 product specifications for the packaging components, including, but not limited to, the weight and composition of the products and any other product specifications that may be required; and
 - 28.17.4 copies of any certifications or audits that have been obtained or conducted in relation to the provision of Plastic Packaging Components.
- 28.18 The Authority shall have the right, on providing reasonable notice, to physically inspect or conduct an audit on the Contractor, to ensure any information that has been provided in accordance with Clause 28.17 above is accurate.
- 28.19 In the event the Contractor is not required to register for PPT it (and to the extent applicable, its Sub-Contractors) shall provide the Authority with a statement to this effect and, to the extent reasonably required by the Authority on reasonable notice, supporting evidence for that statement.
- 28.20 The Contractor shall provide, on the Authority providing reasonable notice, any information that the Authority may require from the Contractor for the Authority to comply with any obligations it may have under the PPT Legislation.

PART 5 - PERFORMANCE AND REMEDIES

29 Key Performance Indicators and Performance Monitoring

- 29.1 The Parties shall comply with the provisions of Schedule 9 (*Pricing and Payment*), Schedule 6 (*Incentivisation*) and Schedule 8 (*Governance and Management*).
- 29.2 Without prejudice to Schedule 9 (*Pricing and Payment*), Schedule 6 (*Incentivisation*) and Schedule 8 (*Governance and Management*), the Authority, the Authority's Representative and any agents or consultants of the Authority (such agents and consultants to be subject to the Contractor's consent, not to be unreasonably withheld or delayed) may, between the hours of 8:30 am to 17:30 pm on any Monday to Friday (which is a Working Day (under limb (a) of that definition) and with reasonable prior notice (having regard to any co-location working which the Contractor hereby confirms will require a short notice period of no more than one (1) hour), undertake inspection of any of the Contractor Deliverables, and make any audit or check of any aspect of the Contractor's performance of this Contract as required by the Authority or where the same shall have been requested by the National Audit Office. The Contractor shall promptly provide all reasonable co-operation in relation to any inspection, audit or check.
- 29.3 Without prejudice to Clause 29.2 (*Key Performance Indicators and Performance Monitoring*), the Authority may undertake its own performance monitoring at any time for any purpose in relation to this Contract (and for any UK Government purposes as requested by the Authority from time to time with the consent of the Contractor (such consent not to be unreasonably withheld or delayed)), including in order to ensure that the Contractor Deliverables are being provided in accordance with this Contract.

30 Technical Assistance to the Authority

- 30.1 The Contractor acknowledges that the Authority:

- 30.1.1 may (from time to time) use the services of personnel from other Government Departments to assist with managerial, technical and/or other support in relation to this Contract, the EvO Contract, any MORPHEUS Contract, the MORPHEUS Programme and/or other BATCIS Activities; and
- 30.1.2 may (from time to time) use the services of specialist commercial organisations to provide managerial, technical and/or other support in relation to this Contract, the EvO Contract, any MORPHEUS Contract, the EvO System, the MORPHEUS System, the MORPHEUS Programme and/or other BATCIS Activities, such specialist organisations being, as at the date of this Contract, those listed in Schedule 12 (*Technical Assistance*) together with any person with whom either or both of the Parties may be required to liaise and/or communicate for the purposes of this Contract and the wider aims of the Authority in connection with the Contractor Deliverables, the EvO Contract, any MORPHEUS Contract, the EvO System, the MORPHEUS System, the MORPHEUS Programme and/or other BATCIS Activities,

and the Contractor agrees that, in such circumstances, such personnel and such organisations shall be deemed to be approved representatives (and for the purposes of the DRA and SSCR, authorised persons) of the Authority and the Contractor shall make available such information (and/or consents to such information being made available (as the case may be) to such personnel and such organisations) and/or facilities as are necessary to enable such personnel and/or such organisations to fulfil their obligations to the Authority.

31 Authority Performance Failures

- 31.1 Subject to the provisions of Clauses 31.8 to 31.13 (*Discretionary GFA*) (inclusive), if and to the extent that a GFA Failure is the direct cause of the Contractor's inability to provide the Contractor Deliverables or perform any of its other obligations under this Contract or of the degradation of the Contractor's performance against the KPI regime set out in Schedule 6 (*Incentivisation*), then subject to Clause 31.2 (*Authority Performance Failures*) the Contractor is entitled, save where the GFA Failure has been caused by any act or omission of the Contractor or any Contractor Related Party under this Contract and/or any default, negligence and/or breach as described in Clause 7 (*Interdependent Contracts*), to apply for relief from those of its obligations that it is unable to perform as a direct result of such GFA Failure. If such act or omission of the Contractor or any Contractor Related Party and/or any default, negligence and/or breach as described in Clause 7 (*Interdependent Contracts*) has contributed to the GFA Failure, the Contractor's entitlement to relief shall be reduced by an amount proportional to such contribution to the GFA Failure.
- 31.2 To obtain relief pursuant to Clause 31.1 (*Authority Performance Failures*) the Contractor shall:
- 31.2.1 as soon as practicable, and in any event within twenty (20) Working Days after it became aware that the GFA Failure has adversely affected or is likely to adversely affect the ability of the Contractor to provide the Contractor Deliverables or to perform its obligations, give to the Authority a notice of its claim for relief from its obligations under this Contract;

- 31.2.2 as soon as practicable and in any event within ten (10) Working Days of service on the Authority of the notice referred to in Clause 31.2.1 (*Authority Performance Failures*) notify the Authority of full details which are available in respect of the GFA Failure and the relief claimed;
- 31.2.3 comply with the provisions of this Clause 31 (*Authority Performance Failures*), the provisions of Schedule 6 (*Incentivisation*), the provisions of Schedule 8 (*Governance and Management*) and the provisions of Schedule 9 (*Pricing and Payment*);
- 31.2.4 demonstrate to the reasonable satisfaction of the Authority that:
- (i) the GFA Failure was the direct cause of the Contractor's inability to provide the Contractor Deliverables or perform any of its other obligations under this Contract or of the degradation of the Contractor's performance against the KPI regime set out in in Schedule 6 (*Incentivisation*); and
 - (ii) the relief claimed could not reasonably be expected to be mitigated or recovered by the Contractor acting in accordance with Good Industry Practice, without incurring material expenditure; and
- 31.2.5 continue to perform its obligations under this Contract subject to the constraints of the GFA Failure.
- 31.3 If and to the extent that the Contractor has complied with its obligations under this Clause 31 (*Authority Performance Failures*), then:
- 31.3.1 the Authority shall not be entitled to exercise its rights arising as a result of the GFA Failure to terminate this Contract; and
- 31.3.2 the Authority shall give the Contractor such relief from its obligations as the Authority considers is reasonable for such a GFA Failure, in accordance with the procedures described in Schedule 9 (*Pricing and Payment*) and Schedule 6 (*Incentivisation*).
- 31.4 If information referred to in this Clause 31 (*Authority Performance Failures*) is provided by the Contractor after the dates referred to in this Clause 31 (*Authority Performance Failures*) then the Contractor shall not be entitled to any relief in respect of the period for which the information is delayed.
- 31.5 The Contractor shall notify the Authority if at any time it realises or becomes aware of any information relating to the GFA Failure, giving details of that information, to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.
- 31.6 If the Parties cannot agree the extent of any relief from the Contractor's obligations under this Contract or the Authority disagrees that any GFA Failure has occurred (or as to its consequences), or that the Contractor is entitled to any relief under this Clause 31 (*Authority Performance Failures*) the Parties shall resolve the matter in accordance with the Dispute Resolution Procedure.

- 31.7 The Contractor shall not be entitled to any common law or equitable rights (including rights to damages or to any other rights under contract, tort or otherwise) in relation to the occurrence or subsistence of any GFA Failure.

Discretionary GFA

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

- 31.8.1 provide a detailed description of the proposed Discretionary GFA;
- 31.8.2 detail the period during which the proposed Discretionary GFA is required to be used by the Contractor and/or any Sub-Contractor;
- 31.8.3 confirm how the Contractor and/or any Sub-Contractor intends to use such proposed Discretionary GFA;
- 31.8.4 describe any benefits to the Authority arising as the result of the Authority providing such proposed Discretionary GFA; and
- 31.8.5 identify any other relevant issues relating to the intended use by the Contractor and/or any Sub-Contractor of the proposed Discretionary GFA (including any impact on the provisions of this Contract and the performance by the Contractor of the Contractor Deliverables which may arise as the result of provision by the Authority of the proposed Discretionary GFA (including any proposed changes to Schedule 6 (*Incentivisation*) and Schedule 7 (*Authority Obligations*) or the relevant Task Order)).

- 31.9 The Authority's Representative may (but shall not be obliged to) consider any Contractor notice issued in accordance with Clause 31.8 (*Discretionary GFA*). If the Authority's Representative does consider such notice, he may (but shall not be obliged to) respond to the Contractor by an Authority notice to be issued to the Contractor at any time following receipt of the relevant Contractor notice, such Authority notice (if issued by the Authority's Representative) shall:

- 31.9.1 require further information relating to the subject matter of the notice and/or invite the Contractor to discuss the proposal further at a time and place convenient to the Authority's Representative; and
- 31.9.2 identify any additional contractual and/or other provisions which the Authority requires to be incorporated into the Contract as a condition of providing the proposed Discretionary GFA; or
- 31.9.3 confirm that the Authority does not wish to provide the proposed Discretionary GFA.

- 31.10 The Contractor confirms that:

- 31.10.1 subject to Clause 31.10.2, Clauses 59.1, 59.2, 59.4 59.8 (other than the reference to such Clause being subject to Clause 59.11), 59.9, 59.12, 59.13, 59.14 and 59.15 (*Issued Property*), Clause 60 (*Accounting for the property of the Authority*), Clause 62.2 (*Transport*), shall (as a minimum)

apply to any Discretionary GFA which is provided by the Authority to the Contractor following a request pursuant to this Clause 31.8 (*Discretionary GFA*) and Clauses 59.3, 59.5, 59.6, 59.7, 59.10, 59.11 (*Issued Property*) shall not apply to any such Discretionary GFA;

31.10.2 prior to providing any proposed Discretionary GFA:

- (i) where any amendments to Clauses 59.1, 59.2, 59.4, 59.8 59.9, 59.12, 59.13, 59.14 and 59.15 (*Issued Property*), Clause 60 (*Accounting for the property of the Authority*), Clause 62.2 (*Transport*) (each as referred to in Clause 31.10.1 (*Discretionary GFA*)) are required by the Authority and/or where any additional contractual provisions are required by the Authority following or subsequent to the matters contemplated in Clauses 31.9.1 and 31.9.2 (*Discretionary GFA*), such amendments and/or additional contractual provisions shall be incorporated into this Contract by means of a Contractor Change Notice (provided always that the Authority subsequently agrees to such Contractor Change Notice) to be issued by the Contractor within a reasonable period following receipt of the Authority's notice and/or conclusion of the discussions referred to in Clauses 31.9.1 and 31.9.2 (*Discretionary GFA*) and the provisions of Schedule 11 (*Change Procedure*) shall apply; and
- (ii) where no amendments or additional contractual provisions are required by the Authority as contemplated in Clause 31.10.2(i) above or after a Change, when the procedures outlined in Clause 31.10.2 (i) above have been followed, the relevant proposed Discretionary GFA shall be set out in the table forming Part 3 (*Discretionary GFA*) to Schedule 7 (*Authority Obligations*) or the relevant Task Order, identifying:
 - (A) the nature of the Discretionary GFA;
 - (B) the date the Discretionary GFA is required by the Contractor and/or the Sub-Contractor;
 - (C) the period the Contractor and/or the Sub-Contractor requires the Discretionary GFA;
 - (D) any matters relating to the use by the Contractor and/or the Sub-Contractor of the Discretionary GFA; and
 - (E) any additional matters relating to the Discretionary GFA as may be agreed by the Parties (including any packaging or delivery instructions),

and the provisions of Clauses 31.12 and 31.13 (*Discretionary GFA*) and Clause 32 (*Indemnity and Liabilities*) shall apply.

31.11 Notwithstanding any agreement between the Parties as to the period during which the Contractor and/or any Sub-Contractor may have use of any Discretionary GFA, the Authority's Representative may require any Discretionary GFA to be returned to the Authority or delivered to any Third Party at any place within the United Kingdom by notice in writing to the Contractor's Representative and the Contractor shall return

or deliver such Discretionary GFA in accordance with any requirements set out in the notice and within three (3) Working Days of receipt of such notice (and the provisions of Clause 59.14 (*Issued Property*) shall apply to the return of the Discretionary GFA).

31.12 The Authority does not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any Discretionary GFA which it makes available to the Contractor and neither the Authority nor any of their agents or employees shall be liable to the Contractor in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of:

31.12.1 any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in any Discretionary GFA which it provides to the Contractor; or

31.12.2 the provision by the Authority of any Discretionary GFA and/or any requirement of the Authority for the Contractor to return any Discretionary GFA earlier than previously agreed by the Parties (in accordance with Clause 31.12 (*Discretionary GFA*)) and/or any failure to make available to the Contractor any Discretionary GFA (whether or not the provision of the Discretionary GFA was the subject of a Change).

31.13 Neither the provision by the Authority of any Discretionary GFA nor failure by the Authority to provide any Discretionary GFA shall:

31.13.1 give the Contractor any right under this Contract to an extension of time or additional payment or damages or any other relief or remedy whatsoever against the Authority;

31.13.2 give rise to a GFA Failure (other than to the extent that the GFA Failure is a direct result of the Authority failing to comply with its obligations in Clause 10.3 (*Necessary Consents*) and where the Contractor has fully satisfied its obligations in Clause 10.1.2 (*Necessary Consents*));

31.13.3 affect, modify, reduce or extinguish either the obligations of the Contractor under this Contract or the rights or remedies of the Authority under this Contract; or

31.13.4 subject to Clauses 31.8.5 and 31.9.2 (*Discretionary GFA*), be taken to amend, add to, delete or waive any term or condition of this Contract.

32 Indemnity and Liabilities

Unlimited liabilities

32.1 Neither Party limits its liability for:

32.1.1 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable) including, in the case of the Contractor, any Contractor Related Party;

32.1.2 fraud or fraudulent misrepresentation by it or its employees;

- 32.1.3 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
- 32.1.4 any liability to the extent it cannot be limited or excluded by Law.
- 32.2 The financial caps on liability set out in Clauses 32.3 and 32.4 below shall not apply to the following:
- 32.2.1 for any indemnity given by the Contractor to the Authority under this Contract, including but not limited to:
- (i) the Contractor's indemnity in relation to paragraph 9 (*IPR Indemnities*) of Schedule 14 (*IPR*);
 - (ii) the Contractor's indemnity in relation to TUPE under Schedule 21 (*Transfer Regulations*);
- 32.2.2 for any indemnity given by the Authority to the Contractor under this Contract, including but not limited to:
- (i) not used;
 - (ii) the Authority's indemnity in relation to TUPE under Schedule 21 (*Transfer Regulations*);
- 32.2.3 breach by the Contractor of Clause 45 (*Protection of Personal Data*) and Data Protection Legislation; and
- 32.2.4 to the extent it arises as a result of a Default by either Party, any fine or penalty incurred by the other Party pursuant to Law and any costs incurred by such other Party in defending any proceedings which result in such fine or penalty.
- 32.2.5 For the avoidance of doubt any payments due from either of the Parties to the other in accordance with the DRA and/or the SSCR, as amended from time to time, shall not be excluded or limited under the provisions of Clause 32.3 and/or Clause 32.4 below.

Financial limits

- 32.3 [xxx]
- 32.3.1 on any agreed extension to the Contract Period, the limitation of the Contractor's total liability (in aggregate) set out in Clauses **Error! Reference source not found.** and **Error! Reference source not found.** above shall be fully replenished such that on and from each such exercise or extension of the Contract Period, the Authority shall be able to claim up to the full value of the limitation set out in Clauses **Error! Reference source not found.** and **Error! Reference source not found.**
- 32.4 Subject to Clauses 32.1, 32.2 and 32.5, and to the maximum extent permitted by Law, the Authority's total liability (in aggregate) whether in contract, in tort (including negligence), under warranty, under statute or otherwise under or in connection with

this Contract shall in respect of all liabilities (taken together) be limited to the Contract Price paid by the Authority in the relevant Year in respect of any and all claims in that Year.

- 32.5 Clause 32.4 shall not exclude or limit the Contractor's right under this Contract to claim for that part of the Contract Price due and payable by the Authority in the relevant Year.

Consequential loss

- 32.6 Subject to Clauses 32.1, 32.2 and 32.7, neither Party shall be liable to the other Party or to any Third Party, whether in contract (including under any warranty), in tort (including negligence), under statute or otherwise for or in respect of:

- 32.6.1 indirect loss or damage;
- 32.6.2 special loss or damage;
- 32.6.3 consequential loss or damage;
- 32.6.4 loss of profits (whether direct or indirect);
- 32.6.5 loss of turnover (whether direct or indirect);
- 32.6.6 loss of business opportunities (whether direct or indirect); or
- 32.6.7 damage to goodwill (whether direct or indirect),

even if that Party was aware of the possibility of such loss or damage to the other Party.

- 32.7 The provisions of Clause 32.6 shall not restrict the Authority's ability to recover any of the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Contractor:

- 32.7.1 any additional operational and administrative costs and expenses arising from the Contractor's Default, including any costs paid or payable by the Authority:
 - (i) to any Third Party;
 - (ii) for putting in place workarounds for the Contractor Deliverables and other deliverables that are reliant on the Contractor Deliverables; and
 - (iii) relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
- 32.7.2 any or all wasted expenditure and Losses incurred by the Authority arising from the Contractor's Default, including wasted management time;
- 32.7.3 the additional cost of procuring and maintaining in place transitional assistance and replacement deliverables for the remainder of the Contract Period and agreed extension to the Contract Period (including legal and

other consultants' fees, re-procurement project costs, other expenses associated with such exercise and any increase in the fees for the replacement services over and above the Contract Price that would have been payable for the relevant Contractor Deliverables);

- 32.7.4 any Losses arising in connection with the loss, destruction, corruption, inaccuracy or degradation of Authority Data, or other data or software, including, to the extent the Authority Data, other data or software can be recovered or reconstituted, the fees, costs and expenses of reconstituting such Authority Data, data or software;
- 32.7.5 damage to the Authority's physical property and tangible assets, including damage under Clauses 52 (*The Contractor's Property and Personnel at Government Establishments*) and 58 (*Issued Property*);
- 32.7.6 costs, expenses and charges arising from, or any damages, account of profits or other award made for, infringement of any Third Party Intellectual Property Rights or breach of any obligations of confidence;
- 32.7.7 any additional costs incurred by the Authority in relation to the Authority's contracts with a Third Party and/or Other Contractor (including any compensation or interest paid to a Third Party by the Authority) as a result of the Default (including the extension or replacement of such contracts);
- 32.7.8 any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty; or
- 32.7.9 any savings, discounts or price reductions during the Contract Period and any agreed extension to the Contract Period committed to by the Contractor pursuant to this Contract.

Invalidity

- 32.8 If any limitation or provision contained or expressly referred to in this Clause 32 (*Indemnity and Liabilities*) is held to be invalid under any Law, it will be deemed to be omitted to that extent, and if any Party becomes liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this Clause 32 (*Indemnity and Liabilities*).

Third Party and/or Other Contractor claims or losses

- 32.9 Without prejudice to any other rights or remedies the Authority may have under this Contract (including but not limited to any indemnity claim under paragraph 9 (*IPR Indemnities*) to Schedule 14 (*IPR*) or at Law), the Authority shall be entitled to make a claim under this Contract against the Contractor in respect of any Losses incurred by the Authority which arise out of a claim made against the Authority by a Third Party and/or Other Contractor under any contract with that Third Party and/or Other Contractor provided that such Third Party and/or Other Contractor claim:
 - 32.9.1 arises naturally and ordinarily as a result of the Contractor's failure to provide the Contractor Deliverables or failure to perform any of its obligations under this Contract; and

- 32.9.2 is a type of claim or loss that would have been recoverable under this Contract if the Third Party and/or Other Contractor were a Party to this Contract (whether as the Authority or the Contractor), such claim to be construed as direct Losses for the purpose of this Contract.

No double recovery

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

Contractor liability to any Third Party and conduct of claims

- 32.11 Except where otherwise expressly stated in this Contract, nothing contained in this Contract shall affect any liability the Contractor may have to a Third Party arising out of its default, performance or non-performance or its negligent act or omission or wilful misconduct and shall not be construed as an indemnity by the Authority against any claims originating with Third Parties, provided that if a claim is raised directly against the Authority but in respect of which the Authority is entitled to an indemnity from the Contractor, then the Authority shall, subject to Clauses 32.11.1 to 32.11.4 (*Indemnity and Liabilities*) below, allow the Contractor to have conduct of the claim at its own cost provided that the Contractor:

- 32.11.1 gives reasonable security to the Authority for any costs or liability arising out of the conduct of the claim by the Contractor;
- 32.11.2 consults with and keeps the Authority reasonably informed of the conduct of the claim;
- 32.11.3 does not settle or compromise or prejudice the defence to any such claim without the prior consent of the Authority (not to be unreasonably withheld or delayed); and
- 32.11.4 does not bring the name of the Authority into disrepute in any way in its conduct of the action,

and provided always that notwithstanding the foregoing the Authority shall at all times have the right to refuse to allow the Contractor to have conduct of the claim if the Authority considers that conduct of the claim should be retained by the Authority on grounds of national interest including national security.]

33 Insurances

- 33.1 Without prejudice to its obligation to indemnify or otherwise be liable to the Authority under this Contract, the Contractor shall for the periods specified in Schedule 13 (*Required Insurances*) take out and maintain, or procure the taking out and maintenance of insurances in accordance with the requirements specified in Schedule 13 (*Required Insurances*) and any other insurances required by Law (together the "**Required Insurances**"). The Contractor shall ensure that the Required Insurances are effective in each case not later than the date on which the relevant risk commences.

- 33.2 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.
- 33.3 Where specified in Schedule 13 (*Required Insurances*), the Contractor shall ensure that the relevant policy of insurance shall contain an indemnity to principals clause or additional insureds equivalent, under which the Authority shall be indemnified in respect of claims made against the Authority arising from death or bodily injury or Third Party property damage, and for which the Contractor is legally liable in respect of this Contract.
- 33.4 The Contractor shall not (and the Contractor shall procure that none of its Sub-Contractors of any tier shall not) take any action or fail to take any action or, insofar as is reasonably within its power, permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Required Insurances.
- 33.5 If the Contractor is in breach of Clause 33.1 (*Insurances*), the Authority may elect, but shall not be obliged, to purchase any insurance which the Contractor is required to maintain pursuant to this Contract but has failed to maintain in full force and effect, and the Authority shall be entitled to recover the premium and other reasonable costs incurred in connection therewith as a debt due from the Contractor.
- 33.6 The Contractor shall, upon the date of this Contract and within fifteen (15) Working Days after the renewal of any of the Required Insurances, provide evidence, in a form satisfactory to the Authority, that the Required Insurances are in full force and effect and meet the requirements of this Clause 33 (*Insurances*) and Schedule 13 (*Required Insurances*). The supply to the Authority of any evidence of insurance cover in compliance with the requirements of this Clause 33.6 (*Insurances*) shall not imply acceptance by the Authority that the extent of insurance cover is sufficient or that the terms and conditions thereof are satisfactory, in either case, for the purposes of this Contract nor be a waiver of the Contractor's liability under this Contract.
- 33.7 The Contractor shall notify the Authority at least ten (10) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Required Insurances.
- 33.8 The Contractor shall promptly notify to insurers any matter arising from, or in relation to, the Contractor Deliverables and/or this Contract for which it may be entitled to claim under any of the Required Insurances. In the event that the Authority receives a claim relating to the Contractor Deliverables or this Contract, the Contractor shall co-operate with the Authority and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.
- 33.9 Except where the Authority is the claimant party, the Contractor shall notify the Authority immediately (such notification to be accompanied by reasonable particulars of the incident or circumstances giving rise to such incident) after any:
- 33.9.1 [xxx]
- 33.9.2 if the incident or circumstances may give rise to any claim in connection with this Contract which may be in excess of the limits of Required Insurances in Schedule 13 (*Required Insurances*).

- 33.10 The Contractor shall maintain a written register of all Losses which result in a claim under the Required Insurances in connection with this Contract and shall allow the Authority to review such register at any time.
- 33.11 Where any Required Insurance requires payment of a premium, the Contractor shall be liable for such premium.
- 33.12 Where any Required Insurance referred to in Schedule 13 (*Required Insurances*) is subject to an excess or deductible, below which the indemnity from insurers is excluded, the Contractor shall be liable for such excess or deductible which would otherwise be insured but for the excess or deductible. The Contractor shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Required Insurances whether under the terms of this Contract or otherwise.
- 33.13 Not Used.

34 States of Emergency, Periods of Tension, Transition to War and Hostilities

- 34.1 The Contractor shall continue to provide the Contractor Deliverables required in peace, during any state of emergency (whether or not involving hostilities), periods of tension, in transition to war, during hostilities and in any period of surge. The Contractor shall provide all the Contractor Deliverables throughout such period of the state of emergency, tension, transition to war or hostility unless directed otherwise by the Authority. The Authority shall advise the Contractor of any changes or additions to the Contract requirements and the provisions of Clause 75 (*Change*) shall apply, provided that the agreement or determination of any Change pursuant to Clause 75 (*Change*) shall not relieve the Contractor of its obligation to comply with the Authority's directions under this Clause 34 (*States of Emergency, Periods of Tension, Transition to War and Hostilities*) in the period up to the agreement or determination of such Change.

35 Not Used.

36 Authority Step-In

Grounds for Step-In

- 36.1 Subject to Clause 36.2 (*Grounds for Step-In*), if the Authority:
- 36.1.1 reasonably believes that it needs to take action in connection with the Contractor Deliverables:
- (i) because a serious risk exists to the health or safety of persons or property or to the environment;
 - (ii) to discharge a statutory duty;
 - (iii) on the occurrence of an urgent operational requirement;
 - (iv) because a breach by the Contractor would result in a significant interruption in the delivery of the whole or part of the Contractor Deliverables; and/or

- (v) because a breach by the Contractor and/or the occurrence or subsistence of certain circumstances is reasonably likely to:
 - (A) cause the Authority to be in breach of its obligations under the EvO Contract and/or any MORPHEUS Contract;
 - (B) result in a delay to the delivery of the MORPHEUS Programme (or any part of the MORPHEUS Programme), the MORPHEUS System and/or the EvO System; and/or
 - (C) to the extent that the Contractor is required to undertake the whole or any part of any BATCIS Activities as a result of the issue of a Task Order in accordance with this Contract, result in a delay to the carrying out and/or completion of the whole or any part of any BATCIS Activities,

then the Authority shall be entitled to take action in accordance with this Clause 36 (*Authority Step-In*).

- 36.2 Save in the case of emergency, the Authority shall give the Contractor reasonable prior written notice of its intention to take action pursuant to Clause 36.1 (*Grounds for Step-In*), and the Parties shall discuss the relevant circumstances in which the Authority intends to take action and perform the Contractor Deliverables and the level of assistance reasonably required by the Authority from the Contractor.

Procedure for Authority Step-In

- 36.3 If Clause 36.1 (*Grounds for Step-In*) applies and the Authority wishes to take action, the Authority's Representative shall notify (the "**Step-In Notice**") the Contractor's Representative in writing of the following:

- 36.3.1 the action it wishes to take;
- 36.3.2 the reason for such action;
- 36.3.3 the date it wishes to commence such action;
- 36.3.4 the time period which it believes shall be necessary for such action; and
- 36.3.5 to the extent practicable, the effect on the Contractor and its obligation to provide the Contractor Deliverables during the period such action is being taken.

Following service of the Step-In Notice and without prejudice to Clause 36.2 (*Grounds for Step-In*), the Contractor may make representations to the Authority regarding the contents of such notice. The Authority shall take such action as notified under Clause 36.3 (*Procedure for Authority Step-In*) (the "**Required Action**") and the Contractor shall give such reasonable assistance to the Authority while it is taking the Required Action.

Effects of Step-In without the Contractor's Breach

36.4 If the Contractor is not in breach of its obligations under this Contract and the Authority exercises its right to take action in connection with the Contractor Deliverables pursuant to Clause 36.1 (*Grounds for Step-In*):

36.4.1 then for so long as and to the extent that the Required Action and the actions under the Step-Out Plan (as defined in Clause 36.7.2 (*Authority Step-Out*)) are taken and this prevents the Contractor from providing the Contractor Deliverables, the Contractor shall be relieved from its obligations to provide such part of the Contractor Deliverables as the Authority is undertaking and any element of the Contractor Deliverables which the Contractor is unable to provide as a direct result of the Authority taking the Required Action; and

36.4.2 in respect of the period in which the Authority is taking the Required Action and the actions under the Step-Out Plan, and provided that the Contractor provides the Authority with reasonable assistance (such assistance to be at the expense of the Authority to the extent incremental costs are incurred), the Contract Price due from the Authority to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations and providing the Contractor Deliverables affected by the Required Action in full over that period and in addition the amount of any incremental costs incurred and the Authority shall continue to pay the Contractor in accordance with the payment plan as detailed in Schedule 9 (*Pricing and Payment*).

Effects of Step-In following the Contractor's Breach

36.5 If the Contractor is in breach of its obligations under this Contract and the Authority exercises its right to take action in connection with the Contractor Deliverables pursuant to Clause 36.1 (*Grounds for Step-In*):

36.5.1 then for so long as and to the extent that the Required Action is taken, and this prevents the Contractor from providing the Contractor Deliverables, the Contractor shall be relieved from its obligations to provide such part of the Contractor Deliverables as the Authority is undertaking and any element of the Contractor Deliverables which the Contractor is unable to provide as a direct result of the Authority taking the Required Action; and

36.5.2 in respect of the period in which the Authority is taking the Required Action, the Contract Price due from the Authority to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations and providing the Contractor Deliverables affected by the Required Action in full over that period and the Authority shall continue to pay the Contractor in accordance with the payment plan as detailed in Schedule 9 (*Pricing and Payment*) less an amount equal to the Authority's reasonable and properly incurred costs of taking the Required Action.

Authority Step-Out

36.6 The Authority's Representative shall provide the Contractor's Representative with reasonable notice of the Authority's intention to cease the performance of the Required Action ("**Step-Out**") and the date on which it intends to do so.

- 36.7 On receipt of the notice referred to in Clause 36.6 (*Authority Step-Out*), the Parties shall jointly agree:
- 36.7.1 the method by which the Authority shall Step-Out; and
 - 36.7.2 a step out plan (a “**Step-Out Plan**”) which shall include the actual date that the Authority shall step out and the Contractor shall resume performance of the Contractor Deliverables.
- 36.8 Subject to Clause 36.7 (*Authority Step-Out*), on the date on which the obligations contained in the Step-Out Plan have been achieved:
- 36.8.1 the Authority will be released from all of its obligations and liabilities in relation to the Required Action and the Step-Out Plan other than its obligations to pay the Contractor as required in this Clause 36 (*Authority Step-In*); and
 - 36.8.2 the Contractor shall resume all or any part of the Contractor Deliverables which was the subject of the Required Action.

PART 6 - INFORMATION PROVISIONS

37 Authority Data

- 37.1 For the purposes of this Clause 37 (*Authority Data*), “**Authority Data**” means:
- 37.1.1 the data, text, drawings, diagrams or images (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and:
 - (i) which are supplied to the Contractor by or on behalf of the Authority; or
 - (ii) which the Contractor is required to generate, process, store or transmit and which are material to the performance of this Contract; or
 - 37.1.2 any Personal Data for which the Authority is the Controller,
- provided that, for the avoidance of doubt, the term Authority Data does not imply any ownership rights in any Authority Data pursuant to this Clause 37 (*Authority Data*).
- 37.2 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 37.3 The Contractor shall not store, copy, disclose, modify, adapt or use the Authority Data except as necessary for the performance by the Contractor of its obligations under this Contract (and in accordance with the relevant licence rights set out in Schedule 14 (*IPR*)), or as otherwise expressly authorised in writing by the Authority.
- 37.4 To the extent that Authority Data is held and/or processed by the Contractor, the Contractor shall supply that Authority Data to the Authority as requested by the Authority in the format reasonably specified by the Authority from time to time and/or

specified in the Statement of Requirements (in each case at no additional cost to the Authority).

- 37.5 The Contractor shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data.
- 37.6 The Contractor shall perform secure back-ups of all electronic Authority Data held on the Contractor's IT systems and shall ensure that up-to-date back-ups are stored in accordance with Good Industry Practice and the Business Continuity Plans and the Contractor shall procure (as reasonably required by the Authority) that the Sub-Contractors perform secure back-ups of all electronic Authority Data held on the Sub-Contractor's IT systems. The Contractor shall ensure that such back-ups are made available to the Authority (or to such other person as the Authority may direct) at all times upon request and are delivered to the Authority at no less than six (6) monthly intervals (or such other intervals as may be agreed by the Parties in writing).
- 37.7 The Contractor shall ensure that any electronic system on which the Contractor holds any Authority Data, including back-up data, is a secure system that complies with GovS 007: Security.
- 37.8 If the Authority Data is corrupted, lost or sufficiently degraded so as to be unusable as a result of the Contractor's failure to fulfil its obligations under this Contract and/or exercise reasonable skill and care, the Authority may:
- 37.8.1 require the Contractor (at the Contractor's expense) to restore or procure the restoration of Authority Data and the Contractor shall do so as soon as practicable but not later than five (5) Working Days from the date of receipt of the Authority's notice; and/or
- 37.8.2 itself restore or procure the restoration of Authority Data, in any manner reasonably available to it and shall be repaid by the Contractor any reasonable expenses incurred directly in doing so.
- 37.9 If at any time the Contractor suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.

Malicious Software

- 37.10 The Contractor shall, as an enduring obligation throughout the term of this Contract and without prejudice to its obligations in Schedule 2 (*Statement of Requirements*):
- 37.10.1 use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus vendor (unless otherwise agreed in writing between the Parties) to check for, contain the spread of, and minimise the impact of any Malicious Software in the Contractor System; and
- 37.10.2 use all reasonable endeavours to ensure that neither it nor any Contractor Related Party introduces any Malicious Software into the Authority System.
- 37.11 Notwithstanding Clause 37.10 (*Malicious Software*), if Malicious Software is found, the Parties shall cooperate to reduce the effect of the Malicious Software and,

particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any losses.

37.12 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 37.11 (*Malicious Software*) shall be borne by the Parties as follows:

37.12.1 by the Contractor where such Malicious Software has been introduced

- (i) by the Contractor and/or any Contractor Related Party, including where such Malicious Software originates from the Contractor System, any Third Party software supplied by the Contractor or the Authority Data (whilst the Authority Data was under the control of the Contractor) unless the Contractor can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Authority when provided to the Contractor; or
- (ii) by a Third Party as a result of a security vulnerability in the Contractor System or any Third Party software supplied by the Contractor and/or a failure by the Contractor to comply with Clause 37.10 (*Malicious Software*); and

37.12.2 otherwise by the Authority.

38 Authority Disclosed Data

38.1 Subject to Clause 38.3 (*Authority Disclosed Data*) the Authority does not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any data disclosed by the Authority prior to and/or after the Effective Date and neither the Authority nor any of their agents or employees shall be liable to the Contractor in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of:

38.1.1 any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in any data disclosed by the Authority prior to and/or after the Effective Date; or

38.1.2 any failure to make available to the Contractor prior to and/or after the Effective Date any materials, documents, drawings, plans or other information relating to this Contract.

38.2 The Contractor acknowledges that any data (including all information provided by the Authority to the Contractor for the purposes of assisting the Contractor to carry out the Contractor Deliverables or providing contextual or other information relating to the Contractor Deliverables and/or the MORPHEUS Programme and/or other related contracts and procurements) is data for the purposes of this Clause 38 (*Authority Disclosed Data*) and, for the avoidance of doubt, in addition to the restriction of liability of the Authority as set out in Clause 38 (*Authority Disclosed Data*), the Contractor shall not be entitled to any relief from its obligations under this Contract in the event that any of such data disclosed by the Authority is as described in Clause 38.1.1 (*Authority Disclosed Data*) and/or is not made available to the Contractor as described in Clause 38.1.2 (*Authority Disclosed Data*).

- 38.3 Nothing in this Clause 38 (*Authority Disclosed Data*) shall exclude any liability which the Authority or any of its agents or employees would otherwise have to the Contractor in respect of any statements made fraudulently or fraudulent omissions to make statements prior to and/or after the Effective Date.

39 The Contractor's Records

- 39.1 The Contractor shall (and shall procure that its Sub-Contractors shall) at all times, and in accordance with Good Industry Practice, maintain all records in the possession, custody or control of the Contractor (or the Sub-Contractor (as the case may be)) relating to this Contract and the provision of the Contractor Deliverables (without prejudice to any other express provisions in this Contract relating to such information):

- 39.1.1 of all incidents relating to health, safety, the environment and security which occur during the Contract Period to the extent that the Authority is not legally obliged to do so as owner of the Authority Sites;
- 39.1.2 of all claims made by a Third Party against either Party that are submitted to the Contractor and/or a Sub-Contractor in connection with this Contract;
- 39.1.3 of all claims made under any policy of insurance that the Contractor is required to maintain pursuant to Clause 33 (*Insurances*);
- 39.1.4 of all Disputes dealt with pursuant to the Dispute Resolution Procedure that arise during the Contract Period;
- 39.1.5 of all certification and/or authorised documentation relating to the attainment of Necessary Consents, Third Party quality standards and/or evidence of compliance with any specified Def Stan requirements;
- 39.1.6 relating to hazardous substances pursuant to Clause 57 (*Supply of Hazard Data*); and
- 39.1.7 any of the Contractor owned Intellectual Property Rights, the Contractor's use of Authority owned Intellectual Property Rights and records relating to applicable Third Party Intellectual Property Rights,

(the "**Records**") and without prejudice to Clause 41 (*Disclosure of Information*) and Clause 46 (*Intellectual Property Rights*) make the Records available to be examined and if necessary, copied, by or on behalf of the Authority, as the Authority may reasonably require when requested upon reasonable notice.

- 39.2 The Authority shall be entitled to disclose the Records set out in Clause 39.1 (*The Contractor's Records*) to potential Follow-On Contractors as the Authority may reasonably require.

- 39.3 The Records shall be retained for a period of at least six (6) years from:

- 39.3.1 the end of the Contract Period; or
- 39.3.2 the final payment,

whichever occurs latest.

40 Financial Management Information

40.1 The Contractor shall, as a minimum:

- 40.1.1 report the Financial Management Information to the Authority as detailed in and in the format required in DEFCON 647, Annex A and Annex B;
- 40.1.2 comply with the provisions of Schedule 24 (*Outcomes and Open Book Data and Audit Reports*);
- 40.1.3 provide the Financial Management Information to the Authority's Representative:
 - (i) within twenty (20) Working Days after the Effective Date;
 - (ii) where applicable, within ten (10) Working Days of the end of a Contract Month in which there [xxx]
 - (iii) on the twenty-fifth (25th) day in each Contract Month or, where the twenty-fifth (25th) day in a Contract Month is not a Working Day, the first Working Day preceding the twenty-fifth (25th) day in such Contract Month ; and
- 40.1.4 retain the Financial Management Information and evidence on activity completed to support the Financial Management Information in accordance with Clause 39.3 (*The Contractor's Records*). This evidence must be released to the Authority if requested within ten (10) Working Days.

41 Disclosure of Information

- 41.1 In this Clause 41 (*Disclosure of Information*), "**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 Contract, including information provided in the tender or negotiations which preceded Contract Award;
- 41.2 Subject to Clauses 41.5 to 41.10 (*Disclosure of Information*), each Party:
 - 41.2.1 shall treat in confidence all Information it receives from the other;
 - 41.2.2 shall not disclose any of that Information to any Third Party without the prior written consent of the other Party, which consent shall not unreasonably be withheld, except that the Contractor may disclose Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of this Contract;
 - 41.2.3 shall not use any of that Information otherwise than for the purpose of this Contract; and
 - 41.2.4 shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under this Contract.

- 41.3 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 Contract:
- 41.3.1 is disclosed to its Employees and Sub-Contractors, only to the extent necessary for the performance of this Contract; and
 - 41.3.2 is treated in confidence by them and not disclosed except with prior written consent or used otherwise than for the purpose of performing work or having work performed for the Authority under this Contract or any Sub-Contract.
- 41.4 The Contractor shall ensure that its Employees and Sub-Contractors are aware of its arrangements for discharging the obligations at Clauses 41.2 and 41.3 (*Disclosure of Information*) before they receive Information and take such steps as may be reasonably practical to enforce such arrangements.
- 41.5 A Party shall not be in breach of Clauses 41.2, 41.3, 41.7, 41.8 and 41.9 (*Disclosure of Information*) to the extent that either Party:
- 41.5.1 exercises rights of use or disclosure granted otherwise than in consequence of, or under, this Contract;
 - 41.5.2 has the right to use or disclose the Information in accordance with other conditions of this Contract; or
 - 41.5.3 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 Contract or any other agreement between the Parties;
 - (ii) that the Information was already known to it (without restrictions on disclosure or use) prior to it receiving it under or in connection with this Contract;
 - (iii) that the Information was received without restriction on further disclosure from a Third Party who lawfully acquired it and who is under no obligation restricting its disclosure; or
 - (iv) from its records that the same information was derived independently of that received under or in connection with this Contract,
- provided the relationship to any other Information is not revealed.
- 41.6 Neither Party shall be in breach of this Clause 41 (*Disclosure of Information*) 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 41 (*Disclosure of Information*).

41.7 The Authority may disclose the Information:

- 41.7.1 to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body, which shall include: disclosure to the Cabinet Office and/or HM Treasury for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes. Where such a disclosure is made the Authority shall ensure that the recipient is made aware of its confidentiality;
- 41.7.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- 41.7.3 subject to Clause 41.8, to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions and/or for the facilitation of any engagement by any TAF Member in the Tactical Architecture Forum and/or to assist any Other Contractor to perform and/or comply with its obligations to the Authority;
- 41.7.4 subject to Clause 41.8, on a confidential basis to a professional adviser, consultant or other person engaged by any Central Government Body and/or the Authority (including benchmarking organisation) for any purpose relating to or connected with this Contract;
- 41.7.5 on a confidential basis for the purpose of the exercise of its rights under this Contract; or
- 41.7.6 on a confidential basis to a proposed body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 41 (*Disclosure of Information*).

- 41.8 Where the Authority intends to disclose Information to a commercial entity which is not a Central Government Body in accordance with Clauses 41.7.3 or 41.7.4, the Authority will endeavour to provide the Contractor with three (3) Working Days' notice in advance of such disclosure. In relation to a disclosure of Information made under Clause 41.7.3, if reasonably requested by the Contractor within two (2) Working 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 41 (*Disclosure of Information*).
- 41.9 Before sharing any Information in accordance with Clause 41.7 (*Disclosure of Information*), the Authority may redact the Information. Any decision to redact Information made by the Authority shall be final.
- 41.10 The Authority shall not be in breach of this Contract where it can show that any disclosure of Information is made solely and to the extent necessary to comply with the FOI Act or the Environmental Information Regulations 2004 ("**the Regulations**"). To the extent permitted by the time for compliance under the FOI Act or the

Regulations, the Authority shall consult the Contractor where the Authority is considering the disclosure of Information under the FOI Act or the Regulations and, in any event, shall provide prior notification to the Contractor of any decision to disclose the Information. The Contractor acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose Information in order to comply with the FOI Act or the Regulations is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the FOI Act or the Regulations. For the avoidance of doubt, nothing in this Clause 41 (*Disclosure of Information*) shall affect the Contractor's rights at law.

- 41.11 Nothing in this Clause 41 (*Disclosure of Information*) shall affect the Parties' obligations of confidentiality where information is disclosed orally in confidence.

Controlled Information

- 41.12 This Clause 41.12 (*Controlled Information*) and Clauses 41.13 to 41.15 (*Controlled Information*) (inclusive) shall apply in respect of any Controlled Information communicated to and/or held by the Contractor, in addition to and notwithstanding Clauses 41.1 to 41.11 (*Disclosure of Information*) (inclusive), or any other confidentiality Clause of this Contract.

- 41.13 The Contractor shall:

- 41.13.1 hold the Controlled Information and not use it other than for the purpose of discharging its obligations under this Contract;
- 41.13.2 not copy the Controlled Information except as strictly necessary for the purpose of discharging its obligations under this Contract;
- 41.13.3 not disclose the Controlled Information to any Third Party unless so authorised in writing beforehand by the Authority;
- 41.13.4 protect the Controlled Information diligently against unauthorised access and against loss; and
- 41.13.5 act diligently to ensure that:
 - (i) Controlled Information is disclosed to its Employees only to the extent necessary for the purpose of discharging its obligations under this Contract; and
 - (ii) Employees to whom Controlled Information is disclosed are made aware of and required to comply with the terms of these Clauses 41.12 to 41.15 (*Controlled Information*) (inclusive).

- 41.14 Where Controlled Information is provided to the Contractor, it shall:

- 41.14.1 compile a register of that Controlled Information, which shall include an explicit description of the Controlled Information, a record of the number of copies made and a record of all access to the Controlled Information including access to any copies of the Controlled Information;

- 41.14.2 maintain such register for the duration of this Contract and for two (2) Years following expiry or earlier termination of this Contract in accordance with its terms;
- 41.14.3 make such register of access available to the Authority upon reasonable notice for inspection and audit for so long as it is required to be maintained under Clause 41.14.2 (*Controlled Information*); and
- 41.14.4 on expiry or earlier termination of this Contract in accordance with its terms, return to the Authority all original and duplicate copies of the Controlled Information, or else at the Authority's option destroy these copies and provide a certificate of destruction to the Authority.
- 41.15 Nothing in these Clauses 41.12 to 41.15 (*Controlled Information*) (inclusive) shall diminish or extinguish any right of the Contractor to copy, use or disclose any information that is not Controlled Information to the extent that it can show:
- 41.15.1 that the information concerned was or has become published or publicly available for use without breach of any provision of this Contract or any other agreement between the Parties;
- 41.15.2 that such information was already known to it (without restrictions on disclosure or use) prior to receiving it under or in connection with this Contract;
- 41.15.3 that the information concerned was lawfully provided by a Third Party without restriction on use or further disclosure; or
- 41.15.4 from its records, that such information was derived independently of the Controlled Information,
- to the extent that copying, use or disclosure of such other information shall not disclose its relationship to any Controlled Information.

Publicity and Communications with the Media

41.16 [xxx]

42 QDC: Confidentiality of Single Source Contract Regulations Information

42.1 In this Clause 42 (*QDC: Confidentiality of Single Source Contract Regulations Information*), the following words and expressions shall have the meaning given to them, except where the context requires a different meaning:

"Single Source Contract Regulations Information" ("SSCR Information") and **"Open Book and Reporting Information" ("OBR Information")** (and, for the purposes of this Clause 42, SSCR Information and OBR Information shall be referred to collectively as OBR Information), means any confidential information in any written or other tangible form, which relates to the Contract disclosed by the Contractor to the Authority or obtained by the Authority, and being of a type specified in Regulation 56(1) (but not including information described in Regulation 56(3)(h) to (n)) of the SSCR, relating to this Contract. It shall not include information that:

- 42.1.1 is or becomes generally available to the public other than as a result of its disclosure by the Authority or a Central Government Body, or the professional advisers or consultants of the Authority, in breach of the provisions of this Contract, the DRA, the SSCR or of any other obligation of confidence owed to the Party to whom the information relates;
- 42.1.2 was, is or becomes available to the Authority on a non-confidential basis from a person who, to the Authority's knowledge, is not bound by a confidentiality agreement with the Contractor or otherwise prohibited from disclosing the information to the Authority;
- 42.1.3 was lawfully in the possession of the Authority before the information was disclosed to it by the Contractor;
- 42.1.4 the Parties agree in writing is not confidential or may be disclosed; or
- 42.1.5 relates to the terms of the Original Contract.
- 42.2 The Authority shall keep OBR Information confidential and, except with the prior written consent of the Contractor, shall not disclose or make available the OBR Information in whole or in part to any person, except as expressly permitted by this Clause 42 (*QDC: Confidentiality of Single Source Contract Regulations Information*).
- 42.3 The Authority may disclose the OBR Information in all circumstances which would be permitted disclosures under section 5(1) of Schedule 5 of the DRA.
- 42.4 Where the Authority discloses OBR Information to any Central Government Body under Clause 42.3 (*QDC: Confidentiality of Single Source Contract Regulations Information*), the Authority shall ensure that the recipient of the OBR Information is made aware of and asked to respect its confidentiality.
- 42.5 Where the Authority discloses OBR Information to its professional advisers or consultants under Clause 42.3 (*QDC: Confidentiality of Single Source Contract Regulations Information*), the Authority shall inform them of the confidential nature of the OBR Information before disclosure and shall obtain from them enforceable obligations to keep the OBR Information confidential in terms at least as extensive and binding on them as the terms of this Clause 42 (*QDC: Confidentiality of Single Source Contract Regulations Information*) are on the Authority.
- 42.6 To the extent permitted by the time for compliance under the FOI Act, the Authority shall consult the Contractor where the Authority is considering the disclosure of OBR Information under the FOI Act, and, in any event, shall provide prior notification to the Contractor of any decision to disclose the OBR Information. The Contractor acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose OBR Information in order to comply with the FOI Act is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the FOI Act. For the avoidance of doubt, nothing in this Clause 42 (*QDC: Confidentiality of Single Source Contract Regulations Information*) shall affect the Contractor's rights at law.
- 42.7 If, for the purposes of this Contract, the Contractor enters into a Sub-Contract which it has assessed to be a Qualifying Sub-contract for the purpose of the DRA and SSCR, it shall include in that Sub-Contract the terms set out in the Appendix to

DEFCONs 812, 813 and 814 (inserting relevant party names and/or definitions where appropriate).

- 42.8 The obligations set out in this Clause 42 (*QDC: Confidentiality of Single Source Contract Regulations Information*) shall be the Authority's sole contractual obligations of confidentiality regarding the OBR Information. Any other provision of this Contract relating to the confidentiality of information provided under or in connection with this Contract, including but not limited to Clause 41 (*Disclosure of Information*), shall be construed in such a way as to exclude the OBR Information from their application.
- 42.9 Nothing in this Clause 42 (*QDC: Confidentiality of Single Source Contract Regulations Information*) shall affect the Authority's obligations of confidentiality where information is disclosed orally in confidence.
- 42.10 The Contractor shall notify the Authority if, at any time, it considers (acting reasonably) that any of the information contained within any Contractor Deliverable constitutes OBR Information and shall identify which part (or parts) constitutes such information.

43 Transparency

- 43.1 For the purpose of this Clause 43 (*Transparency*):
- 43.1.1 "**Sensitive Information**" means the information listed in DEFFORM 539A attached at Schedule 26 (*DEFFORMS*) being information notified by the Contractor to the Authority, which is acknowledged by the Authority as being sensitive, at the point at which the Contract is entered into or amended (as relevant) and remains sensitive information at the time of publication;
- 43.1.2 "**Publishable Performance Information**" means any of the information in DEFFORM 539B KPI Data Report attached at Schedule 26 (*DEFFORMS*) as it relates to a Key Performance Indicator where it is expressed as publishable in the table in DEFFORM 539B which shall not contain any information which is exempt from disclosure which shall be determined by the Authority; and which shall not constitute Sensitive Information;
- 43.1.3 "**Transparency Information**" means the content of the Contract in its entirety, including from time to time agreed changes to the Contract, except for (i) any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004 (EIR), which shall be determined by the Authority, and (ii) any Sensitive Information.
- 43.2 Notwithstanding any other term of the Contract, including Clause 41 (*Disclosure of Information*) where applicable, the Contractor understands that the Authority may publish the Publishable Performance Information and the Transparency Information to the general public.
- 43.3 Subject to Clause 43.4, the Authority shall publish and maintain an up-to-date version of the Transparency Information and Publishable Performance Information in a format readily accessible and reusable by the general public under an open licence where applicable.

- 43.4 If, in the Authority's reasonable opinion, publication of any element of the Transparency Information and Publishable Performance Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information and Publishable Performance Information in its entirety. Accordingly, the Authority acknowledges that it shall only exclude Transparency Information and Publishable Performance Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication on that basis, it will provide a clear statement to the general public explaining the categories of information that have been excluded from publication and reasons for withholding that information.
- 43.5 The Contractor shall assist and co-operate with the Authority as reasonably required to enable the Authority to publish the Transparency Information and Publishable Performance Information, in accordance with the principles set out above, including through compliance with the requirements relating to the preparation of Publishable Performance Information set out in Schedule 26 (*DEFFORMS*). Where the Authority publishes Transparency Information, it shall:
- 43.5.1 before publishing, redact any information that would be exempt from disclosure if it was the subject of a request for information under the FOIA and/or the EIR, for the avoidance of doubt, including Sensitive Information;
- 43.5.2 taking into account the Sensitive Information set out in DEFFORM 539A, 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
- 43.5.3 present information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Contract is being performed.

44 Accuracy of Information

- 44.1 The Contractor shall be responsible for the accuracy of all drawings, documentation, information and/or other items supplied to the Authority by the Contractor in connection with the provision of the Contractor Deliverables.

45 Protection of Personal Data

- 45.1 Both Parties acknowledge that there is no processing of Personal Data associated with or intrinsic to the performance of this Contract. The incidental exchange of Personal Data for the purpose of communication to give effect to this Contract or the business relationship is not considered to be processing of Personal Data by either Party on behalf of the other.
- 45.2 The Contractor shall notify the Authority promptly if it considers that any of the Authority's instructions obligate the Contractor to take on the role of Processor under the Data Protection Legislation beyond that which is contemplated in Clause 45.1.

The Authority agrees that the Contractor shall not be required to provide legal advice to the Authority and that such notification (or absence of notification) by the Contractor will not be construed as legal advice or representation by the Contractor.

- 45.3 Should the Contract be amended to require the Contractor to process Personal Data as a Processor on behalf of the Authority as a result of Clause 45.2 or otherwise the Contract will be amended to include DEFCON 532B and DEFFORM 532 in accordance with the provisions of Clause 76 (*Amendments to Contract*). Where the Contract is amended to include processing of Personal Data as a joint Controller, the Parties agree that they shall amend the Contract to include appropriate contractual clauses, including but not limited to clauses dealing with notification in the event of a Personal Data Breach and requests from Data Subjects for access to their Personal Data.
- 45.4 Notwithstanding Clause 45.1, each Party undertakes to comply with its obligations as Controller under the Data Protection Legislation.

45A Official-Sensitive Security Requirements

- 45A.1 The Contractor shall protect (including protection from deliberate and /or opportunistic attack) all Information relating to the aspects designated as "OFFICIAL" and "OFFICIAL SENSITIVE" as identified in the Security Aspects Letter in accordance with the security conditions contained at Schedule 25 (*Security Conditions*).
- 45A.2 The Contractor shall include the requirements and obligations set out in Clause 45A.1 (*Official-Sensitive Security Requirements*) in any Sub-Contract placed in connection with or for the purposes of this Contract which requires disclosure of OFFICIAL-SENSITIVE Information to the Sub-Contractor or under which any Information relating to aspects designated as OFFICIAL-SENSITIVE is created by the Sub-Contractor. The Contractor shall also include in the Sub-Contract a requirement for the Sub-Contractor to flow the requirements of this Clause 45A (*Official-Sensitive Security Requirements*) to its Sub-Contractors and through all levels of the supply chain to the lowest level where any OFFICIAL-SENSITIVE Information is handled.

45B NOT USED

PART 7 - INTELLECTUAL PROPERTY RIGHTS

46 Intellectual Property Rights

- 46.1 The Parties shall comply with their respective rights and obligations in Schedule 14 (*IPR*).

PART 8 - SECURITY PROVISIONS

47 Security – Secret Matters

- 47.1 In this Clause 47 (*Security – Secret Matters*):
- 47.1.1 "Secret Matter" means any matter connected with this Contract, or its performance which is designated by the Authority in the Security Aspects Letter or otherwise in writing as 'Top Secret' or 'Secret', and shall include

any information concerning the content of such matter and anything which contains or may reveal that matter;

47.1.2 “**Employee**” shall include any person who is an employee or director of the Contractor or who occupies the position of a director of the Contractor, by whatever title given; and

47.1.3 “**GovS 007: Security**” has the meaning given it in Schedule 1 (*Definitions and Acronyms*).

Official Secrets Acts

47.2 The Contractor shall:

47.2.1 take all reasonable steps to make sure that all Employees engaged on any work in connection with this Contract have notice that the Official Secrets Acts 1911-1989 apply to them and will continue so to apply after the completion or termination of this Contract;

47.2.2 if directed by the Authority, make sure that any such Employees shall sign a statement acknowledging that, both during the term of this Contract and after its completion or termination, he is bound by the Official Secrets Acts 1911-1989 (and where applicable by any other legislation); and

47.2.3 make sure that any such Employees are aware that all provisions of the Security Aspects Letter and any other statutory provisions and/or guidance provided by the Authority to the Contractor from time to time, apply to such Employees and will continue so to apply after the completion or termination of this Contract.

Security Measures

47.3 Unless it has the written authorisation of the Authority to do otherwise, neither the Contractor nor any of its Employees shall, either before or after the completion or termination of this Contract, do or permit to be done anything which they know or ought reasonably to know may result in Secret Matter being disclosed to or acquired by a person in any of the following categories:

47.3.1 who is not a British citizen;

47.3.2 who does not hold the appropriate authority for access to the protected matter;

47.3.3 in respect of whom the Authority has notified the Contractor in writing that the Secret Matter shall not be disclosed to or acquired by that person;

47.3.4 who is not an Employee of the Contractor; or

47.3.5 who is an Employee of the Contractor and has no need to know the information for the proper performance of this Contract.

47.4 Unless it has the written authorisation of the Authority to do otherwise, the Contractor and its Employees shall, both before and after the completion or termination of this Contract, take all reasonable steps to ensure that:

- 47.4.1 no photograph of, or pertaining to, any Secret Matter shall be taken and no copy of or extract from any Secret Matter shall be made except to the extent necessary for the proper performance of this Contract; and
- 47.4.2 any Secret Matter is at all times strictly safeguarded in accordance with the GovS 007: Security (as amended from time to time) and, upon request, is delivered up to the Authority who shall be entitled to retain it.

A decision of the Authority on the question of whether the Contractor has taken or is taking reasonable steps as required by this Clause 47 (*Security – Secret Matters*) shall be final and conclusive.

47.5 The Contractor shall:

- 47.5.1 provide to the Authority:
- (i) upon request, such records giving particulars of those Employees who have had, at any time, access to any Secret Matter that is required to be kept in accordance with Clause 47.4.2 (*Security – Secret Matters*);
 - (ii) upon request, such information as the Authority may from time to time require so as to be satisfied that the Contractor and its Employees are complying with its obligations under this Clause 47 (*Security – Secret Matters*), including the measures taken or proposed by the Contractor so as to comply with its obligations and to prevent any breach of them; and
 - (iii) full particulars of any failure by the Contractor and its Employees to comply with any obligations relating to any Secret Matter arising under this Clause 47 (*Security – Secret Matters*) immediately upon such failure becoming apparent; and
- 47.5.2 ensure that, for the purpose of checking the Contractor's compliance with the obligation in Clause 47.4.2 (*Security – Secret Matters*), a representative of the Authority shall be entitled at any time to enter and inspect any premises used by the Contractor which are in any way connected with this Contract and inspect any document or thing in any such premises, which is being used or made for the purposes of this Contract. Such representative shall be entitled to all such information as he may reasonably require.

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

Sub-Contracts

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

- 47.7.1 submit for approval of the Authority the name of the proposed Sub-Contractor, a statement of the work to be carried out and any other details known to the Contractor which the Authority shall reasonably require;
- 47.7.2 incorporate into the Sub-Contract the terms of the Appendix to DEFCON 659A (*Security Measures*) and such secrecy and security obligations as the Authority shall direct. In the appendix "Agreement" shall mean the "Sub-Contract", "First Party" shall mean "the Contractor" and "Second Party" shall mean the "Sub-Contractor"; and
- 47.7.3 inform the Authority immediately if it becomes aware of any breach by the Sub-Contractor of any secrecy or security obligation and, if requested to do so by the Authority, terminate the Sub-Contract.

Termination

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

- 47.8.1 the Contractor is in breach of any obligation under this Clause 47 (*Security – Secret Matters*); or
- 47.8.2 the Contractor is in breach of any secrecy or security obligation imposed by any other contract with the Crown,

where the Authority considers that the circumstances of the breach jeopardise the secrecy or security of the Secret Matter and claim such damages as may have been sustained as a result of the Contractor's breach of this Clause 47 (*Security – Secret Matters*).

Acknowledgement by the Contractor

47.9 By entering into this Contract, the Contractor confirms that:

- 47.9.1 it has received the Security Aspects Letter;
- 47.9.2 the Secret Matter has been brought to the attention of the person directly responsible for the security of this Contract;
- 47.9.3 the nature and details of the Secret Matter are understood; and
- 47.9.4 measures will be taken to safeguard the Secret Matter in accordance with the requirements of this Clause 47 (*Security – Secret Matters*).

Submission of Security Information

47.10 The Contractor shall submit all information required to be submitted under this Clause 47 (*Security – Secret Matters*) to:

[xxx]

or such other address as may be notified in writing by the Authority to the Contractor from time to time.

48 Personnel Security

48.1 Without prejudice to the provisions of Clauses 48.2 and 48.3 (*Personnel Security*), if the Authority considers that any of the Employees are for any reason unsatisfactory to the Authority, it may:

48.1.1 refuse admission to the relevant person(s) to the Authority Site and/or any Other Contractor's Premises; and/or

48.1.2 direct the Contractor to end the involvement of the relevant person(s) in the provision of the Contractor Deliverables,

and the Contractor shall replace and/or procure the replacement of any such Employees as soon as reasonably practicable, whilst ensuring that any Key Role is not vacant for a period exceeding ten (10) Working Days.

48.2 The Contractor shall ensure and/or procure that the Employees comply with all reasonable requirements of the Authority and/or Other Contractor (as the case may be) concerning conduct at Authority Sites and/or any Other Contractor's Premises and make themselves familiar with and at all times shall conduct themselves in accordance with any rules and regulations as issued from time to time by the Authority in relation to the relevant Authority Site and/or by the Authority and/or any Other Contractor in relation to any Other Contractor's Premises.

48.3 The Authority reserves the right to refuse access to, or remove anyone from any Authority Site and/or any Other Contractor's Premises who fails to comply with the applicable rules and regulations.

48.4 Should an Employee be refused access to, or be removed from an Authority Site and/or any Other Contractor's Premises for failure to comply with applicable rules and regulations, the Contractor shall not be relieved from its obligations to provide the Contractor Deliverables in full.

Security Clearance

48.5 The Contractor shall be responsible for ensuring that each Employee holds and maintains a valid security clearance up to and including "Secret" level at all times during their employment or engagement in connection with this Contract.

Admission to Authority Sites and/or Other Contractor's Premises

48.6 The Contractor shall provide the Authority with details of each Employee and any other details the Authority may require, together with details of the Authority Site and/or any Other Contractor's Premises to which access is required and the capacity in which such person is concerned with the provision of the Contractor Deliverables.

48.7 The Authority shall:

48.7.1 in respect of any access required to an Authority Site, issue a pass for all Employees who are security cleared to an appropriate level for the Authority Site pursuant to Clause 48.5 (*Security Clearance*); and/or

48.7.2 in respect of access to any Other Contractor's Premises and to the extent required by such Other Contractor as a condition to granting access to

such Other Contractor's Premises, use reasonable endeavours to procure the issue of a pass for all Employees who are security cleared to an appropriate level for such Other Contractor's Premises,

in each case on or before such person is intended to enter onto an Authority Site and/or such Other Contractor's Premises (as the case may be) in connection with the provision of the Contractor Deliverables. Passes shall remain the property of the Authority or the Other Contractor (as the case may be) and the Contractor shall ensure that passes shall be surrendered on demand or on termination or expiry of this Contract.

- 48.8 A person not in possession of a pass who is required by the Contractor or any Sub-Contractor to attend an Authority Site and/or (to the extent that a pass is required any Other Contractor's Premises (as the case may be) to provide emergency reactive services shall be allowed temporary admission to the Authority Site and/or (where permitted by the Other Contractor) the Other Contractor's Premises (as the case may be) provided that the Contractor shall, or shall procure that any Sub-Contractor shall, ensure that such individual is accompanied at all times whilst on the Authority Site and/or such Other Contractor's Premises (as the case may be) by a member of the Contractor or Sub-Contractor's staff who has been issued with a pass pursuant to Clause 48.5 (*Security Clearance*).
- 48.9 Whilst engaged at the Authority's Sites and/or any Other Contractor's Premises (as the case may be), the Contractor shall, and shall procure that any Sub-Contractor shall, ensure that all Employees and other accompanied emergency reactive workers pursuant to Clause 48.8 (*Admission to Authority Sites and/or Other Contractor's Premises*) comply with the Authority's policies and/or those of the Other Contractor (as the case may be) as notified to the Contractor from time to time relating to the conduct of staff and security arrangements.
- 48.10 Notwithstanding the provisions of Clauses 48.6 to 48.9 (*Personnel Security*) (inclusive), the Authority and/or any Other Contractor (as the case may be) may refuse any person admission to an Authority Site and/or any Other Contractor's Premises (as the case may be) or require the removal of any person from an Authority Site and/or any Other Contractor's Premises (as the case may be):
- 48.10.1 if such person is not in possession of a pass pursuant to Clause 48.7 (*Admission to Authority Sites and/or Other Contractor's Premises*) or is not an accompanied emergency reactive worker pursuant to Clause 48.8 (*Admission to Authority Sites and/or Other Contractor's Premises*);
- 48.10.2 if such person, in the Authority's or Other Contractor's (as the case may be) opinion, represents a risk to themselves and/or an Authority Related Party and/or any other Third Party and/or property and the Authority has given written notice to the Contractor's Representative to this effect;
- 48.10.3 if the Authority and/or Other Contractor has reasonable grounds for considering that the presence or conduct of such person at the Authority Site and/or such Other Contractor's Premises (as the case may be) is undesirable and the Authority and/or Other Contractor has given written notice to the Contractor's Representative to this effect; and/or
- 48.10.4 for any other reason.

48.11 The Authority's or Other Contractor's (as the case may be) decision on any matter arising under Clause 48.10 (*Admission to Authority Sites and/or Other Contractor's Premises*) shall be final and conclusive.

48.12 Where a person is refused admission:

48.12.1 to an Authority Site and/or any Other Contractor's Premises (as the case may be) or is removed from an Authority Site and/or any Other Contractor's Premises (as the case may be) pursuant to Clauses 48.10.1 to 48.10.3 (*Admission to Authority Sites and/or Other Contractor's Premises*), then the Contractor shall not be relieved from its obligations to provide the Contractor Deliverables in full; or

48.12.2 to an Authority Site and/or any Other Contractor's Premises (as the case may be) or is removed from an Authority Site and/or any Other Contractor's Premises, in each case pursuant to Clause 48.10.4 (*Admission to Authority Sites and/or Other Contractor's Premises*), then the Authority shall give the Contractor such relief from its obligations in respect of those Contractor Deliverables in which such person is or would have been engaged for a reasonable period to allow the Contractor or any Sub-Contractor to make alternative arrangements to replace the person whose admission has been refused or whose removal has been required by the Authority and/or such Other Contractor.

49 Co-operation for Security Investigation

49.1 The Contractor shall, and shall procure that each Sub-Contractor shall, notify the Authority's Representative immediately it becomes aware that an Employee or an accompanied emergency reactive worker pursuant to Clause 48.8 (*Admission to Authority Sites and/or Other Contractor's Premises*) has breached Clause 47 (*Security – Secret Matters*) and/or Clause 48 (*Personnel Security*).

49.2 The Contractor shall, and shall procure that its Sub-Contractors shall, give reasonable assistance to the Authority's Representative and/or any other representative or adviser of the Authority for the purposes of carrying out any investigation that the Authority undertakes (acting reasonably).

PART 9 - SITE ISSUES

50 Access to the Contractor's Premises

Authority's Monitoring and Inspection Rights

50.1 Without prejudice to the other provisions of this Contract (including Schedule 2 (*Statement of Requirements*), Schedule 4 (*Assurance and Acceptance Process*) and Schedule 6 (*Incentivisation*)), the Contractor shall ensure that the Authority and the representatives of the Authority shall have the right at all reasonable times and on reasonable notice (but not so as to materially delay or impede the progress of the provision of the Contractor Deliverables):

50.1.1 to enter any of the Contractor's Premises in order to inspect the state and progress of the provision of the Contractor Deliverables (and to ascertain whether the Contractor Deliverables are being properly provided in

accordance with this Contract) and to monitor compliance by the Contractor with its obligations under this Contract; and

- 50.1.2 subject to obtaining the consent of the relevant Sub-Contractor, manufacturer or supplier (which the Contractor shall use all reasonable endeavours to obtain), to visit any property, site or workshop other than the Contractor's Premises where materials, plant or equipment are being manufactured, prepared or stored for use in connection with this Contract (for the purposes of general inspection and of attending any test or investigation being carried out), or any property other than the Contractor's Premises used by the Contractor as training or workshop facilities or as a place where work is being prepared or materials are being obtained in relation to this Contract.
- 50.2 The Contractor shall provide and shall ensure the Sub-Contractors provide to the Authority and the representatives of the Authority (in each case without any additional cost to the Authority) for the purposes of Clause 50.1 (*Authority's Monitoring and Inspection Rights*):
- 50.2.1 all reasonable access to premises and such accommodation and facilities for representatives of the Authority as the Authority may reasonably require (provided that all accommodation shall be adequately furnished, lit, heated and ventilated and shall include suitable cloakroom and communication facilities) for an agreed reasonable period; and
- 50.2.2 that satisfactory facilities are made available and that reasonable assistance is given to representatives of the Authority,
- subject to the Contractor's and any Sub-Contractors' operations not being adversely affected.

Authority's Conduct on the Contractor's Premises

- 50.3 In exercising any right under Clause 50.1 (*Authority's Monitoring and Inspection Rights*), the Authority shall comply with all relevant safety procedures (which shall include any relevant health and safety plans), the Contractor's site rules from time to time and any reasonable directions with regard to site safety that may be issued by or on behalf of the Contractor from time to time.
- 50.4 The Authority shall indemnify the Contractor for any material damage caused by it to the Contractor's Premises whilst exercising any right under this Clause 50 (*Authority's Monitoring and Inspection Rights*).

51 Authority Sites and/or Other Contractor's Premises

The Contractor's Rights over Authority Sites and/or Other Contractor's Premises

- 51.1 During the Contract Period, the Authority shall, in the case of the Authority Sites, afford the following rights to the Contractor and Contractor Related Parties and, in the case of any Other Contractor's Premises, use reasonable endeavours to procure for the benefit of the Contractor and Contractor Related Parties solely for the purpose of the provision of the Contractor Deliverables:

- 51.1.1 a non-exclusive licence to enter and remain upon those parts of the Authority Sites and/or any Other Contractor's Premises (as the case may be) that the Contractor and/or any Contractor Related Party requires access to; and
- 51.1.2 such non-exclusive rights of access to and egress from the Authority Sites and/or any Other Contractor's Premises (as the case may be) as are necessary for the Contractor and/or Contractor Related Parties to perform their obligations and exercise their rights under this Contract or their relevant contracts and in particular for the purposes of providing the Contractor Deliverables, provided that in the case of:
- (i) the Authority Sites such routes may be varied by the Authority to such alternative routes as the Authority may reasonably specify from time to time if such variation does not have a material adverse effect on the provision of the Contractor Deliverables; or
 - (ii) in the case of any Other Contractor's Premises, such routes may be varied by such Other Contractor to such alternative routes as such Other Contractor may reasonably specify from time to time; and
- 51.1.3 use of services and utilities including water, waste water, gas, electricity, telephone and other services serving the [xxx] as may be reasonably required by the Contractor and/or any Contractor Related Party,
- provided that:
- (i) the rights shall not in any circumstances entitle the Contractor or any Contractor Related Party to exclusive occupancy or exclusive possession of any part of the Authority Sites and/or any Other Contractor's Premises (as the case may be) (save as may be required by the Contractor and approved by the Authority and/or Other Contractor in order to comply with relevant health and safety legislation on a temporary basis); and
 - (ii) the Contractor and Contractor Related Parties do not cause any material disruption to the operations or activities carried out by:
 - (A) the Authority on or at the Authority Sites or any of the Authority's legal duties or other functions; and/or
 - (B) any Third Party on or at any Other Contractor's Premises or any such Third Party's legal duties or other functions.

The Contractor's Conduct on Authority Sites and/or Other Contractor's Premises

- 51.2 The Contractor shall ensure, and/or shall procure, that in providing the Contractor Deliverables at the Authority Sites and/or any Other Contractor's Premises (as the case may be) it and/or any Contractor Related Party shall:
- 51.2.1 not act or omit to act in any way which shall give rise to a right for any person to obtain title to or any right or interest over an Authority Site

and/or any Other Contractor's Premises (as the case may be) or any part of any of them (save in accordance with the terms of this Contract);

- 51.2.2 not use or occupy the Authority Sites and/or any Other Contractor's Premises (as the case may be) for any purpose other than the provision of the Contractor Deliverables and only to the extent that such Contractor Deliverables are required to be performed at such Authority Site and/or Other Contractor's Premises;
- 51.2.3 not deposit or manufacture on the Authority Sites and/or any Other Contractor's Premises (as the case may be) any materials which are not required for the provision of the Contractor Deliverables and, in the case of materials which are required for the provision of the Contractor Deliverables, shall only deposit or manufacture such materials at such Authority Site and/or Other Contractor's Premises to the extent that such part of the Contractor Deliverables to which such materials are being deposited or manufactured are required to be performed at such Authority Site and/or Other Contractor's Premises;
- 51.2.4 not store materials or park vehicles in the immediate external vicinity of the boundaries of the Authority Sites and/or any Other Contractor's Premises (as the case may be) other than for reasonable periods necessary for loading and unloading;
- 51.2.5 not discharge any oil, grease or deleterious, dangerous, poisonous, explosive or radioactive matter from the Authority Sites and/or any Other Contractor's Premises (as the case may be) into any rivers or any ditches or conduits on such Authority Sites and/or Other Contractor's Premises (as the case may be) and/or any Adjoining Property and not permit or suffer the blockage of any of such rivers, ditches and conduits by reason of anything done or omitted on such Authority Sites and/or Other Contractor's Premises (as the case may be) by the Contractor or Contractor Related Parties, and shall, subject to the Authority's obligations in Schedule 7 (*Authority Obligations*), comply at the Contractor's expense with any requirements of the Environment Agency or any other Relevant Authority which are required to remedy the breach of this Clause 51.2.5 (*The Contractor's Conduct on Authority Sites*). The Authority shall in the case of the Authority Sites allow and in the case of any Other Contractor's Premises, and to the extent applicable, use reasonable endeavours to procure the Contractor access to environmental systems for inspection to confirm they meet the necessary standards;
- 51.2.6 procure that those parts of the Authority Site and/or any Other Contractor's Premises (as the case may be) which are from time to time occupied by the Contractor and/or Contractor Related Parties for the purpose of carrying out the provision of the Contractor Deliverables (and only to the extent that such Contractor Deliverables are required to be performed at such Authority Site and/or Other Contractor's Premises) are maintained in a clean and tidy state so far as practicable having regard to the nature of the Contractor Deliverables; and
- 51.2.7 not without the written consent of the Authority's Representative erect any temporary structure.

52 The Contractor's Property and Personnel at Government Establishments and Other Contractor's Premises**Liability in respect of damage to Government and Third Party Property**

- 52.1 Without prejudice to the provisions of Clause 59 (*Issued Property*), the Contractor shall, except as otherwise provided for in this Contract, make good or, at the option of the Authority, pay compensation for all damage occurring to any Government and/or Third Party property (which includes land or buildings), occasioned by the Contractor, or by any Contractor's Representative or Contractor Related Party, arising from his or their presence on a Government Establishment and/or Other Contractor's Premises in connection with this Contract, provided that this Clause 52.1 (*Liability In Respect Of Damage To Government and Third Party Property*) shall not apply to the extent that the Contractor is able to show that any such damage was not caused or contributed to by any circumstances within its reasonable control.
- 52.2 Not Used.
- 52.3 Not Used.

The Contractor's Property

- 52.4 All property of the Contractor and Contractor Related Parties shall be at the risk of the Contractor whilst it is on any Government Establishment and/or any Other Contractor's Premises and the Authority shall accept no liability for any Loss or damage howsoever occurring to or caused by such property, except where any such Loss or damage occurred on a Government Establishment and such Loss or damage was caused or contributed to by any act, neglect or default of any Authority servant, agent or contractor then the Authority shall accept liability for such Loss or damage to the extent to which such Loss or damage is so caused or contributed to by such Authority servant, agent or contractor.

Transport Overseas

- 52.5 [xxx]

Medical Treatment Overseas

- 52.6 Out-patient medical treatment given to the Contractor's representatives by a medical officer at a Government Establishment overseas shall be free of charge. Treatment in an Authority hospital or medical centre, dental treatment, the provision of dentures or spectacles, conveyance to and from a hospital, medical centre or surgery not within the Government Establishment, and transportation of the Contractor's representatives back to the United Kingdom, or elsewhere, for medical reasons, shall be charged to the Contractor at the appropriate local rate.

Injuries, disease and dangerous occurrences

- 52.7 The Contractor shall report any injury, disease or dangerous occurrence at any Government Establishment arising out of the performance of this Contract, which is required to be reported under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 ("**RIDDOR**") to the Officer in Charge of the relevant

Government Establishment. This would be in addition to any report, which the Contractor may be required to submit under RIDDOR to the relevant enforcing authority (e.g. Health and Safety Executive or Local Authority).

Dependants of Contractor's Representatives

- 52.8 No assistance from public funds, and no messing facilities, accommodation or transport overseas shall be provided for dependants or members of the families of the Contractor's representatives. Medical or necessary dental treatment may, however, be provided for dependants or members of families on repayment at current Authority rates.

Provision of Funds Overseas

- 52.9 The Contractor shall, wherever possible, arrange for funds to be provided to its representatives overseas through normal banking channels (e.g. by travellers cheques). If banking or other suitable facilities are not available, the Authority shall, upon request by the Contractor and subject to any reasonable limitation required by the Contractor, make arrangements for payments, converted at the prevailing rate of exchange (where applicable), to be made by the Government Establishment to which the Contractor's representatives are attached. All such advances made by the Authority shall be recovered from the Contractor.

Health and safety hazard control

- 52.10 Without prejudice to the Contractor's obligations under Clause 57 (*Supply of Hazard Data*), where the Contractor enters a Government Establishment and/or any Other Contractor's Premises for the purpose of providing the whole or any part of the Contractor Deliverables:

- 52.10.1 the Contractor shall notify the Officer in Charge or the site project liaison officer or overseeing officer or other person nominated by the Authority and/or Other Contractor (as the case may be) of:

- (i) any health and safety hazards associated with the delivery of that part of the Contractor Deliverable to be provided by it or Contractor Related Party;
- (ii) any foreseeable risks to the health and safety of all persons associated with such hazards; and
- (iii) any precautions to be taken by it as well as any precautions which, in its opinion, ought to be taken by the Authority or other person, in order to control such risks;

- 52.10.2 the Authority shall notify the Contractor of:

- (i) any health and safety hazards which may be encountered by the Contractor or any Contractor Related Party on the Government Establishment and/or (to the extent that the same are brought to the attention of the Authority) any Other Contractor's Premises;
- (ii) any foreseeable risks to the health and safety of the Contractor or any Contractor Related Party, associated with such hazards; and

- (iii) any precautions to be taken by the Authority and/or any Third Party as well as any precautions which, in its opinion, ought to be taken by the Contractor, in order to control such risks;
- 52.10.3 the Contractor shall notify the Contractor Related Parties of and, where appropriate, provide adequate instruction in relation to:
 - (i) the hazards, risks and precautions notified by him to the Authority under Clause 52.10.1 (*Health and safety hazard control*);
 - (ii) the hazards, risks and precautions notified by the Authority to the Contractor under Clause 52.10.2 (*Health and safety hazard control*); and
 - (iii) the precautions which, in its opinion, ought to be taken by the Contractor Related Parties in order to control those risks;
- 52.10.4 the Contractor shall provide the Officer in Charge or the site project liaison officer or overseeing officer nominated in this Contract or other person nominated by the Other Contractor (as the case may be) with:
 - (i) copies of those sections of its own and, where appropriate, Contractor Related Party's safety policies which are relevant to the risks notified under Clause 52.10.1 (*Health and safety hazard control*);
 - (ii) copies of any related risk assessments; and
 - (iii) copies of any notifications and instructions issued by it to any Contractor Related Party under Clause 52.10.3 (*Health and safety hazard control*);
- 52.10.5 the Authority shall provide the Contractor with:
 - (i) copies of those sections of its own or (to the extent that the same are provided to the Authority) any Third Party's (as the case may be) safety policies which are relevant to the risks notified under Clause 52.10.2 (*Health and safety hazard control*);
 - (ii) copies of any related risk assessments (in the case of Other Contractor Premises, to the extent only that the same are provided to the Authority); and
 - (iii) copies of any notifications and instructions issued by it to its employees similar to those called for from the Contractor under Clause 52.10.3 (*Health and safety hazard control*); (in the case of Other Contractor's Premises, to the extent only that the same are provided to the Authority); and
- 52.10.6 where the Contractor identifies a health and safety hazard associated with services provided by the Authority under Schedule 7 (*Authority Obligations*), the Contractor shall notify the Authority of the hazard and the risk to the Contractor's or the Authority's personnel;

- (i) the Authority shall implement any urgent temporary actions agreed by the Parties to rectify the hazard within five (5) Working Days; and
- (ii) the Authority shall implement permanent changes to rectify the hazard as soon as practicable but no later than three (3) months from the notification in Clause 52.10.6 (*Health and safety hazard control*).

PART 10 - PEOPLE ISSUES

53 Transfer of Undertakings (Protection of Employment) (TUPE)

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

54 Child Labour and Employment Law and Modern Slavery Act

- 54.1 The Contractor shall comply in all material respects with Child Labour Legislation and applicable employment legislation of those jurisdiction(s) where this Contract is being performed.
- 54.2 The Contractor agrees to take reasonable efforts to reflect this Clause 54 (*Child Labour and Employment Law*) in any Sub-Contract that it enters into to satisfy the requirements of this Contract and to require its Sub-Contractors to reflect this Clause 54 (*Child Labour and Employment Law*) in their Sub-Contracts that they enter into to satisfy the requirements of this Contract.
- 54.3 The Authority has a zero-tolerance approach to modern slavery and human trafficking, and it is committed to acting ethically in its business dealings and relationships and to implement and enforce effective procedures and controls to prevent modern slavery and human trafficking in its business dealings and relationships. The Authority expects the same high standards from all its consultants, contractors, suppliers, employees and agents. The Contractor undertakes and warrants that it:
- 54.3.1 has not committed any offence under the Modern Slavery Act 2015;
 - 54.3.2 has in place adequate procedures and controls to prevent modern slavery and human trafficking as contemplated by the Modern Slavery Act 2015; and
 - 54.3.3 shall comply, and shall require its Sub-Contractors, suppliers, employees and agents to comply with the Modern Slavery Act.
- 54.4 The Contractor acknowledges and confirms that:
- 54.4.1 preventing modern slavery in public sector supply chains is likely to be most effective if done in co-operation with its contractors;
 - 54.4.2 the Authority expects all of its suppliers to maintain high standards of integrity and professionalism in their business dealings, adhering to the laws of the countries in which they operate;

- 54.4.3 the Authority seeks to apply the ethos of the Modern Slavery Act 2015 across all of its procurements as best practice in order to prevent modern slavery in order for the Authority, the Contractor and its Sub-Contractors to avoid the taint of being associated with it.

55 Equality

- 55.1 The Contractor shall not unlawfully discriminate either directly or indirectly on the grounds of age, disability, gender (including re-assignment), sex or sexual orientation, marital status (including civil partnerships), pregnancy and maternity, race, or religion or belief.
- 55.2 Without prejudice to the generality of the obligation in Clause 55.1 (*Equality*), the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 (or any statutory modification or re-enactment thereof) or other relevant or equivalent legislation in the country where this Contract is being performed.
- 55.3 The Contractor agrees to take reasonable efforts to secure the observance of the provisions of this Clause 55 (*Equality*) by any of its employees, agents or other persons acting under its direction or control who are engaged in the performance of this Contract.
- 55.4 The Contractor agrees to take reasonable efforts to reflect this Clause 55 (*Equality*) in any Sub-Contract that it enters into to satisfy the requirements of this Contract and to require its Sub-Contractors to reflect this Clause 55 (*Equality*) in their Sub-Contracts that they enter into to satisfy the requirements of this Contract.

PART 11 - ASSET RELATED PROVISIONS

56 Packaging (for Articles other than Munitions)

Definitions

- 56.1 For the purposes of this Clause 56 (*Packaging (for Articles other than Munitions)*):
- 56.1.1 "**Packaging**" when used as a verb shall mean the preparation of Articles for transportation, storage and delivery in accordance with this Contract. The term includes, as appropriate, cleaning and preservation processes, packing techniques and marking procedures.
- 56.1.2 "**Packaging**" when used as a noun shall mean the materials, and components, used for the preparation of the Articles for transportation, storage and delivery in accordance with this Contract.
- 56.1.3 "**Packaging Design Authority**" or "**PDA**" shall mean the organisation that is responsible for the design of the packaging, identified in Box 3 of DEFFORM 111 in the Agreed Form.
- 56.1.4 "**Military Packager Approval Scheme**" or "**MPAS**" shall mean an Authority sponsored scheme to certify military Packaging designers and register organisations, as capable of producing acceptable Services Packaging Instruction Sheet ("**SPIS**") designs in accordance with Defence Standard (Def Stan) 81-041 (Part 4).

- 56.1.5 **"Commercial Packaging"** shall mean commercial Packaging for military use as described in Def Stan 81-041 (Part 1).
- 56.1.6 **"Military Level Packaging"** or **"MLP"** shall mean Packaging that provides enhanced protection in accordance with Def Stan 81-041 (Part 1), beyond that which Commercial Packaging normally provides for the military supply chain.
- 56.1.7 **"Military Packaging Level"** or **"MPL"** shall have the meaning described in Def Stan 81-041 (Part 1).
- 56.1.8 **"Primary Packaging Quantity"** or **"PPQ"**, and Standard Family Specification (**"SFS"**) shall have the meaning as described in Def Stan 81-041 (Part 1).
- 56.1.9 **"Robust Articles"** shall mean Robust items as described in Def Stan 81-041 (Part 2).
- 56.1.10 **"Dangerous Goods"** shall mean those substances, preparations and articles that are capable of posing a risk to health, safety, property or the environment which are prohibited by regulation, or classified and authorised only under the conditions prescribed by the:
- (i) Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 (**"CDG"**) (as amended 2011);
 - (ii) European Agreement Concerning the International Carriage of Dangerous Goods by Road (**"ADR"**);
 - (iii) Regulations Concerning the International Carriage of Dangerous Goods by Rail (**"RID"**);
 - (iv) International Maritime Dangerous Goods (**"IMDG"**) Code;
 - (v) International Civil Aviation Organisation (**"ICAO"**) Technical Instructions for the Safe Transport of Dangerous Goods by Air; and
 - (vi) International Air Transport Association (**"IATA"**) Dangerous Goods Regulations.
- 56.1.11 **"Safety Data Sheet"** shall have the meaning as defined in REACH.

Specifications for Packaging

- 56.2 General requirements for service Packaging, including details of UK and NATO MLP and Commercial Packaging descriptions, are contained in Def Stan 81-041 (Part 1) "Packaging of Defence Materiel". Def Stans, NATO Standardisation Agreements (**"STANAGs"**) and further information are available from the DStan internet site at: <http://www.dstan.mod.uk/>.
- 56.3 Not Used.
- 56.4 In the event of conflict between this Contract and Def Stan 81-041, this Contract shall take precedence.

Responsibilities

56.5 Packaging responsibilities are as follows:

- 56.5.1 The Contractor shall be responsible for providing Packaging which fully complies with the requirements of this Contract.
- 56.5.2 The Authority shall indicate in this Contract or order raised against a framework agreement (where applicable) the standard or level of Packaging required for each Article, including the PPQ. If a standard or level of Packaging (including the PPQ) is not indicated in this Contract or order, the Contractor shall request such instructions from the Authority before proceeding further.
- 56.5.3 The Contractor shall ensure all relevant information necessary for the effective performance of this Contract is made available to all Sub-Contractors.
- 56.5.4 Where the Contractor or any of their Sub-Contractors have concerns relating to the appropriateness of the Packaging design and or MPL prior to manufacture or supply of the Articles they shall use DEFFORM 129B to feedback these concerns to the Contractor or Authority, as appropriate.
- 56.5.5 Where the volumetric data of individual package designs is required to be compiled as part of the codification data set, the Contractor shall do so in accordance with DEFCON 117 (*Supply of Information for NATO Codification and Defence Inventory Introduction*).

Commercial Packaging

56.6 The Contractor shall supply Commercial Packaging meeting the standards and requirements of Def Stan 81-041 (Part 1). In addition the following requirements apply:

- 56.6.1 The Contractor shall provide Packaging which:
 - (i) will ensure that each Article may be transported and delivered to the consignee named in this Contract in an undamaged and serviceable condition; and
 - (ii) is labelled to enable the contents to be identified without need to breach the package; and
 - (iii) is compliant with statutory requirements and this Clause 56 (*Packaging (for Articles other than Munitions)*).
- 56.6.2 The Packaging used by the Contractor to supply identical or similar Articles to commercial customers or to the general public (i.e. point of sale packaging) will be acceptable, provided that it complies with the following criteria:
 - (i) reference in this Contract to a PPQ means the quantity of an Article to be contained in an individual package, which has been selected as being the most suitable for issue(s) to the ultimate user;

- (ii) Robust Articles, which by their nature require minimal or no packaging for commercial deliveries, shall be regarded as "PPQ packages" and shall be marked in accordance with Clauses 56.13 (*Package Labelling and Marking*) to **Error! Reference source not found.** (*Consignment of Aggregated Packages*). References to "PPQ packages" in subsequent text shall be taken to include Robust Articles; and
- (iii) for ease of handling, transportation and delivery, packages which contain identical Articles may be bulked and overpacked, in accordance with Clauses 56.13 (*Package Labelling and Marking*) to **Error! Reference source not found.** (*Bar code marking*).

Packaging Regulations for Dangerous Goods

- 56.7 The Contractor shall ascertain whether the Articles being supplied are, or contain, Dangerous Goods, and shall supply the Dangerous Goods in accordance with:
- 56.7.1 The Health and Safety At Work Act 1974 (as amended);
 - 56.7.2 The Classification Hazard Information and Packaging for Supply Regulations (CHIP) 2009 (as amended);
 - 56.7.3 The REACH Regulations 2007 (as amended); and
 - 56.7.4 The Classification, Labelling and Packaging Regulations (CLP) 2009 (as amended).
- 56.8 The Contractor shall package the Dangerous Goods as limited quantities, excepted quantities or similar derogations, for UK or worldwide shipment by all modes of transport in accordance with the regulations relating to the Dangerous Goods and:
- 56.8.1 The Safety Of Lives At Sea Regulations (SOLAS) 1974 (as amended); and
 - 56.8.2 The Air Navigation (Amendment) Order 2019.
- 56.9 As soon as possible, and in any event no later than one (1) month before delivery is due, the Contractor shall provide a Safety Data Sheet in respect of each Dangerous Good in accordance with the REACH Regulations 2007 (as amended) and the Health and Safety At Work Act 1974 (as amended).

UK Military or NATO Packaging

- 56.10 The Contractor shall comply with the requirements for the design of MLP which include Clauses 56.10 (*UK Military or NATO Packaging*) and 56.11 (*Military Packaging Design Procedure*) as follows:
- 56.10.1 Where there is a requirement to design UK or NATO MLP, the work shall be undertaken by an MPAS registered organisation, or one that although non-registered is able to demonstrate to the Authority that its quality systems and military package design expertise are of an equivalent standard.

[xxx]

Note 2: The MPAS Documentation is also available on the DStan website

- 56.10.2 MLP shall be designed to comply with the relevant requirements of Def Stan 81-041, and be capable of meeting the appropriate test requirements of Def Stan 81-041 (Part 3). Packaging designs shall be prepared on a Service Packaging Instruction Sheet (SPIS), in accordance with Def Stan 81-041 (Part 4).
- 56.10.3 The Contractor shall ensure a search of the SPIS index (the “**SPIN**”) is carried out to establish the SPIS status of each requirement (using DEFFORM 129a ‘Application for Packaging Designs or their Status’).
- 56.10.4 New designs shall not be made where there is an existing usable SPIS, or one that may be easily modified.
- 56.10.5 Where there is a usable Standard Family Specification (SFS), it shall be used in place of a SPIS design unless otherwise stated by this Contract. When an SFS is used or replaces a SPIS design, the Contractor shall upload this information on to SPIN in Adobe PDF.
- 56.10.6 All SPIS, new or modified (and associated documentation), shall, on completion, be uploaded by the Contractor on to SPIN. The format shall be Adobe PDF.

Manufacture of Packaging to a Military Packaging Level

- 56.10.7 Where it is necessary to use an existing SPIS design, the Contractor shall ensure the Packaging manufacturer is a registered organisation in accordance with Clause 56.10.1 (*UK Military or NATO Packaging*), or if un-registered, is compliant with MPAS ANNEX A Supplement (Code) M. The Contractor shall ensure, as far as possible, that the SPIS is up to date.

Intellectual Property Rights (IPR)

- 56.10.8 The documents supplied under Clause 56.10.6 (*UK Military or NATO Packaging*) shall be considered as a contract data requirement and be subject to the terms of DEFCON 15 (*Design Rights and Rights to Use Design Information*) and DEFCON 21 (*Retention of Records*).

Military Packaging Design Procedure

- 56.11 Unless otherwise stated in this Contract, one of the following procedures for the production of new or modified SPIS designs shall be applied:

- 56.11.1 If the Contractor or their Sub-Contractor is the PDA they shall:

- (i) On receipt of instructions received from the Authority’s representative nominated in Box 2 of DEFFORM 111 in the Agreed Form, prepare the required package design in accordance with Clause 56.10 (*UK Military or NATO Packaging*).

- (ii) Where the Contractor or their Sub-Contractor is registered they shall, on completion of any design work, provide the Authority with the following documents electronically:
 - (A) a list of all SPIS which have been prepared or revised against this Contract; and
 - (B) a copy of all new/revised SPIS, complete with all continuation sheets and associated drawings, where applicable, to be uploaded onto SPIN.
 - (iii) Where the PDA is not a registered organisation, then they shall obtain approval for their design from a registered organisation before proceeding, then follow Clause 56.11.1(ii) (*Military Packaging Design Procedure*).
- 56.11.2 Where the Contractor or their Sub-Contractor is not the PDA and is un-registered, they shall not produce, modify or update SPIS designs. They shall obtain current SPIS design(s) from the Authority or a registered organisation before proceeding with manufacture of Packaging. To allow designs to be provided in ample time, they should apply for SPIS designs as soon as practicable.
- 56.11.3 Where the Contractor or their Sub-Contractor is un-registered and has been given authority to produce, modify, and update SPIS designs by this Contract, it shall obtain approval for their design from a registered organisation using DEFFORM 129A before proceeding, then follow Clause 56.11.1(ii) (*Military Packaging Design Procedure*).
- 56.11.4 Where the Contractor or their Sub-Contractor is not a PDA but is registered, it shall follow Clauses 56.11.1(i) and 56.11.1(ii) (*Military Packaging Design Procedure*).

Tools

- 56.12 If Special Jigs, Tools Etc. are required for the production of MLP, the Contractor shall obtain written approval from the Authority's Representative before providing them.

Package Labelling and Marking

- 56.13 In addition to any marking required by international or national legislation or regulations, the following package labelling and marking requirements apply:

Labelling – General

- 56.13.1 If this Contract specifies UK or NATO MLP, labelling and marking of the packages shall be in accordance with Def Stan 81-041 (Part 6) and this Clause 56 (*Packaging (for Articles other than Munitions)*) as follows:
- (i) Labels giving the mass of the package, in kilograms, shall be placed such that they may be clearly seen when the items are stacked during storage.

Marking – General

- (ii) Each consignment package shall be marked with details as follows:
 - (A) name and address of consignor;
 - (B) name and address of consignee (as stated in this Contract or order);
 - (C) destination where it differs from the consignee's address, normally either:
 - 1) delivery destination/address; or
 - 2) transit destination, where delivery address is a point for aggregation/disaggregation and/or onward shipment elsewhere, e.g. railway station, where that mode of transport is used;
 - (D) Not Used; and
 - (E) if this Contract is subject to DEFCON 5J (*Unique Identifiers*), the unique order identifiers and the CP&F Delivery Label/Form which shall be prepared in accordance with DEFFORM 129J.
- (iii) If aggregated packages are used, their consignment marking and identification requirements are stated at Clause **Error! Reference source not found.** (*Consignment of Aggregated Packages*).

Marking of Commercial Packaging

[xxx]

Concessions

- 56.14 Authorisation of the Contractor to undertake Packaging design, or to use a packaging design, that was not part of the original requirement under this Contract, shall be considered as an alteration to the specification under Schedule 11 (*Change Procedure*).

Environmental - Requirements for Wood used in Packaging

- 56.15 The Contractor shall ensure that timber and wood-containing products supplied under this Contract comply with DEFCON 691 (*Timber and Wood-Derived Products*) and Annex I and Annex II of the International Standards for Phytosanitary Measures, "Guidelines for Regulating Wood Packaging Material in International Trade", Publication No 15 (ISPM 15).

Environmental – Packaging and Packaging Waste

- 56.16 All Packaging shall meet the requirements of the Packaging (Essential Requirements) Regulations 2003 (as amended) where applicable.

- 56.17 In any design work the Contractor shall comply with the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (as amended) or equivalent legislation. Evidence of compliance shall be a contractor record in accordance with Clause 39 (*The Contractor's Records*).

Packaging Design Liability Statement

- 56.18 This Clause 56 (*Packaging (for Articles other than Munitions)*) is concerned with the supply of Packaging suitable to protect and ease handling, transport and storage of specified items. Where there is a failure of suitable Packaging (a design failure), or Packaging fails and this is attributed to the Packaging supplier, then the supplier shall be liable for the cost of replacing the Packaging.
- 56.19 Liability for other Losses resulting from Packaging failure or resulting from damage to Packaging, (such as damage to the packaged item etc.), shall be specified elsewhere in this Contract.

57 Supply of Hazard Data

- 57.1 Nothing in this Clause 57 (*Supply of Hazard Data*) shall reduce or limit any statutory duty or legal obligation of the Authority or the Contractor and/or the Contractor's obligations under Schedule 2 (*Statement of Requirements*).
- 57.2 For the purposes of this Clause 57 (*Supply of Hazard Data*) the following definitions are used:
- 57.2.1 "**Substance**" means a chemical element and its compounds in the natural state or obtained by any manufacturing process, including any additive necessary to preserve its stability and any impurity deriving from the process used, but excluding any solvent which may be separated without affecting the stability of the substance or changing its composition;
- 57.2.2 "**Mixture**" means a mixture or solution composed of two or more substances; and
- 57.2.3 "**Article**" means an object which during production is given a special shape, surface or design which determines its function to a greater degree than does its chemical composition.
- 57.3 The Contractor shall provide to the Authority:
- 57.3.1 for each Substance or Mixture supplied meeting the criteria of classification as hazardous in accordance with the GB Classification, Labelling and Packaging (GB CLP) Regulation ("**GB CLP**") a Registration, Evaluation, Authorisation, and Restriction of Chemicals Regulations ("**UK REACH**") compliant Safety Data Sheet ("**SDS**");
- 57.3.2 where Mixtures supplied do not meet the criteria for classification as hazardous according to GB CLP but contain a hazardous Substance an SDS is to be made available on request; and
- 57.3.3 for each Article whether supplied on its own or part of an assembly that contains a Substance on the UK REACH Authorisation List, Restrictions List and/or the Candidate List of Substances of Very High Concern

("SVHC") in a proportion greater than 0.1% w/w of the Article, sufficient information, available to the supplier, to allow safe use of the Article including as a minimum, the name of that Substance.

- 57.4 For Substances, Mixtures or Articles that meet the criteria listed in Clause 57.3 (*Supply of Hazard Data*) above:
- 57.4.1 if the Contractor becomes aware of new information which may affect the risk management measures or new information on the hazard, the Contractor shall update the SDS / Safety Information and forward it to the Authority and to the address listed in Clause 57.10 (*Supply of Hazard Data*); and
- 57.4.2 if the Authority, becomes aware of new information that might call into question the appropriateness of the risk management measures identified in the safety information supplied, shall report this information in writing to the Contractor.
- 57.5 The Contractor shall provide to the Authority a completed DEFFORM 68 for hazardous and non-hazardous items.
- 57.6 If the Articles, Mixtures or Substances are Ordnance, Munitions or Explosives ("OME"), in addition to the requirements of the GB CLP and UK REACH the Contractor shall comply with the hazard reporting requirements of Def Stan 07-085 (Design Requirements for Weapons and Associated Systems).
- 57.7 If the Articles, Mixtures or Substances are or contain or embody a radioactive Substance as defined in the Ionising Radiation Regulations SI 2017/1075, the Contractor shall additionally provide details on DEFFORM 68 of:
- 57.7.1 activity; and
- 57.7.2 the Substance and form (including any isotope).
- 57.8 If the Articles, Mixtures or Substances have magnetic properties which emit a magnetic field, the Contractor shall additionally provide details on DEFFORM 68 of the magnetic flux density at a defined distance, for the condition in which it is packed.
- 57.9 Any SDS to be provided in accordance with this Clause 57 (*Supply of Hazard Data*), including any related information to be supplied in compliance with the Contractor's statutory duties under Clauses 57.3 and 57.4.1 (*Supply of Hazard Data*), any information arising from the provisions of Clauses 57.8 and 57.8 (*Supply of Hazard Data*) and the completed DEFFORM 68, shall be sent directly to the Authority's Representative as soon as practicable, and no later than one (1) month prior to the delivery of the relevant Articles, Mixtures or Substances.
- 57.10 So that the safety information can reach users without delay, the Contractor shall send a copy preferably as an email with attachment(s) in Adobe PDF or MS WORD format, or, if only hard copy is available, to the addresses below:
- 57.10.1 Hard copies to be sent to:

[xxx]

- 57.11 SDS which are classified above Official including Explosive Hazard Data Sheets (“EHDS”) for OME are not to be sent to HSIS and must be held by the respective Authority Delivery Team.
- 57.12 Failure by the Contractor to comply with the requirements of this Clause 57 (*Supply of Hazard Data*) shall be grounds for rejecting the affected Articles. Any withholding of information concerning hazardous Articles, Mixtures or Substances shall be regarded as a breach of this Contract for which the Authority reserves the right to require the Contractor to rectify the breach immediately at no additional cost to the Authority or to terminate this Contract pursuant to Clause 69 (*Termination for Contractor Default*) without compensation to the Contractor.
- 57.13 Where delivery is made to the Defence Fulfilment Centre (“DFC”) and/or other Team Leidos location/building, the Contractor must comply with the Logistic Commodities and Services Transformation (“LCST”) Supplier Manual.

58 Delivery, Acceptance, Rejection and transfer of Title and Risk

Delivery

- 58.1 Unless otherwise agreed by the Parties, delivery of Articles shall occur upon the Articles being handed over by the Contractor to the Authority or to the Authority’s Representative at the then relevant address in the United Kingdom that the Authority has notified the Contractor (such address as may change from time to time following notification (by any means) by the Authority to the Contractor).
- 58.2 Unless otherwise agreed by the Parties and subject to Clauses 58.4 to 58.17 (inclusive), the title and risk in the Articles shall pass from the Contractor to the Authority upon delivery at the address in Clause 58.1 (*Delivery*) provided the Contractor has complied with its obligations in this Clause 58 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*).
- 58.3 The Contractor shall ensure that the Articles are packaged in accordance with the terms of this Contract (including Clause 56 (*Packaging (for Articles other than Munitions)*)).
- 58.4 Where:
- 58.4.1 in respect of an Article that is delivered and assured in accordance with Schedule 4 (*Assurance and Acceptance Process*) (an “**Assured Article**”), after delivery:
- (i) the Entry Criteria and/or the Exit Criteria in relation to the Review at which such Assured Article is delivered is not achieved and the reason for such Entry Criteria and/or Exit Criteria not being achieved arises (whether in whole or in part) out of or in connection with the delivery of such Assured Article (including where the Authority considers such Assured Article to be defective); and/or
 - (ii) the relevant Contractor Deliverable under which such Assured Article is delivered does not achieve Acceptance and the reason for such Acceptance not being achieved arises (whether in whole or in

part) out of or in connection with the delivery of such Assured Article (including where the Authority considers such Assured Article to be defective),

then, in either case (and whether or not such Assured Article is in the possession of the Contractor to assess and/or repair such Assured Article where the Authority considers such item is defective and requires repair and/or other remedial work):

- (A) the provisions of Schedule 4 (*Assurance and Acceptance Process*) shall apply until the relevant Exit Criteria have been achieved; and
- (B) such Assured Article shall, for the purposes of this Contract, be considered as not having been delivered under this Contract and, subject to Clause 58.17 (*Risk*), the title, property and risk in that Assured Article shall return to the Contractor; or

58.4.2 in respect of an Article that it is expressly agreed (in writing) by the Parties should not be delivered and assured in accordance with Schedule 4 (*Assurance Process*) (a “**Non-Assured Article**”), after delivery and where such Non-Assured Article is:

- (i) rejected by the Authority in accordance with Clauses 58.5 and 58.6 (*Rejection*); or
- (ii) is in the possession of the Contractor to assess and/or repair such Non-Assured Article where the Authority considers such item is defective and requires repair,

that Non-Assured Article shall, for the purposes of this Contract, be considered as not having been delivered under this Contract and, subject to Clause 58.17 (*Risk*), the title, property and risk in that Non-Assured Article shall return to the Contractor (unless, in the case of a Non-Assured Article purported to have been rejected by the Authority, a notice of objection has been issued to the Authority in accordance with Clause 58.11 (*Rejection*), when the title, property and risk in that Non-Assured Article shall only return to the Contractor if it is agreed or determined such objection is not valid).

Rejection

- 58.5 Without prejudice to the Authority’s rights under Schedule 4 (*Assurance and Acceptance Process*), prior to acceptance by the Authority in accordance with Clauses 58.12 to 58.16 (*Acceptance*) (inclusive), the Authority may reject any Non-Assured Article (whether or not after inspection) which does not conform with the requirements of this Contract.
- 58.6 Without prejudice to the Authority’s rights under Schedule 4 (*Assurance and Acceptance Process*), the Authority may (whether or not after inspection) reject the whole of any consignment of the Non-Assured Articles if:

- 58.6.1 a reasonable proportion or percentage of such Non-Assured Articles in that consignment does not conform with the requirements of this Contract; or
- 58.6.2 samples, whether of Non-Assured Articles or of the material in the Non-Assured Articles, taken randomly from that consignment do not conform with the requirements of this Contract; and
- 58.6.3 in either such case, where not more ten (10) Working Days has elapsed since the date of delivery in the manner required in Clauses 58.1 to 58.3 (*Delivery*) (inclusive), subject always to Clause 58.14 (*Acceptance*).
- 58.7 Without prejudice to the Authority's rights under Schedule 4 (*Assurance and Acceptance Process*) in respect of an Assured Article, for the purposes of this Clause 58 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*), an item of Issued Property in connection with which the Contractor is required to perform obligations in accordance with this Contract shall, following completion of the relevant part of the Contractor Deliverables, be subject to rejection under Clause 58.6 (*Rejection*) as if it was an Non-Assured Article, but without prejudice to the Authority's proprietary and other rights in that item of Issued Property. The provisions of Clauses 58.8 to 58.11 (*Rejection*) (inclusive) shall similarly apply to such items.
- 58.8 Subject to Clause 58.11 (*Rejection*), the Contractor shall at its own expense:
- 58.8.1 in the case of an Assured Article (and without prejudice to the Authority's other rights under Schedule 4 (*Assurance and Acceptance Process*)), at the request of the Authority (and in the manner and at the time reasonably requested by the Authority), remove any Assured Article in relation to which the reason for the Entry Criteria and/or Exit Criteria and/or Acceptance (as applicable) referred to in Clause 58.4.1 (*Delivery*) not being achieved arises (whether in whole or in part) out of or in connection with the delivery of such Assured Article (including where the Authority considers such Assured Article to be defective); and/or
- 58.8.2 in the case of a Non-Assured Article and within fourteen (14) Working Days of being notified of the rejection, or within any other applicable period specified in this Contract, remove any such Non-Assured Article and/or consignment which the Authority has rejected.
- 58.9 If the Contractor fails to remove the relevant Article and/or consignment in accordance with Clause 58.8 (*Rejection*) or the Authority considers such Article and/or consignment is defective and is in need of repair, the Authority may return it to the Contractor at the Contractor's risk and expense.
- 58.10 The Contractor shall at its own expense and within the contractual period for delivery, or within such further reasonable period as the Authority may allow, supply and deliver Articles that conform with the requirements of this Contract.
- 58.11 Without prejudice to the provisions of Schedule 4 (*Assurance and Acceptance Process*) in respect of an Assured Article, the Contractor may object in writing to a notification of rejection of a Non-Assured Article by the Authority within the period specified at Clause 58.8.2 (*Rejection*). If the objection is not resolved within a reasonable time, it shall be treated as a Dispute and the provisions of the Dispute Resolution Procedure shall apply. Unless otherwise agreed the Contractor shall not

remove the Non-Assured Articles which are the subject of the rejection notice unless and until the objection or Dispute has been resolved in favour of the Authority.

Acceptance

- 58.12 Subject to Clause 58.13 (*Acceptance*) and without prejudice to the provisions of Schedule 4 (*Assurance and Acceptance Process*) in respect of the Acceptance of an Assured Article, acceptance of a Non-Assured Article and/or consignment occurs at the time and in accordance with the procedure specified in this Contract on the date that is ten (10) Working Days from delivery in accordance with Clause 58.1 (*Delivery*) unless the Authority has rejected such Non-Assured Article in accordance with Clause 58.6 (*Rejection*).
- 58.13 The Authority shall not (and subject always to the provisions of Schedule 4 (*Assurance and Acceptance Process*) in respect of the Acceptance of an Assured Article) have accepted an Article:
- 58.13.1 merely because the Authority asks for, or agrees to, its repair by or under an arrangement with the Contractor; or
- 58.13.2 unless otherwise specified in this Contract, merely because the Article has been delivered to a Third Party.
- 58.14 The Authority shall not (and subject always to the provisions of Schedule 4 (*Assurance and Acceptance Process*) in respect of the Acceptance of an Assured Article) be deemed to have accepted a Non-Assured Article unless it has had a reasonable opportunity to examine it after delivery for the purpose of ascertaining whether it is in conformity with this Contract.
- 58.15 Acceptance of any Article and/or consignment does not limit or in any way affect the Contractor's obligations to remedy any defects which are discovered in any Articles after the date such Article was accepted.
- 58.16 Where software is to be supplied as a requirement of this Contract it will be subject to the provisions of this Clause 58 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*) as if it were an Article.

Risk

- 58.17 For the avoidance of doubt, title and risk in an Article will, subject to Clause 58.18 remain with the Contractor until such time as the Article has been delivered to the Authority in accordance with Clause 58.2 (*Delivery*).
- 58.18 Where following such delivery referred to in Clause 58.17:
- 58.18.1 in the case of any Assured Article, the relevant Assured Article is identified as the reason (whether in whole or in part) for the Entry Criteria and/or Exit Criteria and/or Acceptance (as applicable) referred to in Clause 58.4.1 (*Delivery*) not being achieved; and/or
- 58.18.2 in the case of a Non-Assured Article, the relevant Non-Assured Article is rejected by the Authority in accordance with this Clause 58 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*); and/or

- 58.18.3 in the case of an Article which is in the possession of the Contractor to assess and/or repair such Article where the Authority considers such item is defective and requires repair (as referred to in Clauses 58.4.1 and 58.4.2(ii) (*Delivery*)),

then title and risk will, on the relevant date the circumstances described in Clauses 58.18.1, 58.18.2 or 58.18.3 occurs, be allocated so that title in the Article will remain with the Authority and risk in the Article will be with the Contractor (until such time as the relevant Article is again delivered to the Authority in accordance with Clause 58.2 (*Delivery*)).

59 Issued Property

- 59.1 All Issued Property shall remain the property of the Authority. It shall be used in the execution of this Contract and for no other purpose, without the prior approval in writing of the Authority.
- 59.2 Neither the Contractor, nor any Sub-Contractor, nor any other person, shall have a lien on Issued Property, for any sum due to the Contractor, Sub-Contractor or other person, and the Contractor shall take all such steps as may be necessary to ensure that the title of the Authority, and the exclusion of such lien, are brought to the notice of all Sub-Contractors and other persons dealing with any Issued Property.

Receipt

- 59.3 Subject to Clauses 59.4 and 59.7 (*Receipt*), within fourteen (14) Working Days of receipt of Issued Property, or such other longer period as may be specified in this Contract, the Contractor shall:
- 59.3.1 check the Issued Property to verify that it corresponds with the Issued Property specified in this Contract;
 - 59.3.2 conduct a reasonable visual inspection; and
 - 59.3.3 conduct any additional inspection and testing as may be necessary and practicable to check that the Issued Property is not defective or deficient for the purpose for which it has been provided;
- and notify the Authority of any defects, deficiencies or discrepancies discovered.
- 59.4 Where Issued Property is packaged it shall not be unpacked earlier than is necessary. The period identified at Clause 59.3 (*Receipt*) shall count from the date on which packages are opened.
- 59.5 The Authority shall within a reasonable time after receipt of any notice under Clause 59.3 (*Receipt*) replace, re-issue or authorise repair of Issued Property agreed to be defective or deficient and the Contractor shall (having first taken all reasonable measures to mitigate the consequences of any such delay) consider whether such matter gives rise to a GFA Failure and, if so, shall consider initiating the procedures in Clause 31 (*Authority Performance Failures*) and shall also issue written instructions for the return or disposal of the defective or deficient Issued Property.
- 59.6 In the event that the Authority fails to provide, replace or authorise repair of defective or deficient Issued Property within a reasonable time of receipt of a notice in

accordance with Clause 59.3 (*Receipt*), the Contractor shall (having first taken all reasonable measures to mitigate the consequences of any such delay) consider whether such matter gives rise to a GFA Failure and, if so, shall consider initiating the procedures in Clause 31 (*Authority Performance Failures*) and if the Parties agree, fair and reasonable revisions of the Contract Price, delivery schedule and/or any other matter shall be considered and, if agreed, an Authority Change, to incorporate the agreed changes to this Contract, shall be initiated (such changes having due regard to any relief that may have been granted to the Contractor in accordance with Clause 31 (*Authority Performance Failures*)).

59.7 Clauses 59.3 to 59.6 (*Receipt*) (inclusive) do not apply in the following circumstances:

- 59.7.1 where Issued Property is issued for the purpose of repair, overhaul, conversion or other work to be performed on the Issued Property, inspection of such property shall be as specified in this Contract;
- 59.7.2 where the Contractor can show that the Issued Property cannot be fully tested until it has been integrated with other items, inspection of such property shall be as specified in this Contract;
- 59.7.3 where Special Jigs, Tools Etc. become Issued Property under Clause 63 (*Special Jigs, Tooling and Test Equipment*);
- 59.7.4 where Issued Property is in the care, custody or control of the Contractor as at the Effective Date; and/or
- 59.7.5 subject to Clause 31.10.1 (*Discretionary GFA*) (in so far as such Clause 31.10.1 (*Discretionary GFA*) refers to Clause 59.4 (*Receipt*)), where such Issued Property is Discretionary GFA.

Custody

- 59.8 Subject to Clause 59.11 (*Custody*), the Contractor shall be responsible for the safe custody and due return of Issued Property, whether or not incorporated into any Articles, and shall be responsible for all Loss or damage thereto, until re-delivered in accordance with the Authority's instructions (as may be amended from time to time) or until the expiry of the period specified in Clause 59.15 (*Accounting and Return of Issued Property*).
- 59.9 The Contractor shall be responsible for such calibration and maintenance of the Issued Property as may be required for the purpose of the Contractor delivering the Contractor Deliverables and performing its other obligations in accordance with this Contract.
- 59.10 If requested, the Authority, within a reasonable time, and where practicable before delivery of the Issued Property, shall notify the Contractor of the value of the Issued Property, provided that the provisions of this Clause 59.10 (*Custody*) shall not apply to any Issued Property in the care, custody or control of the Contractor as at the Effective Date.
- 59.11 The Contractor shall not be liable in respect of:

- 59.11.1 defects or deficiencies notified to the Authority in accordance with Clause 59.3 (*Issued Property*) or latent defects which the Contractor can show could not reasonably have been discovered by means of the activities described at Clause 59.3 (*Issued Property*);
- 59.11.2 fair wear and tear in Issued Property resulting from its normal and proper use in the execution of this Contract (except insofar as the deterioration is contributed to by any misuse, lack of care or want of maintenance by the Contractor);
- 59.11.3 Issued Property rendered unserviceable as a direct result of ordinary performance of this Contract; and
- 59.11.4 any Loss or damage to Issued Property arising from:
- (i) aircraft or other aerial devices or objects dropped from them, including pressure waves caused by aircraft or such devices whether travelling at sonic or supersonic speeds;
 - (ii) ionising radiation or contamination by radioactivity from any nuclear fuel or from nuclear waste from the combustion of nuclear fuel;
 - (iii) the radioactive, toxic, explosive or other hazardous properties of any nuclear assembly or nuclear component thereof; or
 - (iv) riot, civil commotion, civil war, rebellion, revolution, insurrection, military or usurped power or acts of the King's enemies.

Accounting and Return of Issued Property

59.12 The Contractor shall:

- 59.12.1 open and maintain a Public Store Account ("**PSA**") in accordance with Def Stan 05-099;
- 59.12.2 ensure that all property of the Authority recorded in the PSA, including but not limited to Issued Property, is available for inspection by the Authority at any reasonable time; and
- 59.12.3 on being given two (2) months' notice or such other period as has been stated in this Contract permit, and co-operate with, the Authority to conduct audits of the property of the Authority recorded in the PSA in a manner to be determined by the Authority and where the Authority has reasonable grounds to believe that the property of the Authority has not been used in accordance with the terms of issue, then these audits may be conducted without notice.
- 59.13 Once title in Special Jigs, Tools Etc. has passed to the Authority in accordance with Clause 63.4 (*Special Jigs, Tooling and Test Equipment: Passing of Property*), the Contractor shall record that equipment in the PSA in accordance with Def Stan 05-099.

- 59.14 The Contractor shall at least once in every two (2) Contract Months forward a list of Issued Property which is in its possession but which is no longer required by the Contractor for the provision of the Contractor Deliverables, to the Authority's Representative. The Authority's Representative shall, within two (2) Contract Months from receipt of the relevant list notify the Contractor of a place or places within the United Kingdom where the Contractor should deliver such Issued Property. Where the Authority has notified such delivery instructions, the Contractor shall comply with such instructions as soon as is reasonably practicable, ensuring that appropriate packaging (having due regard to the nature of the relevant Issued Property) is utilised. Where there is no such notification, the Contractor shall request (in writing) the Authority for delivery instructions and shall repeat such request at least once weekly thereafter until such delivery instructions are notified to the Contractor by the Authority. Following receipt of such delivery instructions the Contractor shall deliver the relevant Issued Property to the Authority (in each case ensuring appropriate packaging (having due regard to the nature of the relevant Issued Property)) is utilised.
- 59.15 Without prejudice to Clause 59.14 (*Accounting and Return of Issued Property*), on completion or termination of this Contract, the Contractor shall forward a list of Issued Property still held to the Authority's Representative. Return or disposal of such Issued Property will be as specified in this Contract, or as instructed by the Authority on completion or termination of this Contract. If no disposal instructions are specified in this Contract the Authority shall provide such instructions within two (2) months of the Contractor's written request to do so.

60 Accounting for the property of the Authority

60.1 The Contractor shall:

- 60.1.1 maintain a Public Store Account (PSA), as defined in Def Stan 05-099, which shall include a complete list of all property of the Authority, as defined in Clause 60.2 (*Accounting for the property of the Authority*), and record for that property all transactions or other accounting information specified in Annex A to DEFCON 694 (*Accounting for property of the Authority*);
- 60.1.2 supply to the Authority quarterly reports on the current PSA holdings. At least one (1) report in any twelve (12) month accounting period or part thereof shall be a reconciled report. This shall be submitted with the Annual Certificate Form AAC 32 as required in Def Stan 05-099. The other three (3) reports submitted in the period may be un-reconciled advisory reports. The submission by the Contractor and receipt by the Authority of these reports shall not prejudice any rights or obligations of the Authority or the Contractor under this Contract;
- 60.1.3 ensure that the PSA is available for inspection by the Authority at any reasonable time;
- 60.1.4 on being given two (2) months' notice permit, and co-operate with, the Authority to conduct audits of the PSA in a manner to be determined by the Authority provided that where the Authority is not satisfied of the proper use of property of the Authority, an audit may be conducted without notice;

- 60.1.5 retain the PSA for a period of three (3) years after disposal of the last item of the property of the Authority or for any other period as may be specified in this Contract;
- 60.1.6 if the Authority agrees that a Sub-Contractor at whatever level of sub-contracting shall have responsibility in the Sub-Contractor's PSA for property of the Authority issued in aid of this Contract, the Contractor shall include in any Sub-Contract with those Sub-Contractors the provisions corresponding to those set out in this Clause 60 (*Accounting for the property of the Authority*) that apply to property of the Authority issued in aid of the Sub-Contract, in particular Clauses 60.1, 60.2, 60.4 and 60.7 (*Accounting for the property of the Authority*); and
- 60.1.7 manage the GFA component of the PSA in accordance with the provisions of Def Stan 05-099 and implement any new edition of or amendment to Def Stan 05-099 subject to Clause 75 (*Change*) within three (3) months of the publication date of the new edition. These amendments shall not have retrospective effect.
- 60.2 For the purposes of this Clause 60 (*Accounting for the property of the Authority*), "property of the Authority" means GFA and fixed assets, including property issued under Clause 31.10 (*Discretionary GFA*), Clause 59 (*Issued Property*) and property of the Authority issued to the Contractor under any other authorising document.
- 60.3 For the avoidance of doubt, it is a condition of this Contract that this Clause 60 (*Accounting for the property of the Authority*) shall apply to all property issued to the Contractor from the Effective Date, whether in aid of this Contract, any other contract or other agreement with the Authority. Property of the Authority issued prior to the Effective Date may be subject to separate contractual arrangements.
- 60.4 The obligations of the Contractor arising under this Clause 60 (*Accounting for the property of the Authority*) in respect of property of the Authority issued in aid of this Contract shall survive completion of this Contract and shall not be completed until all such obligations are fulfilled including the provisions of Clause 60.1.5 (*Accounting for the property of the Authority*).
- 60.5 The obligations of the Contractor arising under this Clause 60 (*Accounting for the property of the Authority*) in respect of property of the Authority unconnected with this Contract shall survive completion of this Contract and shall not be completed until all those obligations are fulfilled including the provisions of Clause 60.1.5 (*Accounting for property of the Authority*) unless and until a subsequent contract containing DEFCON 694 (*Accounting for property of the Authority*), is placed with the Contractor at which time obligations in respect of any remaining property of the Authority unconnected with this Contract shall be subsumed in the subsequent contract.
- 60.6 If, after completion of this Contract, no subsequent contract is placed containing DEFCON 694 within the period detailed at Clause 60.1.5 (*Accounting for property of the Authority*) then the obligations of the Contractor arising under this Clause 60 (*Accounting for the property of the Authority*) in respect of property of the Authority unconnected with this Contract shall cease on expiry of the period detailed in Clause 60.1.5 (*Accounting for property of the Authority*).
- 60.7 The Authority reserves the right to amend Annex A to DEFCON 694 (*Accounting for property of the Authority – Data & Format Requirements for PSA Records*), without

further consultation where the amendments arise from the Authority's proper and reasonable accounting requirements. For the purposes of this Clause 60 (*Accounting for the property of the Authority*), Annex A to DEFCON 694 (*Accounting for property of the Authority – Data & Format Requirements for PSA Records*) shall be regarded as a specification which is subject to the provisions of Clause 75 (*Change*). If the Authority exercises this right:

- 60.7.1 the Contractor shall implement the amendment to Annex A to DEFCON 694 (*Accounting for property of the Authority – Data & Format Requirements for PSA Records*) at the commencement of the Authority's next accounting year provided that a notice of six (6) months or such other period as may expressly be agreed between the Authority and the Contractor is given to the Contractor. These amendments shall not have retrospective effect; and
- 60.7.2 the Contractor shall inform the Authority as soon as practicable, but in any event within three (3) months of notice having been given, if the Contractor cannot comply with the amendment to Annex A to DEFCON 694 (*Accounting for property of the Authority – Data & Format Requirements for PSA Records*).

61 Marking of Articles

- 61.1 Each Article shall be marked in accordance with the procedure laid out in this Contract. Where no procedure is stated, the Contractor shall mark each Article clearly and indelibly in accordance with the requirements of the relevant Def Stan 05-132 as specified in this Contract or specification. In the absence of such requirements, the Articles shall be marked with the Authority stock reference, NATO Stock Number ("**NSN**") or alternative reference number shown in this Contract. Any marking method used shall not have a detrimental effect on the strength, serviceability or corrosion resistance of the Articles.
- 61.2 The marking shall include any serial numbers allocated to the Article.
- 61.3 Where because of its size or nature it is not possible to mark an Article with the required particulars, the required information should be included on the package or carton in which the Article is packed in accordance with Clause 56 (*Packaging (for Articles other than Munitions)*).

62 Transport

- 62.1 [xxx]
- 62.2 The Contractor shall be responsible for transporting the Articles supported under this Contract and returning the items of Issued Property (as the case may be) from the point of origin to the relevant locations within the United Kingdom as notified by the Authority to the Contractor from time to time. The Contractor shall also be responsible for all loading and unloading of the Articles and the items of Issued Property, including, where necessary, the provision of special handling equipment.

63 Special Jigs, Tooling and Test Equipment

- 63.1 The Contractor shall provide all jigs, tools, patterns, moulds, dies, manufacturing gauges and test equipment, together with associated fixtures, fittings and software

necessary for the manufacture of the Articles or for the provision of the Contractor Deliverables, unless supplied by the Authority in accordance with Schedule 7 (*Authority Obligations*).

Pricing

- 63.2 The Contract Price includes an appropriate amount to enable the Contractor to recover his expenditure on Special Jigs, Tools Etc., including the cost of maintenance and calibration under Clause 63.8 (*Accounting and Control*).
- 63.3 The Contractor shall not claim assistance from other Government funds (e.g. Regional Development Grants or selective financial assistance) or other third parties towards the costs of any Special Jigs, Tools Etc.

Passing of Property

- 63.4 Except where otherwise specified in this Contract, the Special Jigs, Tools Etc. shall become the property of the Authority:
- 63.4.1 where the Special Jigs, Tools Etc. are delivered to the Authority before being utilised by the Contractor for any purpose, in accordance with Clause 58 (*Delivery, Acceptance, Rejection and Transfer of Title and Risk*) as if they were Articles; or
 - 63.4.2 where the Authority authorises the Contractor to utilise the Special Jigs, Tools Etc. for the production of articles for a Third Party in advance of their being used for the production of Articles under this Contract, upon delivery of the first article so produced for the Third Party; or
 - 63.4.3 where the Contractor is to utilise the Special Jigs, Tools Etc. in respect of the Contractor Deliverables before delivery of such Special Jigs, Tools Etc. to the Authority, the earlier to occur of when the Special Jigs, Tools Etc. are delivered to the Contractor or title to such Special Jigs, Tools Etc. is secured by the Contractor or any Contractor Related Party through any contractual arrangement to which the Contractor or any Contractor Related Party is a party; and
 - 63.4.4 in all other cases upon acceptance of the first Article delivered under this Contract or upon expiry or termination of this Contract whichever is the earlier.
- 63.5 Where property in the Special Jigs, Tools Etc. passes to the Authority while they are still required to provide the Contractor Deliverables, they shall be treated thereafter as Issued Property for the purposes of Clauses 59 (*Issued Property*) and 60 (*Accounting for the property of the Authority*).

Modifications

- 63.6 Notwithstanding the passing of property to the Authority pursuant to Clause 63.4 (*Passing of Property*), the Contractor shall be free to modify the Special Jigs, Tools Etc. as it may deem necessary in order to produce the Articles or to provide the Contractor Deliverables, and the Authority's approval of such modifications shall not be required.

Accounting and Control

- 63.7 The Contractor shall account for and control the Special Jigs, Tools Etc. in accordance with the provisions of Clause 63.5 (*Passing of Property*). Pending the transfer to the Public Store Account, the Contractor shall:
- 63.7.1 maintain a list of Special Jigs, Tools Etc. procured or manufactured by the Contractor;
 - 63.7.2 make the list available to the Authority for inspection by the Authority;
 - 63.7.3 maintain the list for three (3) years after disposal of the Special Jigs, Tools Etc., where not transferred to the Public Store Account in accordance with Clause 59 (*Issued Property*);
 - 63.7.4 forward the list to the Authority's Representative following first Article acceptance and prior to transfer of Special Jigs, Tools Etc. to the Public Store Account; and
 - 63.7.5 remove from the list any Special Jigs, Tools Etc. transferred to the Public Store Account.
- 63.8 The Contractor shall be responsible for the safe custody, maintenance and calibration necessary to retain the relevant Special Jigs, Tools Etc. on any Contractor premises until delivered to the Authority in accordance with Clause 63.9 (*Availability*).

Availability

- 63.9 Once property in the Special Jigs, Tools Etc. has passed to the Authority in accordance with Clause 63.4 (*Passing of Property*), the Contractor shall, if required, deliver the Special Jigs, Tools Etc. to such individual, company, factory or Government Establishment as may be named by the Authority. The Contractor shall not be entitled to any further payment for delivering the Special Jigs, Tools Etc. other than for the recovery of packing and carriage costs reasonably incurred. This Clause 63.9 (*Availability*) shall not, however, entitle the Authority to require the Contractor to dispose of the Special Jigs, Tools Etc. to the prejudice of this Contract or other contracts held by the Contractor with the Authority or with another customer, provided the Authority's approval for such use has been given in accordance with Clause 63.11 (*Use for other than the purposes of the Authority*). Where the Contractor holds no contracts for such articles, but having received the Authority's approval in accordance with Clause 63.11 (*Use for other than the purposes of the Authority*), has made a firm written offer to a Third Party to supply such articles, the Authority shall not be entitled to dispose of the Special Jigs, Tools Etc. until such time as the Contractor's offer has expired and no commitment to supply those articles or perform those services remains.

Delivery

- 63.10 The Special Jigs, Tools Etc. shall be delivered to the Authority as notified to the Contractor from time to time at no additional cost to the Authority.

Use for other than the purposes of the Authority

- 63.11 The Contractor shall not use the Special Jigs, Tools Etc. for any other purposes other than those of the Authority without first obtaining the written approval of the Authority and in accordance with the terms, including payment, for such other use as stated in a commercial exploitation, or other agreement between the Contractor and the Authority. In Sub-Contracts, which include the provisions of this Clause 63 (*Special Jigs, Tooling and Test Equipment*), the Contractor shall require that such written approval be obtained direct from the Authority.

64 Montreal Protocol Substances

- 64.1 The Contractor shall provide annually to the Authority a list (or a nil return where appropriate) setting out which of the substances listed in Regulation (EC) No. 1005/2009 (as amended by Regulation (EC) No. 744/2010 and as subsequently amended from time to time) have been used in the Contractor Deliverables and/or any Packaging specifying:

64.1.1 the quantity of such substances; and

64.1.2 where in the Contractor Deliverables and/or Packaging such substances have been used.

65 Not Used

PART 12 - CONTRACT SPECIFIC PROVISIONS

66 Authority Obligations

- 66.1 The Parties shall comply with the provisions of Schedule 7 (*Authority Obligations*).

67 Management and Reporting

- 67.1 The Parties shall comply with the provisions of this Contract with regard to the provision of periodic reporting (including Schedule 8 (*Governance and Management*) and Schedule 6 (*Incentivisation*)).
- 67.2 The submission by the Contractor and receipt by the Authority of reports on the progress of this Contract shall not prejudice any rights or obligations of the Authority or the Contractor under this Contract.

68 Quality Assurance

- 68.1 A deliverable quality plan is not required for the purposes of this Contract.
- 68.2 The Contractor shall ensure that the Contractor Deliverables and any other obligations of the Contractor in this Contract are carried out in accordance with the quality requirements contained in this Contract (including those quality requirements in Schedule 15 (*Ancillary Documents*)).

PART 13 - TERMINATION

69 Termination for Contractor Default

Right to Terminate

- 69.1 If a Contractor Default has occurred, the Authority shall be entitled to terminate the whole or any part of this Contract in accordance with the provisions of Clause 69.2 (*Right to Terminate*) and subject to the provisions of Clauses 69.3 to 69.6 (*Rectification*) (inclusive).
- 69.2 If a Contractor Default has occurred (including a default as contemplated in Clause 69.13 (*Termination Following a Change of Ownership*)) and the Authority wishes to terminate the whole or any part of this Contract pursuant to this Clause 69 (*Termination for Contractor Default*), it must serve a notice (the "**Termination Notice**") on the Contractor stating:
- 69.2.1 that the Authority is terminating this Contract or part thereof for Contractor Default;
 - 69.2.2 where relevant, the part of this Contract that the Authority is terminating;
 - 69.2.3 the type and nature of the Contractor Default that has occurred, giving reasonable details; and
 - 69.2.4 that this Contract or part thereof shall (subject to the provisions of Clauses 69.3 to 69.6 (*Rectification*) (inclusive)) terminate on the day (the "**Contractor Default Termination Date**") falling twenty (20) Working Days after the date the Contractor receives the Termination Notice.

Rectification

- 69.3 Where a Termination Notice cites a Contractor Default of the type and nature falling under limbs (a), (f) or (i) of the definition of "Contractor Default", the Contractor shall, in consultation with the Authority, have the opportunity to set out within ten (10) Working Days or such other period as agreed between the Parties before the end of such ten (10) Working Day period how it intends to remedy such Contractor Default.
- 69.4 Where the Authority agrees with such proposed remedy, and the remedy is implemented as agreed, the Termination Notice in question shall be deemed to be revoked.
- 69.5 Where the Authority agrees with such proposed remedy, and the remedy is not implemented as agreed, the Contractor Default Termination Date shall be the day falling twenty (20) Working Days after the date by which the remedy was agreed to be implemented.
- 69.6 If by the day falling twenty (20) Working Days after the date the Contractor receives the Termination Notice (or such later date as the Authority, acting reasonably, may agree) the Authority considers that such proposed remedy will not restore the provision of the Contractor Deliverables or any portion thereof in accordance with the terms of this Contract, and/or that such proposed remedy will not rectify the Contractor Default, the Authority may terminate the whole or the relevant part of this Contract forthwith (and the Contractor Default Termination Date shall be the day falling twenty (20) Working Days after the date the Contractor receives the Termination Notice (or such later date to be determined at the Authority's discretion)).

Termination Date for Contractor Default

- 69.7 Following the issue of a Termination Notice pursuant to Clause 69.2 (*Right to Terminate*) and where the Authority is terminating the whole of this Contract, this Contract shall (subject to the provisions of Clauses 69.3 to 69.6 (*Rectification*) (inclusive)) terminate on the Contractor Default Termination Date.

Partial Termination

- 69.8 Where the Authority is terminating part of this Contract, the Parties shall, subject to Clause 73 (*Continuing Obligations*), owe each other no further obligations in respect of such part of this Contract as is specified in the Termination Notice from the Contractor Default Termination Date.
- 69.9 For the avoidance of doubt, where Clause 69.8 (*Partial Termination*) applies, the Parties shall continue to fulfil their respective obligations in respect of those parts of this Contract that are not identified in the Termination Notice as being terminated.

Termination Following a Prohibited Act

- 69.10 If the Contractor commits a Prohibited Act and/or breaches and/or is in default under Clauses 5.1.13, 5.1.14 and/or 5.1.15 (*Contractor Warranties*), the Authority may (without prejudice to its rights in Clauses 13.3 and 13.4 (*Sub-Contracting*) and subject to the provisions of Clause 69.11 (*Termination following a Prohibited Act*)) by notice:
- 69.10.1 require the Contractor to remove from performance of this Contract any Contractor Related Party, and any of the Contractor's employees, consultants, or agents whose acts or omissions have caused the default; or
 - 69.10.2 immediately terminate this Contract; and
 - 69.10.3 any notice served by the Authority under this Clause 69.10 (*Termination Following a Prohibited Act*) 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 Contract shall terminate).
- 69.11 In exercising its rights and remedies in respect of a Prohibited Act, the Authority shall:
- 69.11.1 act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the Prohibited Act; and
 - 69.11.2 give all due consideration, where appropriate, to action other than termination of this Contract, including without being limited to:
 - (i) requiring the Contractor to procure the termination of a Sub-Contract where the Prohibited Act was undertaken by or on behalf of a Sub-Contractor or anyone acting on its or their behalf; or
 - (ii) requiring the Contractor to procure the re-assignment of an employee, consultant or agent (whether its own or that of a Sub-

Contractor or anyone acting on its behalf) from performing this Contract where the Prohibited Act is that of such employee, consultant or agent,

and the Contractor shall (and shall use all reasonable endeavours to procure that its Sub-Contractors shall) give all due consideration to the Authority's proposal under this Clause 69.11.2 (*Termination Following a Prohibited Act*).

Termination Following Withholding of Hazard Data

- 69.12 As an alternative to terminating this Contract (or any part thereof) following a Contractor Default of the type described at limb (i) of the definition of that term, the Authority shall have the option to require the Contractor to rectify the relevant breach immediately at no additional cost to the Authority.

Termination Following a Change of Ownership

- 69.13 If a Change of Ownership occurs in the circumstances described in Clause 80 (*Change of Ownership*), a Contractor Default shall be deemed to have occurred and the Authority shall be entitled to terminate the whole or any part of this Contract within twelve (12) months of the date the Authority became aware that the relevant Change of Ownership has occurred and such termination shall be subject to the provisions of Clause 69.2 (*Right to Terminate*) and shall not be subject to the provisions of Clauses 69.3 to 69.6 (*Rectification*) (inclusive).

70 Break

- 70.1 The Authority shall, in addition to its power under any other of the provisions of this Contract, have the power to determine this Contract at any time by giving to the Contractor at least twenty (20) Working Days written notice, and upon the expiration of such notice period this Contract shall terminate, without prejudice to the rights of the Parties already accrued as at the Termination Date, but subject to the operation of the following provisions of this Clause 70 (*Break*).
- 70.2 In the event of such notice being given, the Authority shall, at any time before the expiration of the notice, be entitled to exercise and shall, as soon as may be reasonably practicable within that period, exercise such of the following powers as it considers expedient:
- 70.2.1 to direct the Contractor, where provision of any element of the Contractor Deliverables has not been commenced, to refrain from commencing such provision;
 - 70.2.2 to direct the Contractor to complete the provision of any element of the Contractor Deliverables and/or to concentrate its efforts on the completion of any elements of the Contractor Deliverables where provision of the same (or any activities that are integral to such provision) has (or have) already commenced;
 - 70.2.3 to direct the Contractor to, as soon as may be reasonably practicable after the receipt of such notice, take such steps as will ensure that the rate of provision of the Contractor Deliverables (or the rate of performance of any

activities that are integral to such provision) is reduced as rapidly as possible; and/or

- 70.2.4 to direct the Contractor to determine on the best possible terms such Sub-Contracts and orders for materials, parts, components and/or services as have not been completed, observing in connection with this any direction given under Clauses 70.2.1 to 70.2.3 (*Break*) as far as may be possible.
- 70.3 If in any particular case of hardship to the Contractor should arise from the operation of this Clause 70 (*Break*) it shall be open to the Contractor to refer the circumstances to the Authority who, on being satisfied that such hardship exists, shall make such allowance (having particular regard to the provisions of Clause 71 (*Financial consequences of Termination*)), if any, as in its opinion is reasonable, and the decision of the Authority on any matter or thing arising out of this Clause 70.3 (*Break*) shall be final and conclusive.

71 Financial consequences of Termination

Termination for Contractor Default

- 71.1 Where this Contract or any part thereof is terminated pursuant to Clause 69 (*Termination for Contractor Default*), the provisions of Clauses 71.2 to 71.4B (*Termination for Contractor Default*) (inclusive) shall apply except where such termination is as a result of an Insolvency Event in which case the Contractor shall not be entitled to any compensation or any further payment from the Authority.
- 71.2 Where Clause 71.1 (*Termination for Contractor Default*) applies, and the Authority makes alternative arrangements for the provision of the Contractor Deliverables (which may, for the avoidance of doubt, include the Authority carrying out the Contractor Deliverables itself), the Authority shall be entitled to recover from the Contractor the cost of making such alternative arrangements, together with any additional expenditure incurred by the Authority as a result of such alternative arrangements throughout the remainder of what would have been (as at the date of the Termination Notice) the term of this Contract had it not been terminated pursuant to Clause 69 (*Termination for Contractor Default*).
- 71.3 Where Clause 71.1 (*Termination for Contractor Default*) applies, the Contractor shall not be entitled to be paid any sums until the Authority has assessed the cost of the alternative arrangements referred to in Clause 71.2 (*Termination for Contractor Default*). If following such assessment, the amount of such Loss is less than the amount outstanding to the Contractor for any aspect of the Contractor Deliverables that it has, as at the Termination Date, delivered to the Authority in accordance with this Contract, then the Authority shall pay the difference to the Contractor. The Authority shall complete such assessment, and the Parties shall complete the reconciliation process, within three (3) months of the Termination Date and payment shall be made within twenty (20) Working Days of such completion or such other period as agreed between the Parties before the end of such twenty (20) Working Day period.
- 71.4 Where the Authority is entitled to terminate this Contract pursuant to Clause 69 (*Termination for Contractor Default*) as a result of the occurrence of a Prohibited Act (and/or the Contractor breaches and/or is in default under Clauses 5.1.13, 5.1.14 and/or 5.1.15 (*Contractor Warranties*)), the Authority shall, in addition to its rights set

out in Clauses 71.2 and 71.3 (*Termination for Contractor Default*) (but without any double-counting) be entitled to:

- 71.4.1 recover from the Contractor the amount of any Losses resulting from such termination;
- 71.4.2 recover from the Contractor the amount or value of any gift, consideration or commission entailed by such Prohibited Act; and
- 71.4.3 where this Clause 71.4 (*Termination for Contractor Default*) applies but this Contract has not been terminated, to recover from the Contractor any other Losses sustained as a result of such Prohibited Act,

and any recovery action taken against any employee of the Authority shall be without prejudice to any recovery action taken against the Contractor pursuant to this Clause 71.4 (*Termination for Contractor Default*).

71.4A Where the Authority is entitled to terminate this Contract pursuant to Clause 86.5 (*Tax Compliance*), the Authority shall, subject to the provisions of Clause 86.7 (*Tax Compliance*) and in addition to the Authority's rights in Clauses 71.2 and 71.3 (*Termination for Contractor Default*) (but without double-counting), be entitled to recover from the Contractor:

- 71.4A.1 the amount of any Losses resulting from such termination; and
- 71.4A.2 where this Clause 71.4A (*Termination for Contractor Default*) applies but where this Contract has not been terminated, any other Losses sustained as a result of the breach by the Contractor giving rise to the Authority's rights in this Clause 71.4A (*Termination for Contractor Default*).

Termination for Break

71.5 Where this Contract is terminated pursuant to Clause 70 (*Break*), the provisions of Clauses 71.6 to 71.8 (*Termination for Break*) shall apply.

71.6 Where Clause 70 (*Break*) applies (subject always to the Contractor's compliance with any direction given by the Authority pursuant to Clause 70.2 (*Break*)):

71.6.1 the Authority shall take over from the Contractor at a fair and reasonable price (to the extent the Contractor has not already been paid) all unused and undamaged materiel and any Contractor Deliverables which consist of physical items and are in the course of manufacture, that are:

- (i) in the possession of the Contractor at the Termination Date; and
- (ii) properly provided by or supplied to the Contractor for the performance of this Contract,

except such materiel and Contractor Deliverables that consist of physical items as the Contractor shall, with the agreement of the Authority, elect to retain; and

71.6.2 the Contractor shall prepare and deliver to the Authority within an agreed period, or in default of agreement within such period as the Authority may specify, a list of:

- (i) all such unused and undamaged materiel; and
- (ii) the Contractor Deliverables that consist of physical items and are in the course of manufacture,

that are liable to be taken over by, licensed to or previously belonged to the Authority, and shall deliver such materiel and the Contractor Deliverables in accordance with the directions of the Authority (who shall, in the case of materials and Contractor Deliverables which consist of physical items, pay to the Contractor fair and reasonable handling and delivery charges incurred by the Contractor in complying with such directions);

and in assessing a fair and reasonable price in Clauses 71.6.1 to 71.6.2 (*Termination for Break*) the Parties shall have due regard to the provisions of Schedule 9 (*Pricing and Payment*) and the Parties shall carry out a reconciliation for that purpose in accordance with paragraph 6 of Part 1 Schedule 9 (*Pricing and Payment*).

71.7 Where Clause 70 (*Break*) applies, the Authority shall (subject to Clause 71.8 (*Termination for Break*) and to the Contractor's compliance with any direction given by the Authority pursuant to Clause 70.2 (*Break*)) indemnify the Contractor against any commitments, liabilities or expenditure which represent an unavoidable Loss by the Contractor by reason of the termination of this Contract, subject to:

71.7.1 the Contractor taking all reasonable steps to mitigate such Loss; and

71.7.2 the Contractor submitting a fully itemised and costed list of such Loss, with supporting evidence of Losses reasonably and actually incurred by the Contractor as a result of termination of this Contract pursuant to Clause 70 (*Break*).

71.8 The Authority shall not be liable under Clause 71.7 (*Termination for Break*) to pay any sum which, when added to any sums already paid or due to the Contractor under this Contract, exceeds an amount equal to the Notional Contract Price.

71.9 Not Used.

Miscellaneous Provisions

71.10 Where on the Termination Date or the Expiry Date (as the case may be) the Parties:

71.10.1 agree all amounts which are due to each other arising under this Contract, each Party shall (subject to the provisions of Clause 27 (*Recovery of Sums Due*)) pay to the other any amounts payable pursuant to this Clause 71 (*Financial Consequences of Termination*) within twenty (20) Working Days of the Termination Date or the Expiry Date (as the case may be) or such other period as agreed between the Parties before the end of the relevant twenty (20) Working Day period ; or

- 71.10.2 do not agree what amounts are due to each other arising under this Contract, the Parties shall carry out a reconciliation as contemplated at paragraph 6.3 of Part 1 of Schedule 9 (*Pricing and Payment*) within ten (10) Working Days of the Termination Date or the Expiry Date (as the case may be) or such other period as agreed between the Parties before the end of the relevant twenty (20) Working Day period .

72 Exit Plan

- 72.1 The Parties have agreed that the matters which are likely to be required to be implemented on expiry or early termination of this Contract are set out in Schedule 17 (*Exit Plan*). The Parties have agreed that on the earlier to occur of:

72.1.1 six (6) calendar months from the Expiry Date; and

72.1.2 ten (10) Working Days following receipt of a written notice from the Authority,

the Contractor shall review the Exit Plan in accordance with Good Industry Practice, having due regard to the status of the Contractor Deliverables and any other relevant factors at that time and issue to the Authority a proposed update and revision of the Exit Plan, giving full details of the rationale for any proposed changes. Following receipt by the Authority of the revised Exit Plan and rationale, the Contractor and the Authority shall meet (as soon as reasonably practicable and on such number of occasions as the Authority may reasonably require) to discuss and make any agreed amendments to the revised Exit Plan.

- 72.2 The Parties acknowledge that:

72.2.1 the preparation and development of the Exit Plan as contemplated in this Clause 72 (*Exit Plan*) forms part of this Contract and forms part of the Contract Price;

72.2.2 subject to Clauses 72.2.3 and 72.2.4 (*Exit Plan*), the Contract Price does not incorporate sums relating to the carrying out of all of the steps set out in the Exit Plan; and

72.2.3 notwithstanding the provisions of Clause 72.2.2 (*Exit Plan*), the Contractor shall be obliged to carry out those activities described in Clause 74 (*Continuing Assistance*) whether or not such activities are also incorporated or contemplated or referred to in the Exit Plan and the Contractor acknowledges that it has incorporated pricing for the performance of such activities in Clause 74 (*Continuing Assistance*), save for the obligations in Clause 74.3 (*Co-operation*), in the Contract Price; and

72.2.4 in the event that the Authority wishes to require the Contractor to perform:

- (i) any obligations identified in the Exit Plan (as may have been updated or revised) in addition to those activities referred to in Clause 72.2.3 (*Exit Plan*); and/or
- (ii) those obligations set out in Clause 74.3 (*Co-operation*),

the Authority shall issue an Authority Change Notice and the Contractor shall not be permitted to object to such proposed Authority Change, notwithstanding any other provisions of this Contract and the price for such obligations as detailed in the Authority Change shall be fair and reasonable.

73 Continuing Obligations

73.1 Save as otherwise expressly provided in this Contract or as already taken into account in the calculation of any payment on termination pursuant to this Contract:

73.1.1 termination of this Contract shall be without prejudice to any accrued rights or obligations under this Contract prior to termination; and

73.1.2 termination of this Contract shall not affect the continuing rights and obligations of the Contractor and the Authority under:

- (i) the DRA or the SSCR;
- (ii) Clause 3.2 (*Contractor's Obligations*);
- (iii) Clause 5 (*Contractor Warranties and Undertakings*);
- (iv) Clause 32 (*Indemnity and Liabilities*);
- (v) Clause 39 (*The Contractor's Records*);
- (vi) Not Used;
- (vii) Clause 46 (*Intellectual Property Rights*);
- (viii) Clause 47 (*Security – Secret Matters*);
- (ix) Clause 53 (*TUPE*);
- (x) Clause 59 (*Issued Property*);
- (xi) Clause 60 (*Accounting for the property of the Authority*);
- (xii) Clause 71 (*Financial consequences of Termination*);
- (xiii) Clause 74 (*Continuing Assistance*);
- (xiv) Clause 86 (*Tax Compliance*);
- (xv) Clause 89 (*Dispute Resolution (English Law)*); and
- (xvi) any other provision of this Contract which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

PART 14 - GENERAL CONTRACT PROVISIONS**74 Continuing Assistance****Co-operation**

- 74.1 Without prejudice to the provisions of Clause 53 (*TUPE*) and Clause 72 (*Exit Plan*), during the last six (6) months before the Expiry Date or during the period that any Termination Notice is subsisting the Contractor shall co-operate as far as is reasonably practicable with the transfer of responsibility for the provision of the Contractor Deliverables (or part of the Contractor Deliverables) from the Contractor to any person (a "**Follow-On Contractor**") or to the Authority as so directed by the Authority, and for the purposes of this Clause 74 (*Continuing Assistance*) the meaning of the term co-operate shall include:
- 74.1.1 liaising with the Authority and/or any Follow-On Contractor, and providing reasonable assistance and advice concerning the provision of the whole or the relevant part of the Contractor Deliverables and their transfer to the Authority or such Follow-On Contractor;
 - 74.1.2 allowing any such Follow-On Contractor access (at reasonable times and on reasonable notice) to any assets applicable to the performance of this Contract, but not so as to interfere with or impede the provision of the Contractor Deliverables; and
 - 74.1.3 providing to the Authority and/or any Follow-On Contractor any relevant information concerning the Authority Sites and/or the JPO Facility (as applicable) and the provision of the Contractor Deliverables which is reasonably required for the efficient transfer of responsibility for the performance of the Contractor's obligations under this Contract.
- 74.2 Without prejudice to Clause 59 (*Issued Property*), during the last six (6) months before the Expiry Date or during the period that any Termination Notice is subsisting, the Contractor shall protect and preserve material, Articles and Issued Property in its possession, custody or control in which the Authority has notified an interest, provided that the Contractor shall be entitled to use such material, Articles and Issued Property in accordance with the provisions of this Contract where it is agreed that the provision of the Contractor Deliverables requires the use of that material and/or those Articles and/or Issued Property in part or in its entirety.
- 74.3 For a period of six (6) months after the Expiry Date or, if earlier, the Termination Date, the Contractor shall, if requested to do so in writing by the Authority, provide all reasonable assistance, guidance and information to the Authority or any Follow-On Contractor (as the case may be) required by the Authority or any Follow-On Contractor.
- 74.4 Without prejudice to the provisions of Clauses 74.1, 74.2 and 74.3 (*Co-operation*), the Contractor shall use all reasonable endeavours to assist the Authority to facilitate the smooth transfer of responsibility for the provision of the Contractor Deliverables (or any part of the Contractor Deliverables) to the Authority or Follow-On Contractor, as the case may be, and the Contractor shall take no action at any time during the term of this Contract or thereafter which is calculated or intended to prejudice or frustrate or make more difficult any such transfer.

- 74.5 Following the Expiry Date or, if earlier, the Termination Date, the Contractor shall, with the Authority's consent (not to be unreasonably withheld or delayed) be allowed reasonable access to the Authority Sites and/or the JPO Facility (as the case may be) by the Authority in order to carry out winding-down activities, provided that in exercising such right of access, the Contractor shall not interfere with or impede the delivery of goods and/or services equivalent to the Contractor Deliverables (and/or the provision of any other services and/or the carrying out of any other activities) by or on behalf of the Authority and/or any Follow-On Contractor.
- 74.6 On expiry or earlier termination of this Contract, the Contractor shall:
- 74.6.1 upon request by the Authority make arrangements, to be agreed between the Authority and the Contractor (acting reasonably and in good faith), for the Authority to take over at fair and reasonable prices, where payment has not already been made, the rights, title and interest in such Articles and/or material as are held by the Contractor and/or any Sub-Contractor and which the Authority requires to maintain continuity of the delivery of goods and services equivalent to the Contractor Deliverables following the Expiry Date or, if earlier, the Termination Date; and
 - 74.6.2 provide, procure the provision of, or provide access to, as the Authority may require, all such information, documents and data in the possession or control of the Contractor, together with a sufficient explanation of such information, documents and data, the full rights to use such information, documents and data, and a formal certificate confirming those rights, as is required to put the Authority in the position it would have been had there been full and proper performance by the Contractor of the Contractor Deliverables.
- 74.7 The Contractor agrees that following the early termination of this Contract, the Authority shall be entitled to continue to purchase (and the Contractor shall continue to supply) on reasonable terms and conditions at fair and reasonable prices goods and services (which would, but for the expiry or early termination of this Contract, amount to Articles) which are required by the Authority to maintain continuity of the delivery of goods and services equivalent to the Contractor Deliverables following the Termination Date.
- 74.8 The Contractor shall not be obliged to co-operate with a Follow-On Contractor where this Contract is terminated under Clause 70 (*Break*).

75 Change

- 75.1 Without prejudice to the provisions of Schedule 10 (*Task Order Approval Process*), all Changes to this Contract shall be the subject of an amendment to the Contract issued and accepted in accordance with Clause 76 (*Amendments to the Contract*) and the provisions of Schedule 11 (*Change Procedure*).
- 75.2 The Contractor shall use a configuration control system to control Changes to the Specification, as defined in Clause 76 (*Amendments to the Contract*).
- 75.3 For the avoidance of doubt, any Changes to the Specification under the provisions of Clause 76.4 (*Changes to the Specification*) will be classed as a minor Change and all other Changes under Clause 76 (*Amendments to the Contract*) shall be classed as a formal Change.

76 Amendments To Contract

76.1 Other than the changes permitted in accordance with Schedule 10 (*Task Order Approval Process*), amendments to this Contract may not be made except by the written agreement of the duly authorised Representatives of the Parties in accordance with Clause 75 (*Change*) and, where applicable, Schedule 11 (*Change Procedure*), provided always that any such amendments shall come into force only when the Contractor has issued:

76.1.1 in the case of a Change proposed in an Authority Change Notice, the Form set out in Appendix 2 to Schedule 11 (*Change Procedure*); and

76.1.2 in the case of a Change proposed in a Contractor Change Notice, the Form set out in Appendix 3 to Schedule 11 (*Change Procedure*),

as an unqualified Estimate and the Authority agrees to all the terms of such Estimate and, following such agreement, a deed of variation to give effect to such Change has been duly executed by the Parties.

76.2 Where required by the Authority in connection with any such amendment, the Contractor shall (as so required) confirm that any existing Parent Company Guarantee is sufficiently comprehensive so as to cover and support all of the Contractor's liabilities and obligations under and in connection with this Contract (as amended by such amendment) or provide a revised Parent Company Guarantee to achieve the same purposes.

76.3 Where the Authority wishes to amend the Contract to incorporate any work that is unpriced at the time of the amendment:

76.3.1 not used;

76.3.2 to the extent that the change relates to Amendment 6, such part of the Contract Price as relates to Amendment 6 shall be re-determined on amendment in accordance with the Defence Reform Act 2014 and Single Source Contract Regulations 2014 (each as amended from time to time).

Changes to the Specification

76.4 For the purposes of this Contract, "the Specification" shall include any document or item which, individually or collectively, is referenced in the Scope. The Specification forms part of the Contract and all Contractor Deliverables to be supplied by the Contractor under this Contract shall conform in all respects with the Specification.

76.5 The Contractor shall use a configuration control system to control all Changes to the Specification. The configuration control system shall be compatible with ISO 9001 (latest published version).

77 Amendments to Qualifying Defence Contracts – Consolidated Versions

77.1 For the purposes of this Clause 77 (*Amendments to Qualifying Defence Contracts Consolidated Versions*):

- 77.1.1 “consolidated version” means a version of this Contract which incorporates into the body of this Contract all amendments made to this Contract; and
- 77.1.2 “consolidated version date” means:
- (i) where one or more consolidated versions have been issued, the date on which the latest consolidated version was issued, or
 - (ii) where a consolidated version has not been issued, the date on which this Contract was entered into.
- 77.2 Where the Contract is amended in accordance with Clause 76 (*Amendments to Contract*), the Authority shall issue to the Contractor, within twenty-five (25) Working Days of agreeing the relevant amendment, a consolidated version, unless the Contractor is obliged under any other provision of this Contract to prepare an updated or consolidated version following any variation.
- 77.3 The consolidated version issued in accordance with Clause 77.2 (*Amendments to Qualifying Defence Contracts – Consolidated Versions*) shall incorporate only amendments previously agreed between the Parties in accordance with Clause 76 (*Amendments to Contract*) and shall be signed on behalf of the Authority.
- 77.4 The Contractor shall within fourteen (14) Working Days of receiving the consolidated version:
- 77.4.1 sign and return to the Authority a copy of the consolidated version, to confirm that it properly incorporates all amendments made to this Contract; or
 - 77.4.2 notify the Authority in writing why it believes that the consolidated version does not properly incorporate all amendments made to this Contract and if the Contractor does not so notify the Authority the Contractor will be deemed to have accepted the Contract with the consolidated amendments as the then current and agreed version of the Contract.
- 77.5 Following any notification made by the Contractor under Clause 77.4 (*Amendments to Qualifying Defence Contracts – Consolidated Versions*), the Authority and the Contractor shall seek to reach agreement on the content of the consolidated version, in the absence of which the matter may be resolved through the Dispute Resolution Procedure.
- 77.6 Within fourteen (14) Working Days of the Parties reaching agreement or the matter being determined through the Dispute Resolution Procedure, the Authority shall reissue a signed consolidated version which accords with that agreement or determination and which the Contractor shall sign and return to the Authority within fourteen (14) Working Days of receiving it.
- 78 Transfer**
- 78.1 Subject to Clause 79 (*Novation*), neither Party to this Contract shall give, bargain, sell, assign, or otherwise dispose of this Contract or any part thereof, or the benefit or advantage of this Contract or any part thereof, without the prior consent in writing of the other Party.

- 78.2 Subject to the Contractor obtaining the prior written consent of the Authority in accordance with Clause 78.1 (*Transfer*) above, the Contractor may assign to a Third Party (the “**Assignee**”) the right to receive payment of the Contract Price or any part thereof due to the Contractor under this Contract (including any interest incurred by the Authority in accordance with Clause 24 (*Disputed Amounts*)).
- 78.3 Any assignment of the right to receive payment of the Contract Price (or any part thereof) under Clause 78.2 (*Transfer*) above shall be subject to:
- 78.3.1 reduction of any sums in respect of which the Authority exercises its right of recovery under Clause 27 (*Recovery of Sums Due*) or under any other clause concerning recovery of sums due;
 - 78.3.2 all related rights of the Authority under this Contract in relation to the recovery of sums due but unpaid; and
 - 78.3.3 the Authority receiving notification under both Clause 78.4 and Clause 78.5.2 (*Transfer*) below.
- 78.4 In the event that the Contractor obtains from the Authority the consent to assign the right to receive the Contract Price (or any part thereof) under Clause 78.2 (*Transfer*) above, the Contractor shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- 78.5 The Contractor shall ensure that the Assignee:
- 78.5.1 is made aware of the Authority’s continuing rights under Clauses 78.3.1 and 78.3.2 (*Transfer*); and
 - 78.5.2 notifies the Authority of the Assignee’s contact information and bank account details, to which the Authority shall make payment, subject to any reduction made by the Authority in accordance Clauses 78.3.1 and 78.3.2 (*Transfer*) above.
- 78.6 The provisions of this Contract, including any clauses concerning payment, shall continue to apply in all other respects after any assignment in accordance with this Clause 78 (*Transfer*) and shall not be amended without the prior approval of the Authority.

79 Novation

- 79.1 Subject to Clause 79.2, the rights and obligations of the Authority under this Contract shall not be assigned, novated or otherwise transferred (whether by virtue of any law or any scheme pursuant to any law or otherwise) other than:
- 79.1.1 in respect of the whole of this Contract to any person who performs any of the functions that previously had been performed by the Authority; or
 - 79.1.2 to any public body (being a single entity) acquiring the whole of this Contract and having the legal capacity, power and authority to become a Party to and to perform the obligations of the Authority under this Contract, being:

- (i) a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975; or
- (ii) any other public body whose obligations under this Contract are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Contractor) by the Authority or a Minister of the Crown having the legal capacity, power and authority to perform the obligations under the guarantee and the obligations of the Authority under this Contract.

79.2 The Contractor agrees that the Authority may at any time on written notice elect to appoint a Third Party to act as its agent to manage the whole or any part of this Contract on the Authority's behalf and/or to perform any or all of the obligations of the Authority under this Contract to the extent set out in such notice.

80 Change of Ownership

80.1 The Contractor acknowledges that the Authority has a legitimate interest in the ownership of the Contractor and that the Contractor is required to notify the Authority of any Change of Ownership in accordance with this Clause 80 (*Change of Ownership*).

80.2 The Contractor shall notify the Authority's Representative in [xxx] so far as permitted by relevant law (relevant law, for the purposes of this Clause 80 (*Change of Ownership*) being law in the United Kingdom and in all relevant jurisdictions where the Contractor would be subject to a legal sanction arising from issuing such notice), if any proposed Change of Ownership is contemplated, including details of the proposed new ownership structure (legal and beneficial) and/or details of the material asset (including shares held in any company by the Contractor or any of its Subsidiaries), business or undertaking proposed to be disposed or acquired (as the case may be).

80.3 Where:

80.3.1 the Authority is not informed of a proposed Change of Ownership for the reasons set out in Clause 80.2 (*Change of Ownership*) or for any other reason and a Change of Ownership occurs; and/or

80.3.2 the Authority objects to the proposed (or actual) transferee to whom the sale, transfer, disposal or other arrangement is made and/or the Authority is concerned that the disposal or acquisition by the Contractor of the material asset, business or undertaking in question may have a material effect on the ability of the Contractor to perform its obligations under this Contract, in either case, whether or not the Authority is informed of the proposed Change of Ownership pursuant to Clause 80.2 (*Change of Ownership*) and whether the Authority becomes aware of such Change of Ownership prior to or after such Change of Ownership occurring,

then the Authority may terminate this Contract at any time within twelve (12) months of the date the Authority becomes aware that the relevant Change of Ownership has occurred and the provisions of Clause 69.2.1 (*Termination for Contractor Default*) and Clause 69.13 (*Termination following a Change of Ownership*) shall apply.

81 Disruption

81.1 The Contractor shall immediately inform the Authority of any actual or potential industrial action, whether such action be by its own employees or others, which affects or might affect its ability at any time to perform its obligations under this Contract.

81.2 The Contractor shall have robust contingency plans in place, in accordance with the Business Continuity Plans, to ensure that the provision of the Contractor Deliverables is maintained in the event of any disruption (including disruption to information technology systems) to the operations of the Contractor and/or any Sub-Contractor. Such contingency plans shall be available for the Authority to:

81.2.1 inspect; and/or

81.2.2 (subject to the Authority giving the Contractor reasonable advance notice, and subject to the Authority exercising this right a maximum of three (3) times in any one (1) Year in respect of the same plan) practically test at any reasonable time,

and shall be updated and revised as necessary by the Contractor throughout the Contract Period.

82 Waiver

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

82.2 No waiver in respect of any right or remedy shall operate as a waiver in respect of any other right or remedy.

83 Discrepancies, Errors and Omissions

83.1 If either Party identifies any discrepancy, error or omission between the provisions of this Contract, it shall notify the other Party in writing of such discrepancy, error or omission as soon as reasonably practical.

83.2 The Parties shall seek to agree such amendments to resolve such discrepancy, error or omission as soon as reasonably practical.

83.3 Where the Parties fail to reach agreement within ten (10) Working Days of the notice under Clause 83.1 (*Discrepancies, Errors and Omissions*) and either Party considers that the discrepancy, error or omission to be material to its rights and obligations under this Contract, then the matter will be referred to the Dispute Resolution Procedure.

84 Severability

84.1 If any provision of this Contract is held to be invalid, illegal or unenforceable to any extent then:

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

85 Whole Agreement

- 85.1 This Contract constitutes the entire agreement between the Parties relating to the subject matter of this Contract.
- 85.2 This Contract supersedes all prior negotiations, representations and undertakings (whether written or oral), except that this Clause 85 (*Whole Agreement*) shall not exclude liability in respect of any fraudulent misrepresentation.

86 Tax Compliance

- 86.1 The Contractor represents and warrants that at the date this Contract came into effect, it has notified the Authority in writing of any Occasion Of Tax Non-Compliance or any litigation that it is involved in that is in connection with any OOTNC.
- 86.2 If, at any point during the performance of this Contract, an OOTNC occurs, the Contractor shall:
 - 86.2.1 notify the Authority in writing of such fact within twenty (20) Working Days of its occurrence; and
 - 86.2.2 promptly provide to the Authority:
 - (i) details of the steps which the Contractor is taking to address the OOTNC and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (ii) such other information in relation to the OOTNC as the Authority may reasonably require.
- 86.3 For the avoidance of doubt, the obligation at Clause 86.2 (*Tax Compliance*) also applies to OOTNC in non-UK jurisdictions. If the OOTNC occurred in non-UK jurisdictions, the notification must be accompanied by a full explanation of the OOTNC and any relevant tax laws and administrative provisions so the Authority can understand the nature and seriousness of the OOTNC.
- 86.4 The duty to notify does not substitute the Contractor's other reporting obligations under this Contract.
- 86.5 The Authority shall be entitled to terminate this Contract in the event that:
 - 86.5.1 the warranty given by the Contractor pursuant to Clause 86.1 (*Tax Compliance*) is materially untrue; or

- 86.5.2 the Contractor commits a material breach of its obligation to notify the Authority of any OOTNC as required by Clause 86.2 (*Tax Compliance*); or
- 86.5.3 the Contractor fails to provide details of proposed mitigating factors which in the reasonable opinion of the Authority, are acceptable.
- 86.6 In the event that the Authority is entitled to terminate this Contract under Clause 86.5 (*Tax Compliance*) the provisions of Clause 71.4A (*Termination for Contractor Default*) and Clause 86.7 (*Tax Compliance*) shall apply.
- 86.7 In exercising its rights or remedies under this Clause 86 (*Tax Compliance*), the Authority shall:
- 86.7.1 act in a reasonable and proportionate manner taking into account, among other things:
- (i) the gravity and duration of the OOTNC and any sanctions imposed by a court or tribunal; and
 - (ii) any remedial action taken by the Contractor to prevent reoccurrence of the OOTNC; and
- 86.7.2 without prejudice to Clause 86 (*Tax Compliance*), seriously consider, where appropriate, action other than termination of this Contract to deal with the failure by the Contractor to comply with this Clause 86 (*Tax Compliance*).
- 86.8 Not Used.

87 Representatives

References to Authority and the Contractor

- 87.1 Except as provided otherwise under this Contract, any reference to the Authority and the Contractor in respect of:
- 87.1.1 the giving of consent;
- 87.1.2 the delivering of any notices; or
- 87.1.3 the doing of any other thing that may reasonably be undertaken by an individual acting on behalf of the relevant Party,

shall be deemed to be references to the Authority's Representatives and the Contractor's Representatives (respectively) in accordance with this Clause 87 (*Representatives*).

The Contractor's Representatives

- 87.2 The Contractor shall employ representatives (the "**Contractor's Representatives**") to act as the Contractor's representatives in connection with the provision of the Contractor Deliverables and generally in connection with this Contract. Such representatives are described in the table forming Part 2 to Schedule 8 (*Governance and Management*)

Authority of the Contractor's Representatives

- 87.3 The Contractor's Representative shall have full authority to act on behalf of the Contractor for all purposes of this Contract.

Appointment of Successor

- 87.4 The Contractor may terminate the appointment of any Contractor's Representative and shall appoint a successor, the identity of whom shall be made known to the Authority.

Authority's Representatives

- 87.5 The Authority shall employ representatives (the "**Authority's Representatives**") to act as the Authority's representatives in connection with the provision of the Contractor Deliverables and generally in connection with this Contract. Such representatives are described in the table forming Part 2 to Schedule 8 (*Governance and Management*).

Authority of Authority's Representatives

- 87.6 The Authority's Representative shall have the full authority to act on behalf of the Authority for all purposes of this Contract.

Appointment of Successor

- 87.7 The Authority may terminate the appointment of any Authority's Representative and shall appoint a successor, the identity of whom shall be made known to the Contractor.

88 Notices

- 88.1 All notices, orders, or other forms of communication required to be given in writing ("**Notices**") under or in connection with this Contract shall:

88.1.1 be in a form which can be read, copied and recorded;

88.1.2 be authenticated by signature or by such other method as agreed between the Parties;

88.1.3 be marked for the attention of the appropriate Authority's Representative or the Contractor's Representative; and

88.1.4 be marked in a prominent position with the relevant Contract number.

- 88.2 Notices should be delivered by:

88.2.1 hand;

88.2.2 prepaid post (or airmail, in the case of Notices to or from overseas); or

88.2.3 electronic mail.

- 88.3 Notices shall be deemed to have been received:

- 88.3.1 if delivered by hand, on the day of delivery if it is a Working Day and otherwise on the first Working Day immediately following the day of delivery;
- 88.3.2 if sent by prepaid post (or airmail, if appropriate), on the fifth Working Day (or on the tenth Working Day, in the case of airmail) after the day of posting; and
- 88.3.3 if sent by electronic means:
- (i) if transmitted between 09.00 and 17.00 hours on a Working 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 hours on the first Working Day (recipient's time) following the completion of receipt by the sender of verification of the transmission from the receiving instrument.
- 88.4 The addresses (including electronic addresses) of each Party and their Representatives to which all Notices shall be sent are set out in DEFFORM 111 in the Agreed Form, or such other address as either Party may by written Notice specify to the other for the purpose of this Clause 88 (*Notices*).
- 88.5 Where either Party requests written confirmation of any communication which does not constitute a Notice, such request shall not unreasonably be refused.

89 Dispute Resolution (English Law)

- 89.1 The Parties will attempt in good faith to resolve any Dispute 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 (“**ADR**”) procedure on which the Parties may agree.
- 89.2 In the event that the Dispute is not resolved by negotiation, or where the Parties have agreed to use an ADR procedure, by the use of such procedure, the Dispute shall be referred to arbitration.
- 89.3 The Party initiating the arbitration shall give a written notice (the “**Notice of Arbitration**”) to the other Party. The Notice of Arbitration shall specifically state:
- 89.3.1 that the Dispute is referred to arbitration; and
 - 89.3.2 the particulars of the Contract out of or in relation to which the Dispute arises.
- 89.4 Unless otherwise agreed in writing by the Parties, the arbitration and this Clause 89 (*Dispute Resolution (English Law)*) shall be governed by the provisions of the Arbitration Act 1996.
- 89.5 It is agreed between the Parties that for the purposes of the arbitration, the arbitrator shall have the power to make provisional awards as provided for in Section 39 of the Arbitration Act 1996.

- 89.6 For the avoidance of doubt it is agreed between the Parties that the arbitration process and anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential as between the Parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise. No report relating to anything said, done or produced in or in relation to the arbitration process may be made beyond the tribunal, the Parties, their legal representatives and any person necessary to the conduct of the proceedings, without the concurrence of all the Parties to the arbitration.

90 Contractor's Status

- 90.1 Nothing in this Contract shall be construed as creating a partnership or as a contract of employment between the Authority and Contractor.
- 90.2 Save as expressly provided otherwise in this Contract, the Contractor shall not be, nor be deemed to be, an agent of the Authority and the Contractor shall not hold itself out as having authority or power to bind the Authority in any way.
- 90.3 Neither Party shall place or cause to be placed any order with suppliers or otherwise incur liabilities in the name of the other Party or any representative of the other Party.

91 Conflicts of Interest and Impartiality

- 91.1 The Contractor has notified the Authority of its intention to operate a conflicts of interest regime ("**Conflicts Regime**") and, unless otherwise agreed between the Parties, shall produce an agreed form of the Conflicts Regime no later than 3 August 2018. The Contractor acknowledges that its obligations under this Contract and its aspiration to participate to be a provider of goods and/or services in future procurements connected with the MORPHEUS Programme will require the careful management of information both internally and externally by the Contractor and Contractor Related Parties.
- 91.2 Notwithstanding the full adherence by the Contractor to the provisions of the Conflicts Regime, the Authority reserves the right to exclude the Contractor from participation in any future procurements contemplated in Clause 91.1 (*Conflicts of Interest and Impartiality*) (whether to comply with law, as may be permitted in accordance with the regulations applying to any such future procurements or for any reason to ensure fair competition for such procurements).

92 Rights of Third Parties

- 92.1 Except as provided in Clause 92.2 (*Rights Of Third Parties*) and notwithstanding anything to the contrary elsewhere in this Contract, no right is granted to any person who is not a Party to enforce any term of this Contract in his own right and the Parties declare that they have no intention to grant any such right.
- 92.2 Where, and only where, this Contract expressly states that a Third Party shall be entitled to enforce a term of this Contract:
- 92.2.1 the said Third Party shall be entitled to enforce that term in his own right;
- 92.2.2 the Contractor shall inform the said Third Party as soon as is reasonably practicable of the existence of the relevant right together with any other

terms (including the terms of this Clause 92.2 (*Rights Of Third Parties*)) relevant to the exercise of that right; and

92.2.3 the Third Party's rights shall be subject to:

- (i) the resolution of any Dispute pursuant to the Dispute Resolution Procedure; and
- (ii) Clause 93 (*Law (English)*).

93 Law (English)

93.1 The Contract shall be considered as a contract made in England and subject to English Law.

93.2 Subject to and without prejudice to the Dispute Resolution Procedure, each Party hereby irrevocably submits and agrees to the exclusive jurisdiction of the Courts of England to resolve, and the laws of England to govern, any actions, proceedings, controversy or claim of whatever nature arising out of or relating to this Contract or breach thereof.

93.3 Other jurisdictions may apply solely for the purpose of giving effect to this Clause 93 (*Law (English)*) and for the enforcement of any judgement, order or award given under English jurisdiction.

94 IR35 Rules

General principles and obligations

94.1 The Parties acknowledge that the Contract and its delivery remain output based. The Contractor has full control over the allocation of Contractor Personnel to fulfil the outputs of the Statement of Requirements and the Authority has no right to direct the Contractor Personnel directly or reassign them to other work or outputs.

94.2 Where an Individual is engaged or is to be engaged in the provision of the Contractor Deliverables pursuant to arrangements with the Individual's "intermediary" (as defined in the IR35 Rules) in circumstances where the IR35 Rules may apply to the engagement, the Authority shall:

94.2.1 determine whether the IR35 Rules apply to the engagement of the Individual and provide a Status Determination Statement to both the Individual and the Contractor; and

94.2.2 make any withholdings or deductions from any payments to the Contractor under this Contract that it is required to make by law.

94.3 The Contractor shall:

94.3.1 take all reasonable steps to comply with its obligations under the IR35 Rules and all other statutes and regulations relating to income tax, National Insurance contributions, social security contributions and other levies and contributions (or their equivalents in any jurisdiction);

- 94.3.2 contractually require any Sub-Contractors to take all reasonable steps to comply with their obligations under the IR35 Rules and all other statutes and regulations relating to income tax, National Insurance contributions, social security contributions and other levies and contributions (or their equivalents in any jurisdiction);
 - 94.3.3 provide all information and documentation requested by the Authority under this Clause 94 in a timely manner and use its reasonable endeavours to ensure that such information and documentation is materially complete, accurate and up-to-date;
 - 94.3.4 deduct and account to any Relevant Tax Authority for any income tax, National Insurance contributions, social security contributions and other levies and contributions (or their equivalents in any jurisdiction) and any other amounts required by law arising from or in connection with this Contract; and
 - 94.3.5 use reasonable endeavours to mitigate the consequences of failure to provide the Contractor Deliverables arising from the application of the IR35 Rules.
- 94.4 The Parties shall meet within two (2) weeks of the Effective Date of Amendment 6 to discuss the potential impact of the application of the IR35 Rules on the delivery of the Contract and whether a Change is likely to be required to reduce the scope of the Statement of Requirements pursuant to this Clause 94.
- 94.5 The Contractor shall immediately notify the Authority in writing when it becomes aware of an Individual terminating their engagement with the Contractor or its Sub-Contractors of any tier as a result of the application of the IR35 Rules and shall provide the Authority with sufficient evidence to demonstrate the reason for the termination of that Individual's engagement.
- 94.6 The Authority shall promptly comply with all reasonable requests for support and assistance made by the Contractor (or any Sub-Contractor) to the Authority required to enable replacement Individuals to complete the onboarding process (including but not limited to i) the provision of GFA under the Contract and ii) any action or information required relating to a Status Determination Statement and/or IR35 Appeal). The Authority shall notify the Contractor as soon as reasonably practicable of any delays to the provision of GFA or other support or assistance requested by the Contractor (or any Sub-Contractor) under this Clause.
- 94.7 If any Individual terminates their engagement with the Contractor (or its Sub-Contractors of any tier) as the result of a Change in Status and, within a period of eight (8) weeks after the date of termination of the Individual's engagement, the Contractor and/or the relevant Sub-Contractor fails to replace such Individual or put in place other measures that will enable the Contractor to perform the Contractor Deliverables to the standards required by the Contract, the Authority has the right to propose an Authority Change in accordance with Schedule 11 (*Change Procedure*) to reduce the scope of the Statement of Requirements. The period of eight (8) weeks referred to in this Clause shall be extended by a period equivalent to any period of delay to the onboarding of Individuals arising directly from the Authority's failure to comply with its obligations under Clause 94.6.

- 94.8 Where the Authority submits an Authority Change Notice in the circumstances referred to in Clause 94.7, the Contractor shall provide an Estimate in response in accordance with paragraph 5 of Schedule 11 (*Change Procedure*), which shall set out (without limitation) the impact of the proposed Authority Change on the provision of the Contractor's obligations under the Contract, save that for the purposes of this Clause 94.8, the period referred to in paragraph 5.1.1 of Schedule 11 (*Change Procedure*) shall be reduced to two (2) Working Days. The Contractor's right to object to a proposed Authority Change set out in paragraph 3.3 of Schedule 11 (*Change Procedure*) shall not apply to any Authority Change Notice to reduce the scope of the Statement of Requirements that is submitted in accordance with Clause 94.7.

Provision of support in relation to Status Determination Process

- 94.9 The Contractor shall provide to the Authority on request written details of (and, in so far as it is reasonably practicable to do so, documentation relating to):

94.9.1 the contractual arrangements between the Contractor (or its Sub-Contractors) and any Individual;

94.9.2 where applicable, the identity of the "fee-payer" and the "intermediary" for the purposes of the IR35 Rules,

and shall promptly inform the Authority when it becomes aware of any material change to such arrangements or the parties to them.

- 94.10 Where an Individual is engaged or is to be engaged in the provision of the Contractor Deliverables pursuant to arrangements with the Individual's "intermediary" (as defined in the IR35 Rules) in circumstances where the IR35 Rules may apply to the engagement:

94.10.1 during the Contract Period, the Contractor shall, and shall procure that the Individual and any other parties to the arrangements shall, provide any information or documentation and take any action that the Authority may reasonably require, or that the Contractor, acting reasonably, considers to be materially relevant, to enable the Authority to determine whether the IR35 Rules apply to the engagement and otherwise to comply with the Authority's legal obligations in respect of the IR35 Rules;

94.10.2 during the Contract Period, the Contractor shall:

- (i) promptly inform the Authority of any material change to any information or documentation previously provided to the Authority in accordance with Clause 94.10.1; and
- (ii) co-operate fully with any reasonable request by the Authority relating to any matter arising in connection with the Authority's or the Contractor's tax compliance procedures to the extent that it relates or may relate to the arrangements contemplated by this Contract.

- 94.11 If an Individual makes an IR35 Appeal, the Contractor shall, at the Authority's request, promptly provide such assistance as shall be reasonably required by the

Authority to manage the IR35 Appeal in accordance with its obligations under section 61T of chapter 10 of Part 2 to ITEPA 2003.

IR35 Principles - Pricing and Payment

94.12 Subject to Clauses 94.13, **Error! Reference source not found., Error! Reference source not found., Error! Reference source not found., Error! Reference source not found.** and **Error! Reference source not found.**, the Authority shall pay to the Contractor:

94.12.1 all costs, expenses, losses and liabilities incurred by the Contractor in relation to:

- (i) the provision of information, assistance and support to the Authority under Clauses 94.9, 94.10 and 94.11 in respect of the Status Determination Process for any Individual (including any IR35 Appeal made by any Individual);
- (ii) the need to replace Individuals who have terminated their contractual arrangements with the Contractor (or its Sub-Contractors of any tier) as the result of a Change in Status (including, without limitation, recruitment effort associated with replacing such Individuals);
- (iii) the materialisation of a risk that has arisen directly as a result of the application of the IR35 Rules to the engagement of Individuals (including, without limitation, an increase in rates resulting from the Authority determining that the IR35 Rules apply to the engagement of an Individual, which is agreed in accordance with Clause 94.13); and

94.12.2 profit on the sums referred to in Clause 94.12.1 calculated at the Contract Profit Rate.

94.13 [xxx]

94.14 IR35 Principles – Contractor Default and KPIs

94.15 For a period of three (3) months from the Effective Date For Amendment 6, the Contractor shall not be deemed to have committed a Contractor Default or be deemed to have failed to deliver any Contractor Deliverable in accordance with this Contract or be deemed to have registered a Fail for any KPI in accordance with Schedule 6 (*Incentivisation*) if it can demonstrate that its failure to perform arises from the operation of the Status Determination Process. In the event that the Contractor's failure to perform (whether against any applicable KPI in accordance with Schedule 6 (*Incentivisation*) or otherwise) arises or continues beyond the three (3) month period as a direct result of the operation of the Status Determination Process, the Contractor and Authority shall work together in good faith to discuss and agree an acceptable solution.

95 Execution

95.1 This instrument is executed as a deed and was delivered when it was dated.

The corporate seal of **THE SECRETARY OF**
STATE FOR DEFENCE hereunto affixed is)
authenticated by:)
)

.....
Signed

.....

Name

.....

Position

Executed as a deed by **QINETIQ LIMITED**)
acting by a director and its secretary or two)
directors:)
)

Director

Director/Secretary

Schedule 1

Definitions and Acronyms

1.1 In this Contract the following words and expressions shall be deemed to have the following meanings:

“Acceptance” means the satisfaction of the Exit Criteria for the Relevant Deliverable and **“Accept”** and **“Accepted”** shall be construed accordingly;

“Accepted Costs” means the costs that the Authority determines (in its sole discretion) is due to the Contractor, following a review on the application Deductions and Expenses for each Contract Month in relation to Task Order 1 (as referred to in Schedule 9 (Pricing and Payment));

“Active Task Order” means a Task Order which adjusts Task Order 1 as approved in accordance with the procedures in Schedule 10 (*Task Order Approval Process*);

“Additional Contractor Deliverables” means the additional, revised and/or reduced services and/or Articles that the Contractor is to perform and which form part of the Contractor Deliverables following the approval of a Task Order Proposal pursuant to Schedule 10 (*Task Order Approval Process*) or an approved Change in accordance with Schedule 11 (*Change Procedure*);

“Additional KPI 3 Deduction” means, without prejudice to the General Deductible Amount, 5% of the Milestone Payment Amount for the relevant Contract Month, before any other deductions are made from such Milestone Payment Amount;

“Additional KPI 4 Deduction” means, without prejudice to the General Deductible Amount, 5% of the Milestone Payment Amount for the relevant Contract Month, before any other deductions are made from such Milestone Payment Amount;

“Ad-Hoc Project Report” means the report to be created by the Contractor pursuant to, and in accordance with, paragraph 7.3 of Schedule 8 (*Governance and Management*);

“Adjoining Property” means any land and/or property adjoining the Authority Sites and/or any Other Contractor’s Premises (as the case may be) and each and every part of such land and/or property, including all conduits, roads, footpaths, walls, fences, buildings and other erections and all other apparatus on, under or within such land and/or property;

“Affiliate” means in relation to any person, any Holding Company or Subsidiary of that person or any Subsidiary of such Holding Company;

“Aggregate Milestone Payment Amount” means, in respect of Task Order 1, the sum of all of the Milestone Payment Amounts for Task Order 1 contemplated (in the Milestone Payments Schedule for Task Order 1) as having accrued as at Contract Month n (and including all of the Milestone Payment Amounts for Task Order 1 for each Contract Month preceding Contract Month n);

“Aggregate Task Order Payment” means, in respect of Task Order 1, the sum of each preceding Task Order 1 Payment which has become due (whether or not paid) in accordance with Schedule 9 (*Pricing and Payment*) in each Contract Month preceding (but not including) Contract Month n;

“Agreed Form” has the meaning given in Clause 1.1.12 (*Definitions and Interpretation*);

“Amendment 6” has the meaning given in Recital (E);

“Applicable Deduction” means the relevant deduction identified in the Table at Appendix 1 to Schedule 6 (*Incentivisation*) being a percentage of the General Deductible Amount;

“Article” has the meaning given in Clause 57.2.3 (*Supply of Hazard Data*);

“Articles” means all goods which the Contractor is required under this Contract to supply (including as a result of the commencement of any Active Task Order);

“Assets” has the meaning given in paragraph 2.1.5 of Schedule 17 (*Exit Plan*);

“Assurance and Acceptance Process” means the assurance and acceptance process outlined in Schedule 4 (*Assurance and Acceptance Process*), as applicable to the relevant Contractor Deliverable;

“Assured Article” shall have the meaning given in Clause 58.4.1 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*);

“Audit Agents” means:

- (a) the Authority’s internal and external auditors;
- (b) the Authority’s statutory or regulatory auditors;
- (c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;
- (d) HM Treasury or the Cabinet Office;
- (e) any party formally appointed by the Authority to carry out audit or similar review functions; and
- (f) successors or assigns of any of the above;

“Authority Background IPR” means any IPR subsisting and owned by the Authority other than any Vesting IPR);

“Authority Change” means a change initiated by the Authority in accordance with Schedule 11 (*Change Procedure*);

“Authority Change Notice” means the notice issued in accordance with paragraph 3.1 of Schedule 11 (*Change Procedure*) and described in paragraph 4.1 of Schedule 11 (*Change Procedure*);

“Authority Data” has the meaning given in Clause 37.1 (*Authority Data*);

“Authority Feedback Questionnaire” means the questionnaire in Agreed Form at Appendix 5 to Schedule 6 (*Incentivisation*) to be circulated by the Contractor in accordance with the Monitoring Methodology for KPIs 2.1 to 2.4 (Behaviours);

“Authority Related Party” means an officer, servant or agent of the Authority (other than the Contractor and/or any Contractor Related Party);

“Authority Respondents” has the meaning given in paragraph 18.2 of Schedule 6 (*Incentivisation*);

“Authority Sites” means those sites which are in the Authority's control or were in the Authority's control immediately prior to the Effective Date and which are to be used by the Contractor for the purposes of providing the Contractor Deliverables, including the MTRC Facility but not including any Other Contractor's Premises;

“Authority System” means the Authority's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Contractor in connection with this Contract which is owned by the Authority or licensed to it by a Third Party and which interfaces with the Contractor System or which is necessary for the Authority to receive the Contractor Deliverables;

“Authority's Representatives” means the persons referred to in Clause 87.5 (*Authority's Representatives*);

“BATCIS” means the Authority's 'Battlefield Tactical Communications and Information Systems' delivery team;

“BATCIS Activities” means the activities relating to the development, fielding and sustainment of tactical communication information systems equipment and systems in the joint land environment;

“BATCIS System Engineering Assurance” or **“BATCIS SEA”** means the team within BATCIS providing engineering assurance on matters including, technical support, safety, security, training and trials;

“BCIP 5.6” means the solution accepted on BCIP 5.6 programme;

“British Standards” means the standards produced by the British Standards Institution;

“Business Continuity Plans” means the business continuity plans referred to in Schedule 16 (*Business Continuity Plans*), the initial such plan being in the Agreed Form;

“BPSS Ad-Hoc Project Meeting” means the meeting between the Authority and the Contractor as detailed in paragraph 7 of Schedule 8 (*Governance and Management*);

“BPSS Annual Meeting” means the meeting between the Authority and the Contractor as detailed in paragraph 6 of Schedule 8 (*Governance and Management*);

“BPSS Monthly Meeting” means the monthly meeting between the Authority and the Contractor as detailed in paragraph 5 of Schedule 8 (*Governance and Management*);

“BPSS Project Manager” means the representative of the Authority with day to day management responsibilities in relation to this Contract as referred to in DEFFORM 111;

“BPSS Weekly Meeting” means the weekly meeting between the Authority and the Contractor as detailed paragraph 4 of Schedule 8 (*Governance and Management*);

“BPSS Weekly Report” means the report to be produced by the Contractor pursuant to and in accordance with paragraph 4.7 of Schedule 8 (*Governance and Management*);

“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;

“Change” means a change which the Authority or the Contractor shall be entitled to propose in accordance with paragraph 1.1 of Schedule 11 (*Change Procedure*);

“Change of Ownership” means:

- (a) any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares in the Contractor or a Sub-Contractor (as the case may be) (including the control over exercise of voting rights conferred on those shares, control over the right to appoint or remove directors or the rights to dividends):
 - (i) in the case of the Contractor, from that set out in Clause 5.1.5 (*Contractor Warranties and Undertakings*); and
 - (ii) in the case of a Sub-Contractor, from the relevant holdings at the time of the entry by the relevant Sub-Contractor into the relevant Sub-Contract; and/or
- (b) any other arrangements that have or may have or which result in the same effect as limb (a) above; and/or
- (c) any disposal or acquisition by the Contractor of a material asset (including shares held by the Contractor or any of its Subsidiaries in any company), business or undertaking;

"Change in Status" means circumstances where the Authority as End Determinator determines that the IR35 Rules apply to the engagement of an Individual under the Contract, where the engagement had previously been treated as outside the scope of the IR35 Rules, and issues a Status Determination Statement to this effect;

"Child Labour Legislation" means those International Labour Law Conventions concerning economic exploitation of children through the performance of work which is likely to be hazardous or to interfere with a child's health or development, including but not limited to slavery, trafficking, debt bondage or forced labour, which are ratified and enacted into domestic law and directly applicable to the Contractor in the jurisdiction(s) in which it performs this Contract;

"Clause 94 Limit of Liability" has the meaning given to it in Clause **Error!**
Reference source not found.;

"Collaborative Working Environment" means the IT environment hosted at the JPO;

"Contract" means this contract (including its Schedules, Appendices and Annexes) as may be amended and/or extended from time to time as a result of the commencement of any Active Task Order (and includes any consolidated version arising under Clause 77.1.1 (*Amendments to Qualifying Defence Contracts – Consolidated Version*));

"Contract Award" means the Effective Date;

"Contract Initiation Report" has the meaning given in Clause 19.3 (*QDC Reporting*);

"Contract Month" means the period commencing on and including the Effective Date to the end of the calendar month in which the Effective Date occurs and thereafter each subsequent calendar month commencing on the first day of each calendar month, provided that the final Contract Month shall be such period as commences on the first day of the Contract Month in which the Expiry Date or the Termination Date (as the case may be) falls and ends on the Expiry Date or Termination Date (as the case may be);

"Contract Month n" has the meaning given in paragraph 1.1 of Part 1 of Schedule 9 (*Pricing and Payment*);

"Contract Period" means the period commencing on and from the Effective Date and ending on the earlier of the Expiry Date and the Termination Date;

"Contract Price" means the Task Order 1 Firm Price (during such period only as Task Order 1 is subsisting in accordance with this Contract) as adjusted from time to time in accordance with this Contract and which is payable to the Contractor by the Authority under this Contract for the full and proper performance by the Contractor of its obligations under this Contract as determined under the provisions of Schedule 9 (*Pricing and Payment*) and any other relevant provisions of this Contract;

"Contract Profit Rate" means the contract profit rate applicable to the Contract from the Effective Date for Amendment 6, as determined in accordance with the DRA and SSCR;

“Contract Programme” means the programme set out in Schedule 2 (*Statement of Requirements*);

“Contractor Background IPR” means any IPR subsisting and owned by the Contractor prior to the date of, or created or generated by or on behalf of the Contractor outside the scope of, this Contract;

“Contractor Behaviours Questionnaire” means the questionnaire in Agreed Form at Appendix 4 to Schedule 6 (*Incentivisation*) to be circulated by the Contractor in accordance with the Monitoring Methodology for KPIs 2.1 to 2.4 (Behaviours);

“Contractor Change” means a change initiated by the Contractor in accordance with Schedule 11 (*Change Procedure*);

“Contractor Change Notice” means the notice issued in accordance with paragraph 11.1 of Schedule 11 (*Change Procedure*);

“Contractor Default” means any one or more of the following:

- (a) a breach by the Contractor of any of its obligations under this Contract which materially and adversely affects the provision of the Contractor Deliverables (except where such breach is of any obligation to which limb (b) relates);
- (b) the occurrence of any of the circumstances described in paragraphs 6.5.2, 6.6 and 13.1 of Schedule 6 (*Incentivisation*);
- (c) the occurrence of a Persistent Breach;
- (d) the occurrence of an Insolvency Event in relation to the Contractor and/or the Parent Company or any company that becomes the holding company or parent undertaking of the Contractor (as applicable);
- (e) the occurrence of a Prohibited Act and/or the Contractor breaches and/or is in default under Clauses 5.1.13, 5.1.14 and/or 5.1.15 (*Contractor Warranties*);
- (f) a breach by the Contractor of Clause 17 (*Competition in Sub-Contracts*);
- (g) a breach by the Contractor of Clause 78 (*Transfer*);
- (h) a breach by the Contractor and/or any Sub-Contractor (as the case may be) of Clause 80 (*Change of Ownership*);
- (i) any withholding of information concerning hazardous Articles, materials or substances as referred to in Clause 57.11 (*Supply of Hazard Data*);
- (j) the occurrence of any of the circumstances referred to in Clause 47.8 (*Termination*);
- (k) the occurrence of any of the circumstances referred to in Clause 86.5 (*Tax Compliance*);
- (l) the Contractor and/or any Sub-Contractor (as the case may be) commits a breach of this Contract which results in the criminal investigation, prosecution

and conviction of the Contractor and/or any Sub-Contractor under health and safety legislation;

- (m) Not used;
- (n) any of the Authority's rights under the Parent Company Guarantee ceasing to be in full force and effect; and/or
- (o) the occurrence of the circumstances referred to in Clause 18.19 (*Import and Export Licences*);

"Contractor Default Termination Date" has the meaning given in Clause 69.2.4 (*Right to Terminate*);

"Contractor Deliverables" means the services and/or Articles including any arising out of the performance and/or provision of such services and/or Articles which the Contractor is required to provide under this Contract, including the Core Contractor Deliverables and any Additional Contractor Deliverables;

"Contractor Equipment" means the hardware, computer and telecoms devices and equipment used by the Contractor or its Sub-Contractors (but not hired, leased or loaned from the Authority) for the provision of the Contractor Deliverables;

"Contractor Personnel" means the Contractor's employees, agents and employees and agents of the Sub-Contractors;

"Contractor Related Party" means:

- (a) an officer, servant, agent or employee of the Contractor or any Affiliate of the Contractor;
- (b) any Sub-Contractor acting in connection with this Contract; and/or
- (c) any person on or at:
 - (i) any of the Authority Sites or other Government Establishment (as the case may be) at the express or implied invitation of the Contractor (other than an Authority Related Party); and/or
 - (ii) any Other Contractor's Premises at the express or implied invitation of the Contractor,

save to the extent such person is acting under the instruction or control of the Authority or such Other Contractor;

"Contractor Respondents" has the meaning given in paragraph 19.1 to Schedule 6 (*Incentivisation*);

"Contractor System" means the information and communications technology system used by the Contractor in implementing and performing the Contractor Deliverables including software, the Contractor Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Authority System);

“Contractor’s Account Manager” means the QinetiQ Capture Lead;

“Contractor’s Premises” means those premises or parts of premises which are not Authority Sites and/or Other Contractor’s Premises but which are used by the Contractor and/or Contractor Related Parties for the purpose of providing the Contractor Deliverables;

“Contractor’s Proposals” means the Contractor’s proposals referred to in Schedule 3 (*Contractor’s Proposals*), in the Agreed Form;

“Contractor’s Representatives” means the persons referred to in Clause 87.2 (*Contractor’s Representatives*);

“Controlled Information” means any information in any written or tangible form in any media which is disclosed to the Contractor by or on behalf of the Authority under or in connection with this Contract, and which is identified by the legend “Controlled Information” or any other approved legend notified to the Contractor, and which is subject to an export, transfer or transit obligation or any other related technology transfer or disclosure restriction that requires special handling measures or is deemed by the Authority to be especially sensitive commercial information that has been obtained from a Third Party, and the term “Controlled Information” shall exclude information provided by oral communication;

“Controller” has the meaning given in Article 4 of the UK GDPR;

“Core Contractor Deliverables” means any of the Contractor Deliverables that the Authority requires the Contractor to both perform and complete, in each case prior to the Original Expiry Date;

“Costs” means the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Contractor in providing the Contractor Deliverables:

- (a) the cost to the Contractor (as the context requires), calculated per man day, of engaging the Contractor Personnel, including:
 - (i) base salary paid to the Contractor Personnel;
 - (ii) employer’s national insurance contributions;
 - (iii) pension contributions;
 - (iv) car allowances;
 - (v) any other contractual employment benefits;
 - (vi) staff training;
 - (vii) work place accommodation; and
 - (viii) work place IT equipment and tools reasonably necessary to perform the Contractor Deliverables (but not including items included within limb (b) below);

- (b) costs incurred in respect of those assets treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of assets by the Contractor to the Authority or (to the extent that risk and title in any asset is not held by the Contractor) any cost actually incurred by the Contractor in respect of those assets;
- (c) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Contractor in the delivery of the Contractor Deliverables; and
- (d) Forecast Contingency Costs;
but excluding:
 - (i) overhead;
 - (ii) financing or similar costs;
 - (iii) maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Contract Period;
 - (iv) taxation;
 - (v) fines and penalties; and
 - (vi) non-cash items (including depreciation, amortisation, impairments and movements in provisions);

“**CP&F**” has the meaning given in Clause 20 (*Payment under CP&F*);

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

- (a) UK GDPR;
- (b) DPA 2018; and
- (c) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426) as amended,

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

“**DPA 2018**” means the Data Protection Act 2018;

“**Data Subject**” has the meaning given in Article 4 of the UK GDPR;

“**Deduction**” means the Authority’s right to make Applicable Deductions arising under paragraphs 9 (*Deductions for KPIs 1.1 and 1.2 (Right First Time and On Time)*) and 10 (*Deductions for KPIs 2.1 to 2.4 (Behaviours)*) of Schedule 6 (*Incentivisation*), Additional KPI 3 Deductions arising under paragraph 11 (*Deductions for KPI 3 (Maintenance of Key Personnel)*) and Additional KPI 4 (*Social Value*) Deductions arising under paragraph 12 (*Deductions for KPI 4*) of Schedule 6 (*Incentivisation*);

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

“Defence Contract Analysis and Reporting System 2” or “DefCARS” is the central system for the capture, storage and analysis of all SSCR contract-level and supplier level reports, owned and operated by the SSRO;

“Defence Reform Act” or “DRA” means the Defence Reform Act 2014;

“DEFFORM 111” means the completed DEFFORM 111 in the Agreed Form as referred to in Clauses 56.1.3, 56.1.11(i), **Error! Reference source not found.** (*Packaging (for Articles other than Munitions)*) and 88.4 (*Notices*);

“Discretionary GFA” means the provision by the Authority to the Contractor of items and/or information to assist the Contractor in delivery of the Contractor Deliverables as listed in the table at Part 3 (*Discretionary GFA*) to Schedule 7 (*Authority Obligations*) (as more particularly referred to in Clauses 31.8 to 31.10 (*Discretionary GFA*));

“Dispute” means any dispute, claim or difference of whatever nature arising out of, in connection with, or in relation to this Contract, including a claim based on contract, tort, equity or domestic or international statute;

“Disputed Amount” has the meaning given in Clause 24.1 (*Disputed Amounts*);

“Dispute Resolution Procedure” means the procedure set out in Clause 89 (*Dispute Resolution (English Law)*);

“DOTAS” means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to:

- (a) tell HM Revenue & Customs of any specified notifiable arrangements or proposals; and
- (b) provide prescribed information on those arrangements or proposals within set time limits as:
 - (i) contained in Part 7 of the Finance Act 2004 and in secondary legislation made under powers contained in Part 7 of the Finance Act 2004; and as
 - (ii) extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;

“EBC” has the meaning given in limb (c) of the definition of “Unique Identifiers”;

“Effective Date” means the date of the Original Contract;

“Effective Date for Amendment 6” means 1 June 2023;

“Employee” means any person who is an employee, officer or director of the Contractor and/or any person who is an employee, officer or director of any Sub-Contractor (as the case may be) or who occupies the position of an officer or director of the Contractor and/or any Sub-Contractor (as the case may be), by whatever title given;

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

“Employing Sub-Contractor” means any Sub-Contractor providing all or any part of the Contractor Deliverables who employs or engages any person in providing the Contractor Deliverables;

“End Determinator” means the “client” for the purposes of, and as defined in, the IR35 Rules;

“Entry Criteria” means the criteria specified in paragraph 1 of Part 2 of Schedule 4 (*Assurance and Acceptance Process*) applicable to the Review in question;

“EUI” has the meaning given in limb (c) of the definition of “Unique Identifiers”;

“Estimate” means the estimate prepared in accordance with paragraph 5 of Schedule 11 (*Change Procedure*);

“EvO Contract” means the contract entered into by the Authority on or around 24 March 2017 by which (and in accordance with the terms of which) the Authority is procuring the design, development and delivery of the EvO System;

“EvO Contractor” means the counterparty to the EvO Contract, other than the Authority;

“EvO System” means the tactical communication and information system being procured by the Authority from the EvO Contractor;

“Excess Monthly Payment” shall have the meaning given in paragraph 1.3 of Part 1 of Schedule 9 (*Pricing and Payment*);

“Exit Criteria” means the criteria specified in paragraph 2 of Part 2 of Schedule 4 (*Assurance and Acceptance Process*) applicable to the Review in question;

“Exit Manager” means the person appointed by each party for managing the Parties' respective obligations under Schedule 17 (*Exit Plan*);

“Exit Management” means services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Contractor Deliverables from the Contractor to the Authority and/or a Follow-On Contractor as referred to in Clauses 72 (*Exit Plan*) and 74 (*Continuing Assistance*);

“Exit Management Information” means the information regarding the management of the transfer of the data, information, materials and Assets relating to this Contract,

including, but not limited to: time schedules, performance measures, staff transfer etc.;

“Exit Period” means, subject to paragraph 7.3 of Schedule 17 (*Exit Plan*), the period commencing six (6) months prior to the Expiry Date and ending on the Expiry Date and/or the period commencing with the service of a Termination Notice and ending on the date that this Contract (or part thereof) will (or may) terminate as the result of the service of such Termination Notice;

“Exit Plan” means the plan referred to in Schedule 17 (*Exit Plan*) as may be developed and/or amended in accordance with Clause 72 (*Exit Plan*) and paragraph 4 of Schedule 17 (*Exit Plan*);

“Expenses” shall have the meaning given in paragraph 5.1 of Part 1 of Schedule 9 (*Pricing and Payment*);

“Expenses Cap” means the Task Order 1 Expenses Cap;

“Expiry Date” means 31 May 2024;

“Fail” means, in relation to any of the KPIs, the Contractor has not satisfied the criteria contained within the relevant monitoring methodology set out in the Table at Appendix 1 to Schedule 6 (*Incentivisation*);

“Final Form” is when the Authority considers a Relevant Deliverable satisfies the Statement of Requirement and/or other Authority requirements in respect of such Contractor Deliverable and does not require the Contractor to carry out any additional work in respect of such Relevant Deliverable;

“Financial Management Information” means the value of work completed at a given point in time;

“Financial Representative” means a reasonably skilled and experienced member of the Contractor’s staff who has specific responsibility for preparing, maintaining, facilitating access to, discussing and explaining the Open Book Data;

“Firm Price” means, as the context requires, the Task Order 1 Firm Price and/or a Task Order 1 Adjustment Firm Price;

“FOI Act” means the Freedom of Information Act 2000;

“Follow-On Contractor” has the meaning given in Clause 74 (*Continuing Assistance*);

“General Anti-Abuse Rule” means:

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

“General Assurance Review” means the assurance review to be carried out for all Relevant Deliverables in accordance with Schedule 4 (*Assurance and Acceptance Process*);

“General Deductible Amount” [xxx]

“General Recovery Plan” has the meaning given in paragraph 6.3 of Schedule 6 (*Incentivisation*) and which should include:

- (a) start date and proposed completion date for recovery action;
- (b) milestones within the recovery action to monitor progress; and
- (c) name and contact details for the Contractor’s senior manager responsible for the recovery action;

“GFA” means the obligations of the Authority as set out in Schedule 7 (*Authority Obligations*);

“GFA Failure” means the failure of the Authority to provide GFA (other than Discretionary GFA) as set out in Schedule 7 (*Authority Obligations*);

“GFA Working Day” means Monday to Friday and excluding bank holidays;

“Good Industry Practice” means that degree of skill, care, prudence and foresight and operating practice, which would reasonably and ordinarily be expected from time to time of a skilled and experienced consultant engaged in the same type of undertaking as that of the Contractor and/or any Sub-Contractor under the same or similar circumstances;

“Government Department” means any department of the central government of the United Kingdom whose powers have not been devolved to any other national or regional executive or body, including any central government department with powers to administrate in specific geographical areas only (such as in England and Wales only);

“Government Establishment” means any sites and/or real property owned and/or operated by the Government, including the Authority Sites, any of His Majesty’s ships or vessels and any service stations;

“GovS 007: Security” means the Government Functional Standard GovS: Security relating to the government’s expectations for protecting:

- (a) the government’s people, information and assets;
- (b) visitors to government property and Third Party suppliers while engaged on government business; and
- (c) citizen data;

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

“Holding Company” has the meaning given in, and shall be construed in accordance with, section 1159 and section 1162 of the Companies Act 2006;

“Individual” means any Key Personnel or any person undertaking a Key Role or any other person involved in the provision of the Contractor Deliverables, in each case at any time;

“Information” means information in any form, whether written, oral, electronic, or in a tangible form disclosed to one Party by or on behalf of the other Party under or in connection with this Contract that is identified as being of a confidential or proprietary nature or which ought reasonably to be considered to be confidential, including information provided in the tender or negotiations which preceded Contract Award;

“Insolvency Event” occurs in relation to any person (which for the avoidance of doubt shall include an individual, a partnership, whether unlimited, limited, or limited liability, or any other type of entity as applicable and for this purpose “it” or “its” shall refer to such individual or partnership or other entity) when any one or more of the following events occurs to that person:

- (a) a meeting of its partners, shareholders, directors or other officers is convened for the purpose of considering any resolution, to petition, to apply, or to file documents with a court or any registrar, for its winding-up, administration or dissolution, or for it to enter the moratorium procedure under Part A1 of the Insolvency Act 1986 (the **“Moratorium Procedure”**), or any such resolution is passed;
- (b) its partners, shareholders, directors or other officers request the appointment of, or give notice of their intention to appoint, a liquidator, compulsory manager, receiver, administrative receiver, administrator, monitor or similar officer, or a qualifying floating charge holder gives notice of their intention to appoint an administrator;
- (c) any person presents a petition, or makes an application, or files documents with a court or any registrar: for its winding-up, bankruptcy, sequestration, administration or dissolution; or for it to enter the Moratorium Procedure; or, without limitation to the foregoing, in the case of a partnership other than a limited liability partnership, for the individual bankruptcy or sequestration of any one or more partners in the partnership, other than any winding-up, bankruptcy or sequestration petition which is contested in good faith and/or shown as frivolous or vexatious and discharged or dismissed within 3 Business Days after presentation;
- (d) any Security Interest is enforced by a judicial decision over a part or all of its assets;
- (e) an order for its winding-up, bankruptcy, sequestration, provisional liquidation, administration, or dissolution is made, or an order that it is subject to the Moratorium Procedure is made, or it enters winding-up, bankruptcy, sequestration, provisional liquidation, administration, or the Moratorium Procedure, or is dissolved, or, without limitation to the foregoing, in the case of a partnership other than a limited liability partnership, any one or more of the partners is made bankrupt or an order for their sequestration is made;
- (f) any liquidator, provisional liquidator, trustee in bankruptcy, compulsory manager, receiver, administrative receiver, administrator, monitor under the Moratorium Procedure, or similar officer is appointed in respect of it or a part of its assets, or, without limitation to the foregoing, in the case of a

partnership other than a limited liability partnership, a trustee in bankruptcy, compulsory manager, receiver or other similar officer is appointed in respect of any one or more of the partners or a part of their assets;

- (g) it commences negotiations for, a formal proposal is made for, any formal step is taken in relation to (including filing documents with the court for or applying for a moratorium under Schedule A1 to the Insolvency Act 1986 or an interim order pursuant to section 252 of the Insolvency Act 1986), or it enters or implements a voluntary arrangement under Part I or Part VIII of the Insolvency Act 1986, a scheme of arrangement under Part 26 of the Companies Act 2006, or a composition, arrangement or reconstruction under Part 26A of the Companies Act 2006, but excluding a scheme of arrangement under Part 26 of the Companies Act 2006 which is a scheme of arrangement as a solvent company for the purposes of amalgamation or reconstruction;
- (h) without limitation to the foregoing, in the case of a partnership other than a limited liability partnership, any one or more of the partners commences negotiations for, a formal proposal is made for, any formal step is taken in relation to (including filing documents with the court for or applying for an interim order pursuant to section 252 of the Insolvency Act 1986), or that partner or partners enters or implements a voluntary arrangement under Part VIII of the Insolvency Act 1986;
- (i) any one or more persons has become entitled to appoint a receiver, including without limitation an administrative receiver, over all or any of its assets, or has become entitled to appoint an administrator to it;
- (j) any creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within three (3) Business Days;
- (k) it suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due, or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership other than a limited liability partnership) has any partner to whom any of the foregoing apply;
- (l) it commences negotiations for, a formal proposal is made for, any formal step is taken in relation to, or it enters into an agreement for the rescheduling, reduction and/or a moratorium of any debts owed by it with all or any one or more of its creditors;
- (m) it commences negotiations for, a formal proposal is made for, any formal step is taken in relation to, or it enters into a composition, scheme or arrangement with or in respect of its creditors or any one or more of them, other than an arrangement as a solvent company for the purposes of amalgamation or reconstruction;

- (n) without limitation to the foregoing, in the case of a partnership other than a limited liability partnership, any one or more of the partners commences negotiations for, a formal proposal is made for, any formal step is taken in relation to, or that partner or partners enter into a composition, scheme or arrangement with or in respect of their creditors or any one or more of their creditors;
- (o) it ceases, suspends or threatens to cease or suspend carrying on its business;
- (p) an “insolvency event” as defined in sections 121(2) to 121(5) inclusive of the Pensions Act 2004 occurs to it; and/or
- (q) any other step, process, procedure and/or event occurs in England and Wales or any other jurisdiction in relation to it that is equivalent, similar and/or analogous to any one or more of those set out in (a) to (p) inclusive above;

“Intellectual Property” means the subject of any Intellectual Property Rights;

“Intellectual Property Rights” or **“IPR”** means patents, utility models, rights (registered and unregistered) in any designs, applications for any of the foregoing, topography rights, database rights, copyright, inventions, confidential Information and trade secrets, and all rights and forms of protection of a similar nature to these or having equivalent effect anywhere in the world;

“Invoice Date” has the meaning given in paragraph 5.2 of Schedule 6 (*Incentivisation*);

“IR35 Appeal” means representations made by an Individual in accordance with section 61T of chapter 10 of Part 2 to ITEPA 2003 that a Status Determination Statement issued by the Authority is incorrect;

“IR35 Rules” means the off-payroll working rules set out in Chapter 10 of Part 2 to ITEPA 2003 and the Social Security Contributions (Intermediaries) Regulations 2000 (SI 2000 No 727);

“Issued Property” means any item, including any physical items which the Contractor requires under this Contract in order to provide the Contractor Deliverables (or any element thereof), issued or otherwise furnished to the Contractor in connection with this Contract by or on behalf of the Authority;

“ITEPA 2003” means the Income Tax (Earnings and Pensions) Act 2003;

“IT Environment” means the Authority System and the Contractor System;

“Joint Project Office” or **“JPO”** is the Authority led vehicle for the joint delivery of the EvO Contract;

“JPO Facility” means the facility within which the JPO is located from time to time;

“Key Date” means the date upon which the whole or any part (as the case may be) of a Key Deliverable is to be provided to the Authority subject to Clause 9.10.2 (*Contract Management and Meetings*);

“Key Deliverables” means all those Contractor Deliverables referred to in paragraph 4.1 of Schedule 6 (*Incentivisation*);

“Key Performance Indicator” or **“KPI”** means the criteria against which the Contractor’s performance of its obligations under this Contract is measured and which are set out in Appendix 1 to Schedule 6 (*Incentivisation*);

“Key Personnel” means those persons appointed by the Contractor to fulfil the Key Roles, being the persons listed in:

- (a) Schedule 20 (*Key Personnel*) against each Key Role as at the Effective Date or as amended from time to time in accordance with Clauses 11.4 to 11.6 (*Contractor Related Parties*) (inclusive); or
- (b) the relevant Task Order Proposal or as amended from time to time in accordance with Clauses 11.4 to 11.6 (*Contractor Related Parties*) (inclusive);

“Key Role” means a role listed in the first column of the Table in Schedule 20 (*Key Personnel*) or identified in any Active Task Order and any additional roles added from time to time in accordance with Clause 11.5 (*Contractor Related Parties*);

“KPI 1.1 or 1.2 Recovery Plan” has the meaning given in paragraph 6.1 of Schedule 6 (*Incentivisation*) and which should include:

- (a) start date and proposed completion date for recovery action;
- (b) milestones within the recovery action to monitor progress; and
- (c) name and contact details for the Contractor’s senior manager responsible for the recovery action;

“KPI Report” means the report to be created by the Contractor pursuant to and in accordance with paragraph 5.1 of Schedule 6 (*Incentivisation*);

“KPI Data Report” is the Publishable Performance Information report in the form of DEFFORM 539B attached at Schedule 26 (*DEFFORMS*);

“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 with which a Party to this Contract is bound to comply;

“LE TacCIS Programme” means the programme to sustain, evolve, maintain and replace tactical communication and information systems (including the JCRVT, LDG, BCIP 5.6, FALCON Exploit, TRINITY and MORPHEUS Programme) for the UK Government Armed Forces;

“Losses” means all damage, losses, liabilities, claims, actions, costs, expenses (including legal expenses on a standard basis), proceedings, demands and charges whether arising under statute, contract or at common law (and **“Loss”** or **“loss”** shall have the same meaning as **“Losses”**);

“Malicious Software” means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other

information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;

“Maximum Additional Deliverables Sum” means the sum available to the Authority for the purposes of funding Additional Contractor Deliverables as notified by the Authority to the Contractor from time to time, as such sum may be increased from time to time by written notice from the Authority to the Contractor (whether pursuant to Schedule 6 (*Incentivisation*) or otherwise);

“Maximum Contract Price” means a sum equal to the aggregate of:

- (a) the Task Order 1 Firm Price as at the date of this Contract; plus
- (b) not used;
- (c) the Maximum Additional Deliverables Sum;

“Milestones” has the meaning given in:

- (a) paragraph 1.2 of Part 2 of Schedule 9 (*Pricing and Payment*) in relation to Milestones relevant to Task Order 1;
- (b) not used;

“Milestone Payment Amount” means, in respect of Task Order 1 and each Active Task Order, the amount set out in the relevant column of the applicable Milestone Payments Schedule;

“Milestone Payments Schedule” means, in respect of:

- (a) Task Order 1, the schedule set out in Appendix 1 to Schedule 9 (*Pricing and Payment*), as adjusted in accordance with paragraph 3.1 of Part 2 of Schedule 9 (*Pricing and Payment*) to take account of each Active Task Order applicable to Task Order 1 and/or an approved Change pursuant to Schedule 11 (*Change Procedure*);
- (b) not used;

“Minor Changes” has the meaning given in Clause 75 (*Change*);

“Mixture” has the meaning given in Clause 57.2.2 (*Supply of Hazard Data*);

“Monitoring Period” means in respect of KPIs 1.1, 1.2 and 3 each Contract Month and for KPIs 2.1 to 2.4 and KPI 4 the three (3) Contract Month period ending with each Quarter Month (as the case may be);

“Monthly Dashboard Report” means the report in the Agreed Form;

“Monthly Payment” means the amount calculated in accordance with paragraph 1.1 of Part 1 of Schedule 9 (*Pricing and Payment*);

“Monthly Performance Report” means the report in the Agreed Form to be created by the Contractor on the performance and delivery of this Contract pursuant to and in accordance with paragraph 5.5 of Schedule 8 (*Governance and Management*);

“MORPHEUS Contract” means any contract entered into or to be entered into by the Authority with any Third Party or any variation to any existing contract to which the Authority is a party (as the context shall require) arising out of or in connection with the MORPHEUS Programme (and, in either case, whether such contract is entered into, to be entered into or varied in whole or in part in connection with the MORPHEUS Programme and/or any part of it);

“MORPHEUS Contractor” means a counterparty to a MORPHEUS Contract other than the Authority;

“MORPHEUS Programme” means the procurement by the Authority for the provision and support of the MORPHEUS System, including the designing, building, assembling, maintaining, repairing, operating, modifying, developing, implementing, interfacing with, adapting, proving, integrating, updating, configuring, conforming, analysing, instantiating, supplementing, enhancing, training in relation to and/or evolving and/or installation of such MORPHEUS System;

“MORPHEUS Programme Manager” means the person holding the position of ISS DEV-BATCIS-MOR-PROG MGR-PPM;

“MORPHEUS System” means the next generation tactical communication and information system which will be the successor to the current tactical communication and information system (of which the EvO System forms part) being procured by the Authority;

“MTRC” means the Authority organisation from time to time with responsibility for, amongst other things, the independent testing, analysis, proving and/or conformance of the whole or any part of the MORPHEUS System and/or the EvO System and/or any Product forming part of (or proposed to form part of) the MORPHEUS System and/or the EvO System (including any associated architectures and designs);

“MTRC Facility” means the facility within which the MTRC is located from time to time, as notified by the Authority to the Contractor;

“NATO Stock Number” or **“NSN”** means a unique item identifier of 13 digits in length, composed of a 4 digit NATO supply classification code and a 9 digit NATO item identification number (NIIN);

“Necessary Consents” means all permits, licences (including licences required under the USA International Traffic in Arms Regulations (ITAR) and US Export Administration Regulations (EAR)), permissions, clearances, consents, approvals, certificates and authorisations (whether statutory or otherwise) which are required for the performance of any of the Contractor’s obligations under this Contract, whether required in order to comply with Law, as a result of the rights of any Third Party and/or the requirements of any foreign government or organisation;

“New Provider” means any replacement contractor or contractors engaged to provide the Contractor Deliverables (or part thereof) or substantially similar contractor deliverables or the Authority itself where the Contractor Deliverables or substantially

similar contractor deliverables or part thereof continue to be provided by the Authority after partial termination, termination or expiry of this Contract;

“Non-Assured Article” shall have the meaning given in Clause 58.4.2 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*);

“Notices” has the meaning given in Clause 88.1 (*Notices*);

“Notional Contract Price” means the Contract Price less the aggregate Firm Price of any Active Task Orders which have not commenced;

“Occasion Of Tax Non-Compliance” or “OOTNC” means:

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

“Open Book Data” means complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify that part of the Contract Price already paid or payable and that part of the Contract Price forecast to be paid during the remainder of the Contract Period, including details and all assumptions relating to:

- (a) the Costs broken down against each Contractor Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software;
- (b) operating expenditure relating to the provision of the Contractor Deliverables including an analysis showing:
 - (i) the unit costs and quantity of consumables and bought-in services;
 - (ii) manpower resources broken down into the number and grade/role of all Contractor Personnel (free of any contingency) together with a list of agreed rates against each manpower grade;
 - (iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Contractor's profit margin; and

- (iv) permitted reimbursable Expenses;
- (c) overheads;
- (d) all interest, expenses and any other Third Party financing costs incurred in relation to the provision of the Contractor Deliverables;
- (e) the Contractor profit achieved over the Contract Period and on an annual basis;
- (f) confirmation that all methods of Cost apportionment and overhead allocation are consistent with and not more onerous than such methods applied generally by the Contractor;
- (g) an explanation of the type and value of risk and contingencies associated with the provision of the Contractor Deliverables, including the amount of money attributed to each risk and/or contingency; and
- (h) the actual Costs profile for each Contract Period.

“Original Contract” has the meaning given in Recital (D);

“Original Expiry Date” means the Expiry Date as at the Effective Date (and prior to any agreed extension);

“Other Contractor” means any contractor to the Authority (other than the Contractor) or any other Third Party which is notified to the Contractor from time to time and/or of which the Contractor ought reasonably to have been aware, including the EvO Contractor, any MORPHEUS Contractor, the System Integrator and/or any Managed Service Provider;

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

“Packaging” shall have the meaning given in Clause 56.1 (*Packaging (for Articles other than Munitions)*);

“Parent Company” [xxx]

“Parent Company Guarantee” means the parent company guarantee provided by the Parent Company in accordance with Clause 3.7 (*Delivery of Parent Company Guarantee*) in the form of Schedule 18 (*Parent Company Guarantee*);

“Parties” means the Contractor and the Authority unless expressly stated differently;

“Pass” means, in relation to any of the KPIs, the Contractor has satisfied the criteria contained within the relevant monitoring methodology as set out in the Table at Appendix 1 to Schedule 6 (*Incentivisation*);

“Performance Review Meeting” means each meeting referred to in paragraph 17 of Schedule 6 (*Incentivisation*);

“Permanent Deduction” means the deductions referred to in paragraphs 9.2.3, 9.4.1(ii), 9.4.2, 9.5, 10.2.2, 10.4.2, 10.5, 11.3 and 12.3 of Schedule 6 (*Incentivisation*);

“Persistent Breach” means three (3) or more breaches (the **“Subsequent Breaches”**) by the Contractor of one of its obligations under this Contract, provided:

- (a) that the Authority has previously served on the Contractor a notice (**“Warning Notice”**) correctly stating that the Contractor has, in any Contract Months prior to the service of such Warning Notice, breached such obligation under this Contract on one (1) or more occasions;
- (b) that the Contractor's Subsequent Breaches of such obligation take place during the eighteen (18) month period following the service of such Warning Notice; and
- (c) no service of a Warning Notice may be based on any breaches of such obligation that have already been the subject of a Warning Notice,

provided that Persistent Breach will not include breaches which count towards limb (b) of the definition of Contractor Default;

“Personal Data” has the meaning given in Article 4 of the UK GDPR;

“Personal Data Breach” has the meaning given in Article 4 of the UK GDPR;

“Prescribed Rate” means two percent (2%) above the base rate from time to time of the Bank of England;

“Previous Contractor” [xxx]

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

“Price List” means the price list in the Agreed Form or as amended from time to time in accordance with paragraphs 3, 4 and 6 and 7 of Part 2 of Schedule 9 (*Pricing and Payment*) and paragraph 4 of Part 4 of Schedule 9 (*Pricing and Payment*);

“Processor” has the meaning given in Article 4 of the UK GDPR;

“Product Descriptions” means the Product Descriptions referred to in the Statement of Requirements and set out in Schedule 19 (*Product Descriptions*);

“Programmed Contractor Deliverables” are items or documents which are identified in Part 3 of Schedule 4 (*Assurance and Acceptance Process*) on the Effective Date and/or following the approval of a Task Order Proposal or a Change pursuant to Schedule 11 (*Change Procedure*) for which there is a Review Date and Submission Date (in each case set out in the Contract Programme);

“Prohibited Act” means any instance of the Contractor or any of its employees, agents or Sub-Contractors (or anyone acting on behalf of such persons), with or without the knowledge or authority of the Contractor:

- (a) directly or indirectly offering, promising, giving or agreeing to give to any Crown servant any gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Contract or any other contract with the Crown;
 - (ii) for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Crown; or
 - (iii) for improper performance of a relevant function or activity;
- (b) entering into this Contract or any other contract with the Crown in connection with which commission has been paid or has been agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless before such contract is entered into, particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Authority;
- (c) committing any offence:
 - (i) Not Used;
 - (ii) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
 - (iii) under Law creating offences in respect of fraudulent acts;
 - (iv) at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Crown; or
 - (v) any activity, practice or conduct which would constitute one or more of the offences listed in limbs (i) to (iv) inclusive, if such activity, practice or conduct had been carried out in the United Kingdom; or
- (d) defrauding, attempting to defraud or conspiring to defraud the Crown;

“Project Charter” means the charter to be prepared and developed in accordance with the Statement of Requirements;

“Proposed Additional Contractor Deliverables” means the Additional Contractor Deliverables that the Authority is, requesting the Contractor to perform at the relevant time in relation to Task Order 1;

“Public Store Account” or **“PSA”** has the meaning given in Clause 60.1.1 (*Accounting for the property of the Authority*);

“Publishable Performance Information” has the meaning given in Clause 43.1.2 (*Transparency*);

“QSC” has the meaning given to it in Clause 15.1.2(iii) (*QDC: Open Book on Sub-Contracts that are not Qualifying Sub-Contracts*);

“Qualifying Defence Contract” or **“QDC”** means a single source contract which has been assessed and which meets the criteria for a contract to which the DRA and SSCR must apply;

“QinetiQ Capture Lead” means Nick Caleb or such other person as the Contractor notifies to the Authority in accordance with this Contract;

“Quarterly Contract Reports” (or **“QCR”**) are the reports referred to in Clause 19.4 (*QDC Reporting*);

“Quarter Month” means the Contract Month which is the third (3rd) Contract Month after the Effective Date and each three (3) month anniversary of such Contract Month;

“REACH” has the meaning given in Clause 57.4 (*Supply of Hazard Data*);

“Records” has the meaning given in Clause 39 (*The Contractor’s Records*);

“Rectification Plan” means a plan to address a Default identified following an audit conducted in accordance with Schedule 24 (*Outcomes and Open Book Data and Audit Reports*);

“Reductions” means the reductions and/or discounts from Unit Rates referred to in paragraph 7 of Part 2 of Schedule 9 (*Pricing and Payment*);

“Relevant Authority” means any court with the relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union;

“Relevant Deliverable” has the meaning given in paragraph 1.4 of Part 1 Of Schedule 4 (*Assurance and Acceptance Process*);

“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;

“Relevant Tax Authority” means HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the Contractor is established;

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

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

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

“Replacement Contractor Deliverables” means any deliverables which are the same as, or substantially similar to, any of the Contractor Deliverables and which the

Authority receives in substitution for any of the Contractor Deliverables following the expiry or termination or partial termination of this Contract, whether those deliverables are provided by the Authority internally and/or by any Follow-On Contractor;

“Representatives” means the Authority’s Representatives or the Contractor’s Representatives (as appropriate);

“Required Action” has the meaning given in Clause 36.3 (*Procedure for Authority Step-In*);

“Required Insurances” has the meaning given in Clause 33.1 (*Insurances*);

“Review” means a review by the Authority of a Programmed Contractor Deliverable or an Unprogrammed Contractor Deliverable in accordance with Schedule 4 (*Assurance and Acceptance Process*);

“Review Date” means, subject to paragraphs 1.6 and 3.2 of Part 1 of Schedule 4 (*Assurance and Acceptance Process*):

- (a) in respect of a Programmed Contractor Deliverable the last date of the relevant Review Period as identified in the Contract Programme; and
- (b) in respect of an Unprogrammed Contractor Deliverable the date notified by the Authority to the Contractor in accordance with paragraph 1.4.2 of Schedule 4 (*Assurance and Acceptance Process*);

“Review Period” means, subject to paragraphs 1.6 and 3.2 of Part 1 of Schedule 4 (*Assurance and Acceptance Process*), the period for review of the Relevant Deliverable applicable to the Review in question, being the period commencing on the date the Entry Criteria for the relevant review have been satisfied;

“Risk Report” means the report to be produced in accordance with paragraph 5.9.2(ii) of Schedule 8 (*Governance and Management*);

“Secret Matter” has the meaning given in Clause 47.1.1 (*Security – Secret Matters*);

“Security Aspects Letter” means the letter relating to the designation of security classifications in the form set out at the Appendix to Schedule 25 (*Security Conditions*);

“Security Policy” means the HMG Security Policy Framework relating to the Government Security Classification policy as published by the Cabinet Office;

“Sensitive Information” has the meaning given in Clause 43.1.1 (*Transparency*);

“Servicemen” means military manpower (and **“Serviceman”** shall be construed accordingly);

“Single Source Contract Regulations 2014” or **“SSCR”** means the Single Source Contract Regulations 2014, as amended by the Single Source Contract (Amendment) Regulations 2018, the Single Source Contract (Amendment) (No. 2) Regulations 2018 and the Single Source Contract (Amendment) Regulations 2019;

"SME" means a small or medium sized enterprise being an establishment or service employing less than two hundred and fifty (250) people and with a turnover of less than fifty million Euros (50,000,000 Euro) per annum;

"Social Value Delivery Plan" has the meaning given in KPI 4 set out in Appendix 1 to Schedule 6 (*Incentivisation*);

"Special Jigs, Tools Etc" means all special jigs, tools, patterns, moulds, dies, manufacturing gauges and test equipment, together with any associated fixtures, fittings and software necessary for the manufacture of the Articles or for the performance of the Contractor Deliverables, which are not tools of the trade, as used by the Contractor in the performance of this Contract;

"SSRO" is the UK government's Single Source Regulations Office;

"Staff" means any Employee who is employed in the performance of the Contractor Deliverables (or who may be employed in the performance of any Proposed Additional Contractor Deliverables) and having the job titles and/or roles identified in the Price List;

"Standard Deliverables" means the Contractor Deliverables referred to in paragraph 4.2 of Schedule 6 (*Incentivisation*);

"Statement of Requirements" means Schedule 2 (*Statement of Requirements*) in the Agreed Form;

"Status Determination Process" means the process undertaken by the Authority as End Determinator to determine whether the IR35 Rules apply to the engagement of any Individual under the Contract;

"Status Determination Statement" means a statement which complies with the requirements of section 61NA of Chapter 10 of Part 2 to ITEPA 2003;

"Step-In Notice" has the meaning given in Clause 36.3 (*Procedure for Authority Step-In*);

"Step-Out" has the meaning given in Clause 36.6 (*Authority Step-Out*);

"Step-Out Plan" has the meaning given in Clause 36.7.2 (*Authority Step-Out*);

"Sub-Contracting Plan" has the meaning given in Clause 17.1 (*Competition in Sub-Contracts*);

"Sub-Contractor" means any sub-contractor to the Contractor under this Contract, a sub-contractor of a sub-contractor to the Contractor and any other sub-contractor (of whatever tier) engaged by the Contractor or any sub-contractor from time to time as may be permitted by this Contract to provide the Contractor Deliverables (or any part of the Contractor Deliverables);

"Sub-Contracts" means the contracts entered into between the Contractor and the Sub-Contractors and the contracts entered into between any Sub-Contractor and any other Sub-Contractor in respect of the provision of the Contractor Deliverables and

"Sub-Contracting" shall be construed accordingly;

“Submission Date” means, subject to paragraphs 1.4.1, and 3 of Part 1 of Schedule 4 (*Assurance and Acceptance Process*):

- (a) in respect of a Programmed Contractor Deliverable, the programmed date for the relevant Review Period to commence, on or before which the relevant Entry Criteria is to be satisfied, as identified in the Contract Programme; and
- (b) in respect of an Unprogrammed Contractor Deliverable, the programmed date for the relevant Review Period to commence as notified by the Authority to the Contractor in accordance with paragraph 1.4.1 of Schedule 4 (*Assurance and Acceptance Process*);

“Subsequent Relevant Transfer” means a transfer of the employment of Subsequent Transferring Employees from the Contractor or any Employing Sub-Contractor to a New Provider or the Authority under the Transfer Regulations;

“Subsequent Review” has the meaning given in paragraph 3.2 of Part 1 of Schedule 4 (*Assurance and Acceptance Process*);

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

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

“Subsidiary” has the meaning given in, and shall be construed in accordance with, sections 1159 and 1162 of the Companies Act 2006;

“Substance” has the meaning given in Clause 57.2.1 (*Supply of Hazard Data*);

“TacCIS Team” means the team responsible for the delivery, maintenance and support of the current Tactical Communication and Information System Capability;

“Tactical Architecture Forum” or **“TAF”** means the forum (lead by the Authority and attended by representatives of the Authority and TAF Members (as applicable)) established to provide the Authority with advice, comments, guidance and/or analysis (which may include advice, comments, guidance and/or analysis in relation to certain Contractor Deliverables and/or certain deliverables provided by and/or to be provided by the Other Contractors) to facilitate the delivery by the Authority of the EvO System and the MORPHEUS System;

“TAF Member” means a Third Party member of the Tactical Architecture Forum;

“Task Order” means Task Order 1 and, in respect of a Task Order Proposal, an order issued by the Authority's Representative confirming that the Contractor is required to perform the Proposed Additional Contractor Deliverables in accordance with an approved Task Order Proposal;

“Task Order Proposal” means a proposal to be issued by the Contractor to the Authority in response to the issue by the Authority of a Task Order Request, as more particularly defined in Schedule 10 (*Task Order Approval Process*);

“Task Order Proposal Template” means the form of document set out in Appendix 1 of Schedule 10 (*Task Order Approval Process*);

“Task Order Request” means a request by the Authority for the Contractor to develop a Task Order Proposal in respect of the applicable Proposed Additional Contractor Deliverables;

“Task Order 1” means the Task Order for the Core Contractor Deliverables as adjusted following the commencement of any Active Task Order relevant to Task Order 1 and/or an approved Change pursuant to Schedule 11 (*Change Procedure*);

“Task Order 1 Adjusted Excess” shall have the meaning given in paragraph 2.4.2 of Part 1 of Schedule 9 (*Pricing and Payment*);

“Task Order 1 Adjustment Firm Price” means the amount by which the Task Order 1 Firm Price (current at the relevant time) will be adjusted following commencement of an Active Task Order and/or an approved Change which adjusts Task Order 1, as more particularly referred to in paragraph 3 of Part 2 of Schedule 9 (*Pricing and Payment*);

“Task Order 1 Excess” shall have the meaning given in paragraph 2.2.2 of Part 1 of Schedule 9 (*Pricing and Payment*);

“Task Order 1 Expenses Cap” means [xxx]

“Task Order 1 Firm Price” means the Firm Price for Task Order 1¹ as described in paragraph 1 of Part 2 of Schedule 9 (*Pricing and Payment*) and as adjusted as described in paragraph 3 of Part 2 of Schedule 9 (*Pricing and Payment*);

“Task Order 1 Payment” means each payment calculated in accordance with paragraph 2 of Part 1 of Schedule 9 (*Pricing and Payment*);

“Tax” means any kind of tax, duty, levy or other charge (other than VAT) whether or not similar to any in force at the Effective Date and whether imposed by a local, governmental or other Relevant Authority in the United Kingdom or elsewhere;

“Temporary Deduction” means the deductions referred to in paragraphs 9.2.2, 9.3, 9.4, 10.2.1, 10.3 and 10.4 of Schedule 6 (*Incentivisation*);

“Tender Documentation” means any documents issued to prospective bidders and bidders relating to the opportunity to bid to enter into a contract to provide the Contractor Deliverables;

“Tender Requirement” has the meaning given in Clause 17.3 (*Competition in Sub-Contracts*);

“Termination Date” means the date of any early termination of the whole or part of this Contract pursuant to Clauses 69 (*Termination for Contractor Default*) or 70 (*Break*);

¹ TBC once negotiations have completed.

“Termination Notice” has the meaning given in Clause 69.2 (*Termination for Contractor Default*), or as relevant, means any notice to terminate this Contract pursuant to Clause 70 (*Break*);

“Third Party” means:

- (a) for the purpose of Schedule 14 (*IPR*), a party other than the Authority, the Contractor, and any Affiliate of the Contractor; or
- (b) for any other purpose, any person other than the Parties;

“Third Party IPR” means any IPR owned by a Third Party;

“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;

“Transferring Contracts” has the meaning given in paragraph 9.2.2 of Schedule 17 (*Exit Plan*);

“Transition Plan” means the process for the transfer of knowledge and information from the Contractor to the Authority as more particularly referred to in paragraph 5 of Schedule 17 (*Exit Plan*);

“Transition Plan Request” means a request by the Authority for the Contractor to develop a Transition Plan;

“Transparency Information” has the meaning given in Clause 43.1.3 (*Transparency*);

“TRINITY” means the Wide Area Network (WAN) for the deployed land environment, delivering high assurance connectivity services at the tactical and operational levels of command, whether operating as a single nation or part of a wider coalition, within the defence single information environment;

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

“UK Government Purposes” means use for the purposes of the UK Government, including, without limitation, rights to copy, modify, perform, reproduce, display and disclose in whole or in part, and to authorise Third Parties to do so, but shall not extend to commercial sales of Articles except for disposal of outworn or surplus items;

“Unexpected Subsequent Transferring Employee” has the meaning given in paragraph 4.1 of Part 2 of Schedule 21 (*Transfer Regulations*);

“Unique Identifiers” comprise the following:

- (a) Unique Order Identifier (“**UOI**”) generated by the Contracting, Purchasing & Finance (CP&E) electronic procurement tool for non inventory purchase orders;
- (b) Unique Receipt Reference Identifier (“**URRI**”), generated by CP&F for inventory purchase orders; or
- (c) Electronic Business Capability (“**EBC**”) Unique Package Identifier (“**EUPI**”) generated for EBC contractor logistic support contracts. EUPIs comprise two parts, the first part being the identifier allocated by the Authority and the second part being the identifier generated by the Contractor;

“**Unique Order Identifier**” or “**UOI**” has the meaning given in limb (a) of the definition “Unique Identifiers” in Schedule 1 (*Definitions and Acronyms*);

“**Unique Receipt Reference Identifier**” or “**URRI**” has the meaning given in limb (b) of the definition “Unique Identifiers” in Schedule 1 (*Definitions and Acronyms*);

“**Unit Rate**” means the agreed maximum rates (as may be amended from time to time in accordance with paragraphs 4 to 6 (inclusive) of Part 2 of Schedule 9 (*Pricing and Payment*)) as set out in the Price List, which are used to calculate the Task Order 1 Firm Price and the Task Order 1 Adjustment Firm Price in respect of the Contractor Deliverables and Proposed Additional Contractor Deliverables (in accordance with paragraph 3 of Part 2 of Schedule 9 (*Pricing and Payment*));

“**Unprogrammed Contractor Deliverables**” are items or documents which are referred to in paragraphs 1.3.2 and 1.3.3 Part 1 of Schedule 4 (*Assurance and Acceptance Process*);

“**VAT**” means value added tax and is the tax charged on supplies of goods and services in the UK pursuant to the Value Added Tax Act 1994;

“**Vesting IPR**” shall have the meaning given in paragraph 2.1 of Schedule 14 (*IPR*);

“**Warning Notice**” has the meaning given in limb (a) of the definition of Persistent Breach;

“**Working Day**” means any day excluding:

- (a) Saturdays, Sundays and public and statutory holidays in the jurisdiction of either Party; and
- (b) privilege days notified in writing by the Authority to the Contractor at least ten (10) business days in advance;

“**Year**” means the twelve (12) month period from and including the day falling immediately before the day bearing the same number in the same month of the following year (or, in the case of a period commencing on 29 February, ending on the next following 28 February).

Schedule 2

Statement of Requirements

[Please see Schedule 2 (Statement of Requirements) of the document entitled “Schedules 1 to 26 relating to BATCM/0288 BATCIS Private Sector Support”]

Schedule 3

Contractor's Proposals

[Please see Schedule 3 (Contractor's Proposals) of the document entitled "Schedules 1 to 26 relating to BATCM/0288 BATCIS Private Sector Support"]

Schedule 4

Assurance and Acceptance Process

[Please see Schedule 4 [(Assurance and Acceptance Process) of the document entitled “Schedules 1 to 26 relating to BATCM/0288 BATCIS Private Sector Support”]

Schedule 5

Not Used

Schedule 6

Incentivisation

[Please see Schedule 6 (Incentivisation) of the document entitled “Schedules 1 to 26 relating to BATCM/0288 BATCIS Private Sector Support”]

Schedule 7

Authority Obligations

[Please see Schedule 7 (Authority Obligations) of the document entitled “Schedules 1 to 26 relating to BATCM/0288 BATCIS Private Sector Support”]

Schedule 8

Governance and Management

[Please see Schedule 8 (Governance and Management) of the document entitled “Schedules 1 to 26 relating to BATCM/0288 BATCIS Private Sector Support”]

Schedule 9

Pricing and Payment

[Please see Schedule 9 (Pricing and Payment) of the document entitled “Schedules 1 to 26 relating to BATCM/0288 BATCIS Private Sector Support”]

Schedule 10

Task Order Approval Process

[Please see Schedule 10 (Task Order Approval Process) of the document entitled “Schedules 1 to 26 relating to BATCM/0288 BATCIS Private Sector Support”]

Schedule 11

Change Procedure

[Please see Schedule 11 (Change Procedure) of the document entitled “Schedules 1 to 26 relating to BATCM/0288 BATCIS Private Sector Support”]

Schedule 12

Technical Assistance

[Please see Schedule 12 (Technical Assistance) of the document entitled “Schedules 1 to 26 relating to BATCM/0288 BATCIS Private Sector Support”]

Schedule 13

Required Insurances

[Please see Schedule 13 (Required Insurances) of the document entitled “Schedules 1 to 26 relating to BATCM/0288 BATCIS Private Sector Support”]

Schedule 14

IPR

[Please see Schedule 14 (IPR) of the document entitled “Schedules 1 to 26 relating to BATCM/0288 BATCIS Private Sector Support”]

Schedule 15

Ancillary Documents

[Please see Schedule 15 (Ancillary Documents) of the document entitled “Schedules 1 to 26 relating to BATCM/0288 BATCIS Private Sector Support”]

Schedule 16

Business Continuity Plans

[Please see Schedule 16 (Business Continuity Plans) of the document entitled “Schedules 1 to 26 relating to BATCM/0288 BATCIS Private Sector Support”]

Schedule 17

Exit Plan

[Please see Schedule 17 (Exit Plan) of the document entitled “Schedules 1 to 26 relating to BATCM/0288 BATCIS Private Sector Support”]

Schedule 18

Parent Company Guarantee

[Please see Schedule 18 (Parent Company Guarantee) of the document entitled "Schedules 1 to 26 relating to BATCM/0288 BATCIS Private Sector Support"]

Schedule 19

Product Descriptions

[Please see Schedule 19 (Product Descriptions) of the document entitled “Schedules 1 to 26 relating to BATCM/0288 BATCIS Private Sector Support”]

Schedule 20

Key Personnel

[Please see Schedule 20 (Key Personnel) of the document entitled “Schedules 1 to 26 relating to BATCM/0288 BATCIS Private Sector Support”]

Schedule 21

Transfer Regulations

[Please see Schedule 21 (Transfer Regulations) of the document entitled “Schedules 1 to 26 relating to BATCM/0288 BATCIS Private Sector Support”]

Schedule 22

Contract Programme

[Please see Schedule 22 (Contract Programme) of the document entitled “Schedules 1 to 26 relating to BATCM/0288 BATCIS Private Sector Support”]

Schedule 23

Not Used

Schedule 24

Outcomes and Open Book Data and Audit Reports

[Please see Schedule 24 (Outcomes and Open Book Data and Audit Reports) of the document entitled “Schedules 1 to 26 relating to BATCM/0288 BATCIS Private Sector Support”]

Schedule 25

Security Conditions

[Please see Schedule 25 (Security Conditions) of the document entitled “Schedules 1 to 26 relating to BATCM/0288 BATCIS Private Sector Support”]

Schedule 26

DEFFORMS

[Please see Schedule 26 (DEFFORMS) of the document entitled “Schedules 1 to 26 relating to BATCM/0288 BATCIS Private Sector Support”]