Ministry of Defence

Contract Number: DGM/1880

Terms and Conditions (T&Cs)

For:
Next Generation Munitions Solution (NGMS) Programme

November 2020

Contractor's Name BAE SYSTEMS GLOBAL COMBAT SYSTEMS MUNITIONS LIMITED	**MINISTRY OF DEFENCE** **SCHEDULE OF REQUIREMENTS COVERING:** **Next Generation Munitions Solution (NGMS)**	DEFFORM 110 Contract No DGM/1880
Issued on: **1 December 2020**		Previous Contract No.

SERVICE YEAR 2023		
ITEM NO	**DESCRIPTION**	**PRICE PER ITEM (£ EX VAT)**
1.1	(1) Engineering Support of Type A Munitions and Type B Munitions, Update of Type A Munitions, design and development of Future Munitions, Maintaining and Sustaining the Manufacturing Capability and maintaining the Engineering Capability, during Service Year 2023; and (2) Manufacture and supply of Type A Munitions to be delivered in Service Year 2023, in accordance with Schedule 2 (Statement of Requirements), Schedule 5 (Engineering Requirements), Schedule 6 (Technical Requirements and Quality Standards) and Schedule 8 (Manufacturing and Supply)	Service Year Price Payable and Earned KPI Incentives for Service Year 2023 (subject to and in accordance with Clause 24 (Pricing), Clause 26 (Key Performance Indicators) and Schedule 12 (Pricing)
1.2	Ad Hoc Tasks, Engineering Tasks and Ad Hoc Engineering Tasks agreed during Service Year 2023 in accordance with Schedule 10 (Tasking) and Schedule 5 (Engineering Requirements)	As determined in accordance with Clause 24.25 and recorded in Paragraph 5 (Other Priced Components) of Schedule 12 (Pricing)
1.3	Unavoidable Order Shortfall Costs incorporated into this Contract in relation to Type A Munitions to be delivered in Service Year 2023 in accordance with Clause 25.5	As determined in accordance with Clause 25.5 and recorded in Paragraph 5 (Other Priced Components) of Schedule 12 (Pricing)
All items above shall be subject to the terms and conditions of this Contract		

SERVICE YEAR 2024		
ITEM NO	**DESCRIPTION**	**PRICE PER ITEM (£ EX VAT)**
2.1	(1) Engineering Support of Type A Munitions and Type B Munitions, Update of Type A Munitions, design and development of Future Munitions, Maintaining and Sustaining the Manufacturing Capability and maintaining the Engineering Capability, during Service Year 2024; and (2) Manufacture and supply of Type A Munitions to be delivered in Service Year 2024, in accordance with Schedule 2 (Statement of Requirements), Schedule 5 (Engineering Requirements), Schedule 6 (Technical Requirements and Quality Standards) and Schedule 8 (Manufacturing and Supply)	Service Year Price Payable and Earned KPI Incentives for Service Year 2024 (subject to and in accordance with Clause 24 (Pricing), Clause 26 (Key Performance Indicators) and Schedule 12 (Pricing)
2.2	Ad Hoc Tasks, Engineering Tasks and Ad Hoc Engineering Tasks agreed during Service Year 2024 in accordance with Schedule 10 (Tasking) and Schedule 5 (Engineering Requirements)	As determined in accordance with Clause 24.25 and recorded in Paragraph 5 (Other Priced Components) of Schedule 12 (Pricing)
2.3	Unavoidable Order Shortfall Costs incorporated into this Contract in relation to Type A Munitions to be delivered in Service Year 2024 in accordance with Clause 25.5	As determined in accordance with Clause 25.5 and recorded in Paragraph 5 (Other Priced Components) of Schedule 12 (Pricing)
All items above shall be subject to the terms and conditions of this Contract		

SERVICE YEAR 2025		
ITEM NO	**DESCRIPTION**	**PRICE PER ITEM (£ EX VAT)**
3.1	(1) Engineering Support of Type A Munitions and Type B Munitions, Update of Type A Munitions, design and development of Future Munitions, Maintaining and Sustaining the Manufacturing Capability and maintaining the Engineering Capability, during Service Year 2025; and (2) Manufacture and supply of Type A Munitions to be delivered in Service Year 2025, in accordance with Schedule 2 (Statement of Requirements), Schedule 5 (Engineering Requirements), Schedule 6 (Technical Requirements and Quality Standards) and Schedule 8 (Manufacturing and Supply)	Service Year Price Payable and Earned KPI Incentives for Service Year 2025 (subject to and in accordance with Clause 24 (Pricing), Clause 26 (Key Performance Indicators) and Schedule 12 (Pricing)
3.2	Ad Hoc Tasks, Engineering Tasks and Ad Hoc Engineering Tasks agreed during Service Year 2025 in accordance with Schedule 10 (Tasking) and Schedule 5 (Engineering Requirements)	As determined in accordance with Clause 24.25 and recorded in Paragraph 5 (Other Priced Components) of Schedule 12 (Pricing)
3.3	Unavoidable Order Shortfall Costs incorporated into this Contract in relation to Type A Munitions to be delivered in Service Year 2025 in accordance with Clause 25.5	As determined in accordance with Clause 25.5 and recorded in Paragraph 5 (Other Priced Components) of Schedule 12 (Pricing)
All items above shall be subject to the terms and conditions of this Contract		

SERVICE YEAR 2026		
ITEM NO	**DESCRIPTION**	**PRICE PER ITEM (£ EX VAT)**
4.1	(1) Engineering Support of Type A Munitions and Type B Munitions, Update of Type A Munitions, design and development of Future Munitions, Maintaining and Sustaining the Manufacturing Capability and maintaining the Engineering Capability, during Service Year 2026; and (2) Manufacture and supply of Type A Munitions to be delivered in Service Year 2026, in accordance with Schedule 2 (Statement of Requirements), Schedule 5 (Engineering Requirements), Schedule 6 (Technical Requirements and Quality Standards) and Schedule 8 (Manufacturing and Supply)	Service Year Price Payable and Earned KPI Incentives for Service Year 2026 (subject to and in accordance with Clause 24 (Pricing), Clause 26 (Key Performance Indicators) and Schedule 12 (Pricing)
4.2	Ad Hoc Tasks, Engineering Tasks and Ad Hoc Engineering Tasks agreed during Service Year 2026 in accordance with Schedule 10 (Tasking) and Schedule 5 (Engineering Requirements)	As determined in accordance with Clause 24.25 and recorded in Paragraph 5 (Other Priced Components) of Schedule 12 (Pricing)
4.3	Unavoidable Order Shortfall Costs incorporated into this Contract in relation to Type A Munitions to be delivered in Service Year 2026 in accordance with Clause 25.5	As determined in accordance with Clause 25.5 and recorded in Paragraph 5 (Other Priced Components) of Schedule 12 (Pricing)
All items above shall be subject to the terms and conditions of this Contract		

SERVICE YEAR 2027		
ITEM NO	**DESCRIPTION**	**PRICE PER ITEM (£ EX VAT)**
5.1	(1) Engineering Support of Type A Munitions and Type B Munitions, Update of Type A Munitions, design and development of Future Munitions, Maintaining and Sustaining the Manufacturing Capability and maintaining the Engineering Capability, during Service Year 2027; and (2) Manufacture and supply of Type A Munitions to be delivered in Service Year 2027, in accordance with Schedule 2 (Statement of Requirements), Schedule 5 (Engineering Requirements), Schedule 6 (Technical Requirements and Quality Standards) and Schedule 8 (Manufacturing and Supply)	Service Year Price Payable and Earned KPI Incentives for Service Year 2027 (subject to and in accordance with Clause 24 (Pricing), Clause 26 (Key Performance Indicators) and Schedule 12 (Pricing)
5.2	Ad Hoc Tasks, Engineering Tasks and Ad Hoc Engineering Tasks agreed during Service Year 2027 in accordance with Schedule 10 (Tasking) and Schedule 5 (Engineering Requirements)	As determined in accordance with Clause 24.25 and recorded in Paragraph 5 (Other Priced Components) of Schedule 12 (Pricing)
5.3	Unavoidable Order Shortfall Costs incorporated into this Contract in relation to Type A Munitions to be delivered in Service Year 2027 in accordance with Clause 25.5	As determined in accordance with Clause 25.5 and recorded in Paragraph 5 (Other Priced Components) of Schedule 12 (Pricing)
All items above shall be subject to the terms and conditions of this Contract		

SERVICE YEAR 2028		
ITEM NO	**DESCRIPTION**	**PRICE PER ITEM (£ EX VAT)**
6.1	(1) Engineering Support of Type A Munitions and Type B Munitions, Update of Type A Munitions, design and development of Future Munitions, Maintaining and Sustaining the Manufacturing Capability and maintaining the Engineering Capability, during Service Year 2028; and (2) Manufacture and supply of Type A Munitions to be delivered in Service Year 2028, in accordance with Schedule 2 (Statement of Requirements), Schedule 5 (Engineering Requirements), Schedule 6 (Technical Requirements and Quality Standards) and Schedule 8 (Manufacturing and Supply)	Service Year Price Payable and Earned KPI Incentives for Service Year 2028 (subject to and in accordance with Clause 24 (Pricing), Clause 26 (Key Performance Indicators) and Schedule 12 (Pricing)
6.2	Ad Hoc Tasks, Engineering Tasks and Ad Hoc Engineering Tasks agreed during Service Year 2028 in accordance with Schedule 10 (Tasking) and Schedule 5 (Engineering Requirements)	As determined in accordance with Clause 24.25 and recorded in Paragraph 5 (Other Priced Components) of Schedule 12 (Pricing)
6.3	Unavoidable Order Shortfall Costs incorporated into this Contract in relation to Type A Munitions to be delivered in Service Year 2028 in accordance with Clause 25.5	As determined in accordance with Clause 25.5 and recorded in Paragraph 5 (Other Priced Components) of Schedule 12 (Pricing)
All items above shall be subject to the terms and conditions of this Contract		

SERVICE YEAR 2029		
ITEM NO	**DESCRIPTION**	**PRICE PER ITEM (£ EX VAT)**
7.1	(1) Engineering Support of Type A Munitions and Type B Munitions, Update of Type A Munitions, design and development of Future Munitions, Maintaining and Sustaining the Manufacturing Capability and maintaining the Engineering Capability, during Service Year 2029; and (2) Manufacture and supply of Type A Munitions to be delivered in Service Year 2029, in accordance with Schedule 2 (Statement of Requirements), Schedule 5 (Engineering Requirements), Schedule 6 (Technical Requirements and Quality Standards) and Schedule 8 (Manufacturing and Supply)	Service Year Price Payable and Earned KPI Incentives for Service Year 2029 (subject to and in accordance with Clause 24 (Pricing), Clause 26 (Key Performance Indicators) and Schedule 12 (Pricing)
7.2	Ad Hoc Tasks, Engineering Tasks and Ad Hoc Engineering Tasks agreed during Service Year 2029 in accordance with Schedule 10 (Tasking) and Schedule 5 (Engineering Requirements)	As determined in accordance with Clause 24.25 and recorded in Paragraph 5 (Other Priced Components) of Schedule 12 (Pricing)
7.3	Unavoidable Order Shortfall Costs incorporated into this Contract in relation to Type A Munitions to be delivered in Service Year 2029 in accordance with Clause 25.5	As determined in accordance with Clause 25.5 and recorded in Paragraph 5 (Other Priced Components) of Schedule 12 (Pricing)
All items above shall be subject to the terms and conditions of this Contract		

SERVICE YEAR 2030		
ITEM NO	**DESCRIPTION**	**PRICE PER ITEM (£ EX VAT)**
8.1	(1) Engineering Support of Type A Munitions and Type B Munitions, Update of Type A Munitions, design and development of Future Munitions, Maintaining and Sustaining the Manufacturing Capability and maintaining the Engineering Capability, during Service Year 2030; and (2) Manufacture and supply of Type A Munitions to be delivered in Service Year 2030, in accordance with Schedule 2 (Statement of Requirements), Schedule 5 (Engineering Requirements), Schedule 6 (Technical Requirements and Quality Standards) and Schedule 8 (Manufacturing and Supply)	Service Year Price Payable and Earned KPI Incentives for Service Year 2030 (subject to and in accordance with Clause 24 (Pricing), Clause 26 (Key Performance Indicators) and Schedule 12 (Pricing)
8.2	Ad Hoc Tasks, Engineering Tasks and Ad Hoc Engineering Tasks agreed during Service Year 2030 in accordance with Schedule 10 (Tasking) and Schedule 5 (Engineering Requirements)	As determined in accordance with Clause 24.25 and recorded in Paragraph 5 (Other Priced Components) of Schedule 12 (Pricing)
8.3	Unavoidable Order Shortfall Costs incorporated into this Contract in relation to Type A Munitions to be delivered in Service Year 2030 in accordance with Clause 25.5	As determined in accordance with Clause 25.5 and recorded in Paragraph 5 (Other Priced Components) of Schedule 12 (Pricing)
All items above shall be subject to the terms and conditions of this Contract		

SERVICE YEAR 2031		
ITEM NO	**DESCRIPTION**	**PRICE PER ITEM (£ EX VAT)**
9.1	(1) Engineering Support of Type A Munitions and Type B Munitions, Update of Type A Munitions, design and development of Future Munitions, Maintaining and Sustaining the Manufacturing Capability and maintaining the Engineering Capability, during Service Year 2031; and (2) Manufacture and supply of Type A Munitions to be delivered in Service Year 2031, in accordance with Schedule 2 (Statement of Requirements), Schedule 5 (Engineering Requirements), Schedule 6 (Technical Requirements and Quality Standards) and Schedule 8 (Manufacturing and Supply)	Service Year Price Payable and Earned KPI Incentives for Service Year 2031 (subject to and in accordance with Clause 24 (Pricing), Clause 26 (Key Performance Indicators) and Schedule 12 (Pricing)
9.2	Ad Hoc Tasks, Engineering Tasks and Ad Hoc Engineering Tasks agreed during Service Year 2031 in accordance with Schedule 10 (Tasking) and Schedule 5 (Engineering Requirements)	As determined in accordance with Clause 24.25 and recorded in Paragraph 5 (Other Priced Components) of Schedule 12 (Pricing)
9.3	Unavoidable Order Shortfall Costs incorporated into this Contract in relation to Type A Munitions to be delivered in Service Year 2031 in accordance with Clause 25.5	As determined in accordance with Clause 25.5 and recorded in Paragraph 5 (Other Priced Components) of Schedule 12 (Pricing)
All items above shall be subject to the terms and conditions of this Contract		

SERVICE YEAR 2032		
ITEM NO	**DESCRIPTION**	**PRICE PER ITEM (£ EX VAT)**
10.1	(1) Engineering Support of Type A Munitions and Type B Munitions, Update of Type A Munitions, design and development of Future Munitions, Maintaining and Sustaining the Manufacturing Capability and maintaining the Engineering Capability, during Service Year 2032; and (2) Manufacture and supply of Type A Munitions to be delivered in Service Year 2032, in accordance with Schedule 2 (Statement of Requirements), Schedule 5 (Engineering Requirements), Schedule 6 (Technical Requirements and Quality Standards) and Schedule 8 (Manufacturing and Supply)	Service Year Price Payable and Earned KPI Incentives for Service Year 2032 (subject to and in accordance with Clause 24 (Pricing), Clause 26 (Key Performance Indicators) and Schedule 12 (Pricing)
10.2	Ad Hoc Tasks, Engineering Tasks and Ad Hoc Engineering Tasks agreed during Service Year 2032 in accordance with Schedule 10 (Tasking) and Schedule 5 (Engineering Requirements)	As determined in accordance with Clause 24.25 and recorded in Paragraph 5 (Other Priced Components) of Schedule 12 (Pricing)
10.3	Unavoidable Order Shortfall Costs incorporated into this Contract in relation to Type A Munitions to be delivered in Service Year 2032 in accordance with Clause 25.5	As determined in accordance with Clause 25.5 and recorded in Paragraph 5 (Other Priced Components) of Schedule 12 (Pricing)
All items above shall be subject to the terms and conditions of this Contract		

SERVICE YEAR 2033		
ITEM NO	**DESCRIPTION**	**PRICE PER ITEM (£ EX VAT)**
11.1	(1) Engineering Support of Type A Munitions and Type B Munitions, Update of Type A Munitions, design and development of Future Munitions, Maintaining and Sustaining the Manufacturing Capability and maintaining the Engineering Capability, during Service Year 2033; and (2) Manufacture and supply of Type A Munitions to be delivered in Service Year 2033, in accordance with Schedule 2 (Statement of Requirements), Schedule 5 (Engineering Requirements), Schedule 6 (Technical Requirements and Quality Standards) and Schedule 8 (Manufacturing and Supply)	Service Year Price Payable and Earned KPI Incentives for Service Year 2033 (subject to and in accordance with Clause 24 (Pricing), Clause 26 (Key Performance Indicators) and Schedule 12 (Pricing)
11.2	Ad Hoc Tasks, Engineering Tasks and Ad Hoc Engineering Tasks agreed during Service Year 2033 in accordance with Schedule 10 (Tasking) and Schedule 5 (Engineering Requirements)	As determined in accordance with Clause 24.25 and recorded in Paragraph 5 (Other Priced Components) of Schedule 12 (Pricing)
11.3	Unavoidable Order Shortfall Costs incorporated into this Contract in relation to Type A Munitions to be delivered in Service Year 2033 in accordance with Clause 25.5	As determined in accordance with Clause 25.5 and recorded in Paragraph 5 (Other Priced Components) of Schedule 12 (Pricing)
All items above shall be subject to the terms and conditions of this Contract		

SERVICE YEAR 2034		
ITEM NO	**DESCRIPTION**	**PRICE PER ITEM (£ EX VAT)**
12.1	(1) Engineering Support of Type A Munitions and Type B Munitions, Update of Type A Munitions, design and development of Future Munitions, Maintaining and Sustaining the Manufacturing Capability and maintaining the Engineering Capability, during Service Year 2034; and (2) Manufacture and supply of Type A Munitions to be delivered in Service Year 2034, in accordance with Schedule 2 (Statement of Requirements), Schedule 5 (Engineering Requirements), Schedule 6 (Technical Requirements and Quality Standards) and Schedule 8 (Manufacturing and Supply)	Service Year Price Payable and Earned KPI Incentives for Service Year 2034 (subject to and in accordance with Clause 24 (Pricing), Clause 26 (Key Performance Indicators) and Schedule 12 (Pricing)
12.2	Ad Hoc Tasks, Engineering Tasks and Ad Hoc Engineering Tasks agreed during Service Year 2034 in accordance with Schedule 10 (Tasking) and Schedule 5 (Engineering Requirements)	As determined in accordance with Clause 24.25 and recorded in Paragraph 5 (Other Priced Components) of Schedule 12 (Pricing)
12.3	Unavoidable Order Shortfall Costs incorporated into this Contract in relation to Type A Munitions to be delivered in Service Year 2034 in accordance with Clause 25.5	As determined in accordance with Clause 25.5 and recorded in Paragraph 5 (Other Priced Components) of Schedule 12 (Pricing)
All items above shall be subject to the terms and conditions of this Contract		

SERVICE YEAR 2035		
ITEM NO	**DESCRIPTION**	**PRICE PER ITEM (£ EX VAT)**
13.1	(1) Engineering Support of Type A Munitions and Type B Munitions, Update of Type A Munitions, design and development of Future Munitions, Maintaining and Sustaining the Manufacturing Capability and maintaining the Engineering Capability, during Service Year 2035; and (2) Manufacture and supply of Type A Munitions to be delivered in Service Year 2035, in accordance with Schedule 2 (Statement of Requirements), Schedule 5 (Engineering Requirements), Schedule 6 (Technical Requirements and Quality Standards) and Schedule 8 (Manufacturing and Supply)	Service Year Price Payable and Earned KPI Incentives for Service Year 2035 (subject to and in accordance with Clause 24 (Pricing), Clause 26 (Key Performance Indicators) and Schedule 12 (Pricing)
13.2	Ad Hoc Tasks, Engineering Tasks and Ad Hoc Engineering Tasks agreed during Service Year 2035 in accordance with Schedule 10 (Tasking) and Schedule 5 (Engineering Requirements)	As determined in accordance with Clause 24.25 and recorded in Paragraph 5 (Other Priced Components) of Schedule 12 (Pricing)
13.3	Unavoidable Order Shortfall Costs incorporated into this Contract in relation to Type A Munitions to be delivered in Service Year 2035 in accordance with Clause 25.5	As determined in accordance with Clause 25.5 and recorded in Paragraph 5 (Other Priced Components) of Schedule 12 (Pricing)
All items above shall be subject to the terms and conditions of this Contract		

SERVICE YEAR 2036		
ITEM NO	**DESCRIPTION**	**PRICE PER ITEM (£ EX VAT)**
14.1	(1) Engineering Support of Type A Munitions and Type B Munitions, Update of Type A Munitions, design and development of Future Munitions, Maintaining and Sustaining the Manufacturing Capability and maintaining the Engineering Capability, during Service Year 2036; and (2) Manufacture and supply of Type A Munitions to be delivered in Service Year 2036, in accordance with Schedule 2 (Statement of Requirements), Schedule 5 (Engineering Requirements), Schedule 6 (Technical Requirements and Quality Standards) and Schedule 8 (Manufacturing and Supply)	Service Year Price Payable and Earned KPI Incentives for Service Year 2036 (subject to and in accordance with Clause 24 (Pricing), Clause 26 (Key Performance Indicators) and Schedule 12 (Pricing)
14.2	Ad Hoc Tasks, Engineering Tasks and Ad Hoc Engineering Tasks agreed during Service Year 2036 in accordance with Schedule 10 (Tasking) and Schedule 5 (Engineering Requirements)	As determined in accordance with Clause 24.25 and recorded in Paragraph 5 (Other Priced Components) of Schedule 12 (Pricing)
14.3	Unavoidable Order Shortfall Costs incorporated into this Contract in relation to Type A Munitions to be delivered in Service Year 2036 in accordance with Clause 25.5	As determined in accordance with Clause 25.5 and recorded in Paragraph 5 (Other Priced Components) of Schedule 12 (Pricing)
All items above shall be subject to the terms and conditions of this Contract		

SERVICE YEAR 2037		
ITEM NO	**DESCRIPTION**	**PRICE PER ITEM (£ EX VAT)**
15.1	(1) Engineering Support of Type A Munitions and Type B Munitions, Update of Type A Munitions, design and development of Future Munitions, Maintaining and Sustaining the Manufacturing Capability and maintaining the Engineering Capability, during Service Year 2037; and (2) Manufacture and supply of Type A Munitions to be delivered in Service Year 2037, in accordance with Schedule 2 (Statement of Requirements), Schedule 5 (Engineering Requirements), Schedule 6 (Technical Requirements and Quality Standards) and Schedule 8 (Manufacturing and Supply)	Service Year Price Payable and Earned KPI Incentives for Service Year 2037 (subject to and in accordance with Clause 24 (Pricing), Clause 26 (Key Performance Indicators) and Schedule 12 (Pricing)
15.2	Ad Hoc Tasks, Engineering Tasks and Ad Hoc Engineering Tasks agreed during Service Year 2037 in accordance with Schedule 10 (Tasking) and Schedule 5 (Engineering Requirements)	As determined in accordance with Clause 24.25 and recorded in Paragraph 5 (Other Priced Components) of Schedule 12 (Pricing)
15.3	Unavoidable Order Shortfall Costs incorporated into this Contract in relation to Type A Munitions to be delivered in Service Year 2037 in accordance with Clause 25.5	As determined in accordance with Clause 25.5 and recorded in Paragraph 5 (Other Priced Components) of Schedule 12 (Pricing)
All items above shall be subject to the terms and conditions of this Contract		

CONTENTS

Clause **Heading** **Page**

{ TOC \O "1-6" \F \H \Z \U **}**
SCHEDULE LIST

SCHEDULE 1: DEFINITIONS AND INTERPRETATION

SCHEDULE 2: STATEMENT OF REQUIREMENTS

SCHEDULE 3: **REDACTED**

SCHEDULE 4: **REDACTED**

SCHEDULE 5: **REDACTED**

ANNEX – **REDACTED**

SCHEDULE 6: TECHNICAL REQUIREMENTS AND QUALITY STANDARDS

SCHEDULE 7: **REDACTED**

SCHEDULE 8: **REDACTED**

ANNEX – **REDACTED**

SCHEDULE 9: **REDACTED**

SCHEDULE 10: TASKING

ANNEX A – LAND TMS TASKING PROCESS

ANNEX B – REGISTER OF AGREED TASKS

SCHEDULE 11: GOVERNMENT FURNISHED ASSETS (GFA)

ANNEX A – ISSUED PROPERTY SCHEDULING PROCESS

ANNEX B – ACCOUNTING FOR PROPERTY OF THE AUTHORITY – DATA & FORMAT REQUIREMENTS FOR PSA RECORDS

SCHEDULE 12: **REDACTED**

ANNEX A – **REDACTED**

ANNEX B – **REDACTED**

ANNEX C – **REDACTED**

ANNEX D – **REDACTED**

ANNEX E – **REDACTED**

ANNEX F – **REDACTED**

ANNEX G – **REDACTED**

SCHEDULE 13: **REDACTED**

SCHEDULE 14: **REDACTED**

SCHEDULE 15: SECURITY ASPECTS LETTER

SCHEDULE 16: EARNED VALUE MANAGEMENT

SCHEDULE 17: **REDACTED**

ANNEX A – **REDACTED**

ANNEX B – **REDACTED**

ANNEX C – **REDACTED**

SCHEDULE 18: DISPUTE RESOLUTION PROCEDURE

ANNEX – CONTENT OF DISPUTE RESOLUTION DOCUMENT

SCHEDULE 19: **REDACTED**

ANNEX A – **REDACTED**

ANNEX B – **REDACTED**

ANNEX C – **REDACTED**

ANNEX D – **REDACTED**

SCHEDULE 20: **REDACTED**

SCHEDULE 21: FLOW-DOWN PROVISIONS

SCHEDULE 22: INTELLECTUAL PROPERTY RIGHTS

SCHEDULE 23: **REDACTED**

SCHEDULE 24: NATO CODIFICATION REQUIREMENTS

SCHEDULE 25: PARENT COMPANY GUARANTEE

SCHEDULE 26: TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) (TUPE) REGULATIONS – EMPLOYEE TRANSFER ARRANGEMENTS ON EXIT

ANNEX A – CONTRACTOR PERSONNEL-RELATED INFORMATION TO BE RELEASED UPON RE-TENDERING WHERE THE TRANSFER REGULATIONS APPLY

ANNEX B – PERSONNEL INFORMATION TO BE RELEASED PURSUANT TO THIS CONTRACT

SCHEDULE 27: DEFFORM 111

THIS CONTRACT is made on 1 December 2020

BETWEEN:

(1) **THE SECRETARY OF STATE FOR DEFENCE OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND** (the "**Authority**"); and

(2) **BAE SYSTEMS GLOBAL COMBAT SYSTEMS MUNITIONS LIMITED**, a company registered in England with number 01842252 whose registered office is at Warwick House, PO BOX 87 Farnborough Aerospace, Centre Farnborough, Hampshire, GU14 6YU (the "**Contractor**"),

(each a "**Party**" and together, the "**Parties**").

WHEREAS:

(A) The Authority issued a request for proposal on 25 January 2018 for the provision of the Next Generation Munition Solution ("**NGMS**") programme.

(B) The Parties have agreed to enter into a contract for the provision of the NGMS programme on the terms set out in this Contract.

(C) This Contract is a qualifying defence contract for the purposes of the Defence Reform Act 2014 and the Single Source Contract Regulations 2014.

SECTION 1 - MECHANICS

1 DEFINITIONS, STRUCTURE, INTERPRETATION AND DEFCONS

1.1 In this Contract, unless the context requires otherwise, the definitions and principles of interpretation set out in Schedule 1 (Definitions and Interpretation) shall apply.

1.2 No DEFCON or DEFSTAN shall apply to this Contract unless it is expressly incorporated in or referred to in this Contract as applying to this Contract. The DEFSTANs, regulations and standards as set out in Schedule 5 (Engineering Requirements) and Schedule 6 (Technical Requirements and Quality Standards) shall apply to this Contract.

2 PRECEDENCE

2.1 In the event of any contradiction or inconsistency between the provisions of the main body of this Contract and the Schedules, or between any of the Schedules, the conflict shall be resolved according to the following order of precedence:

(a) the main body of this Contract and Schedule 1 (Definitions and Interpretation);

(b) Schedule 2 (Statement of Requirements);

(c) Schedule 4 (Contract Data Requirement List), Schedule 5 (Engineering Requirements), Schedule 6 (Technical Requirements and Quality Standards) and Schedule 8 (Manufacturing and Supply);

(d) Schedule 3 (Master Data Assumptions List); and

(e) the remaining Schedules.

2.2 Should the Contractor or the Authority become aware of any conflicts, apparent conflicts or inconsistencies between any contractual documentation, such conflict, apparent conflict or inconsistency shall be notified by that Party to the JRCC for determination of how such conflict, apparent conflict or inconsistency shall be resolved. Upon resolution, the Parties shall confirm in writing, and make an amendment to the Contract if appropriate.

SECTION 2 - SCOPE

3 SCHEDULE OF REQUIREMENTS

The Contractor shall provide all of the items defined in the Schedule of Requirements (DEFFORM 110) in accordance with Schedule 2 (Statement of Requirements) and the terms and conditions and associated Schedules of this Contract.

4 DURATION AND OPTIONS

4.1 The Contract shall take effect on the Effective Date and, subject to Clause **{** REF _Ref20384992 \r \h **}**, shall terminate on the earlier of:

(a) the Expiry Date; or

(b) the Termination Date.

4.2 The Authority shall have the right, at its absolute discretion, to elect to extend the duration of the Contract and delay the Expiry Date by a period of up to 5 (five) Contract Years, provided that it has served notice on the Contractor not less than 3 (three) Contract Years prior to the then Expiry Date. Unless otherwise agreed between the Parties, the Authority shall not be entitled to extend the Contract on more than one occasion.

5 TRANSITION

During the Transition Period, the Parties shall carry out the activities detailed in Schedule 23 (Transition).

SECTION 3 – CONTRACTOR'S OBLIGATIONS

6 CONTRACTOR'S PERFORMANCE

6.1 The Contractor shall carry out all work under this Contract in accordance with Schedule 2 (Statement of Requirements).

6.2 The Contractor shall perform all of its obligations under the Contract and provide the Contractor Deliverables:

(a) in accordance with Good Industry Practice;

(b) by suitably qualified and experienced personnel;

(c) in accordance with all applicable Law;

(d) in accordance with the Contractor's approved quality assurance systems as set out in Clause **{** REF _Ref17372240 \w \h * MERGEFORMAT **}** (Quality Standards and Assurance); and

(e) in accordance with all applicable technical, quality, safety and environmental standards and requirements to the extent described in Schedule 6 (Technical Requirements and Quality Standards).

6.3 Where the Contractor is required to deliver any Data Items pursuant to a Task or as a result of a Change, the Contractor shall deliver the Data Items to the Authority in accordance with the Contract Data Requirements List.

6.4 Subject to Clauses **{** REF _Ref40105300 \r \h **}** (Import and Export Licences), **{** REF _Ref35963530 \r \h **}** (Issued Property) and **{** REF _Ref17131988 \r \h **}** (Intellectual Property Rights), the Contractor shall obtain and maintain all Necessary Consents required for the performance of its obligations under this Contract.

7 CONTRACTOR'S WARRANTIES AND REPRESENTATIONS

Contractor Warranties

7.1 The Contractor warrants and represents to the Authority that as at the Effective Date:

(a) it is properly constituted and incorporated under the Laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted;

(b) it has all necessary power, authority and capacity to enter into and to exercise its rights, perform its obligations and discharge its liabilities under this Contract;

(c) the execution, delivery and performance of this Contract by the Contractor does not in any case contravene:

(i) any provision of any Law either in force or enacted but not yet in force binding on the Contractor;

(ii) any order or decree of any court of competent jurisdiction;

(iii) any obligation which is binding upon the Contractor or upon any of its assets; or

(iv) the Contractor's constitutional documents;

(d) it is not subject to any claim, litigation, arbitration, proceedings or any other obligation which shall or is likely to have a material adverse effect on the ability of the Contractor to perform its obligations under this Contract;

(e) it has not committed any prohibited act under Clause **{** REF _Ref28088811 \r \h * MERGEFORMAT **}** (Corrupt Gifts and Payments of Commission);

(f) 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, including under Clause **{** REF _Ref17131988 \r \h * MERGEFORMAT **}** (Intellectual Property Rights), in connection with this Contract and the Authority relies upon such warranties and representations;

(g) no proceedings or other steps have been taken and not discharged (nor to the best of the knowledge of the Contractor, having made all due enquiry, threatened) for the winding-up or dissolution of the Contractor or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues or the assets or revenues whether in the UK or otherwise and the Contractor is not insolvent nor unable to pay its debts and could not be deemed by a court to be unable to pay its debts within the meaning of section 123(1) of the Insolvency Act 1986 nor will it become so in consequence of entering into this Contract or performing the obligations contemplated thereby; and

(h) it is not subject to any other obligation, compliance with which shall or is likely to have a material adverse effect on the ability of the Contractor to perform its obligations under this Contract.

7.2 The Contractor warrants that it has read, understood and agreed to each and all terms, clauses, specifications (including drawings) and conditions specified in the Contract and

it accepts, without reservation, the said Contract terms within their normal and common meaning.

Contractor Undertakings

7.3 The Contractor undertakes that for so long as this Contract remains in full force it shall 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 it has been made aware of by such 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 by the Contractor as soon as reasonably practicable after becoming aware that such proceedings may be threatened, pending or have commenced.

Contractor Warranties and Representations

7.4 Other than as expressly set out in this Contract, 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.

8 QUALITY STANDARDS AND ASSURANCE

Deliverable Quality Plan

8.1 The Contractor shall submit the Deliverable Quality Plan to the Authority within 12 (twelve) weeks of the Effective Date.

8.2 When agreed by the Authority, the Deliverable Quality Plan shall be incorporated into the Contract as an Annex to Schedule 6 (Technical Requirements and Quality Standards). Notwithstanding that the Deliverable Quality Plan will have been seen and agreed by the Authority, the Contractor shall be solely responsible for the accuracy, suitability and applicability of the Deliverable Quality Plan.

Requirement for a Certificate of Conformity

8.3 The Contractor shall provide a Certificate of Conformity (CofC) in accordance with any applicable quality plan. One copy of the CofC shall be sent to the Authority (Box 2 DEFFORM 111) upon delivery and one copy shall be provided with the Articles or to the recipient of the Services.

8.4 The CofC shall be considered by the Contractor as a record and Clause **{** REF _Ref20328408 \r \h **}** (Contractor's Records) shall apply.

8.5 The information provided on the CofC shall include:

(a) Contractor name and address;

(b) Contractor unique CofC reference number;

(c) Contract number and where applicable contract amendment number;

(d) Details of any approved Major Concessions;

(e) Acquirer name and organisation;

(f) Delivery address;

(g) Contract Item Number from the Schedule of Requirements;

(h) Description of Article or Service including part number, Specification and configuration status;

(i) Identification marks, batch and serial number(s) in accordance with the relevant Specifications;

(j) Quantities;

(k) A signed and dated statement by the Contractor that Articles or Services provided comply with the requirements of the Contract, and approved concessions.

Exceptions or additions to the above are to be documented.

8.6 Where the Schedule of Requirements and/or any applicable quality plan requires demonstration of traceability and design provenance through the supply chain, the Contractor shall include in any relevant Sub-Contract the requirement for the information called for at Clause **{** REF _Ref20328375 \r \h **}**. The Contractor shall ensure that this information is available to the Authority through the supply chain, upon request in accordance with Clause **{** REF _Ref20328408 \r \h **}** (Contractor's Records).

9 SUPPLY OF MUNITIONS

The provisions of Schedule 8 (Manufacturing and Supply) shall apply.

10 SECURITY OF SUPPLY

10.1 The Contractor shall produce and maintain a Technical Data Pack which shall comprise the information to be provided by the Design Organisation and Manufacturing Organisation for each Type A Munition as set out in the Annex (Build Standards) to

Schedule 5 (Engineering Requirements) to enable a competent third party supplier to supply and/or support (maintain, update, modify) the relevant Type A Munition.

10.2 The Parties agree and acknowledge that, prior to entry into this Contract, the costs associated with producing and maintaining the Technical Data Packs have been:

(a) estimated by the Contractor; and

(b) included in the Engineering Support provision of the Enabling Charge Target Costs.

10.3 Each Technical Data Pack shall at all times be the property of the Authority and the Contractor shall ensure that it is marked or recorded as such.

10.4 The Technical Data Packs may be accessed by the Authority:

(a) from time to time on at least 20 (twenty) Business Days' notice from the Authority to the Contractor in order to verify the existence of each Technical Data Pack and that its contents meet the Authority's requirements, as stated in Clause **{** REF _Ref49155460 \r \h * MERGEFORMAT **}**; and

(b) in accordance with Clause **{** REF _Ref51273149 \w \h **}**.

10.5 Subject to the terms of Clause **{** REF _Ref51273150 \w \h **}**, in the event that it is established in accordance with Paragraphs 4.17 to 4.19 of Schedule 8 (Manufacturing and Supply) that the Contractor is unable or unwilling to supply or support any or all of the Type A Munitions in accordance with the terms of this Contract:

(a) the Authority may notify the Contractor that the Authority intends to invoke its right of access to the Technical Data Packs under this Clause **{** REF _Ref35948526 \w \h **}**, provided that at least 20 (twenty) Business Days prior to such notification the Authority shall have notified the Contractor that the Authority is considering invoking such rights;

(b) within 24 (twenty four) hours of receipt by the Contractor of the notification from the Authority that the Authority intends to invoke its right of access to the Technical Data Packs under this Clause **{** REF _Ref35948526 \w \h **}**, the Contractor shall confirm to the Authority in writing that the Contractor:

(i) is unable or unwilling to supply or support the relevant Type A Munitions; or

(ii) disputes the Authority's right of access to the Technical Data Packs, in which case either Party may refer the matter to arbitration in accordance

with Clauses **{** REF _Ref44582930 \w \h **}** to **{** REF _Ref44582934 \w \h **}** (Dispute Resolution); and

(c) within 48 (forty eight) hours of confirmation or determination (as applicable) under Clause **{** REF _Ref50542799 \w \h * MERGEFORMAT **}** above that the Contractor is unable or unwilling to supply or support the relevant Type A Munitions, the Contractor shall:

(i) in the event that the Contractor is unwilling to supply, provide access to the Authority to the elements of the Technical Data Pack to enable a competent third party to supply the specific Type A Munitions that the Contractor is unable or unwilling to supply provided always that the inability or unwillingness of the Contractor to supply such Type A Munitions is not as a direct result of the Authority being in breach of its obligations under this Contract; or

(ii) in the event that the Contractor is unable or unwilling to support, provide access to the Authority to the Technical Data Pack for the specific Type A Munition that the Contractor is unable or unwilling to support.

10.6 In the event that the Authority does access the Technical Data Pack as provided in Clause **{** REF _Ref50543039 \w \h * MERGEFORMAT **}**, it shall have the right to use the information therein for the purposes of procuring the Type A Munitions from an alternative source including for the purposes of having the Type A Munitions manufactured. In the event that the Authority does access the Technical Data Pack as provided in Clause **{** REF _Ref50543054 \w \h * MERGEFORMAT **}**, it shall have the right to use the information therein for the purposes of having the Type A Munitions maintained, updated or modified by an alternative contractor. In the event that any intellectual property owned by the Contractor is included within the Technical Data Pack which the Authority has not secured rights to (as set out in Schedule 22 (Intellectual Property Rights)) under previous contracts with the Contractor, the Parties shall agree a reasonable fee and/or royalty payment for its use. The level of such fee and/or royalty payment shall reflect the extent to which the Type A Munitions in question contain intellectual property owned by the Contractor which the Authority has not already secured rights in and the specific circumstances of the request.

10.7 The Parties shall work together to agree:

(a) the level of fee and/or royalty payment applicable under Clause **{** REF _Ref49175858 \w \h * MERGEFORMAT **}** and related payment terms within 90 (ninety) days of the date on which the relevant Technical Data Pack was first accessed under Clauses **{** REF _Ref50543039 \w \h * MERGEFORMAT **}** and **{** REF _Ref50543054 \w \h * MERGEFORMAT **}**; and

(b) the price payable under Clause **{** REF _Ref51273227 \w \h **}** and related payment terms within 90 (ninety) days of the date on which the assistance was first requested by the Authority.

If the Parties are unable to agree such payment or price (as applicable) and related payment terms within the relevant time period, the Parties shall resolve the matter in accordance with the Fast-Track Dispute Resolution Procedure.

10.8 The Contractor shall, if requested by the Authority, provide reasonable assistance necessary to the Authority or an alternative contractor engaged by the Authority to enable a competent third party supplier to supply and/or support any Type A Munition. The Parties shall also agree the terms upon which such assistance shall be provided, including the reasonable duration of such assistance, having due regard to the particular circumstances. Such assistance shall be provided by the Contractor at a price to be agreed between the Parties in accordance with Clause **{** REF _Ref51273148 \w \h **}**, it being agreed and acknowledged by the Parties that if such assistance is requested as a result of:

(a) a failure by the Contractor to comply with its obligations under the Contractor to the extent attributable to fault of the Contractor, no price shall be payable for such assistance;

(b) a Force Majeure Event, the price shall reflect that the costs incurred for such assistance are to be shared equally between the Parties.

10.9 In the event that the Authority requests the Contractor to provide a Technical Data Pack for Type B Munition, such request shall be referred to the JRCC, providing details of the Technical Data Pack required, and shall be subject to agreement between the Authority and the Contractor. If agreed, provision of the Technical Data Pack shall be undertaken as an Ad Hoc Engineering Task in accordance with Schedule 10 (Tasking).

10.10 For the avoidance of doubt, nothing in this Clause 10 shall alter or transfer either the ownership in the intellectual property of the Contractor or any third party in the Articles, or any rights subsisting therein.

10.11 The provisions of this Clause **{** REF _Ref35948562 \r \h * MERGEFORMAT **}** shall not release either Party from any obligations it otherwise has under this Contract.

10.12 The above provisions relate specifically to Contractor owned intellectual property rights. Access by the Authority to intellectual property rights owned by a third party which the Authority has not secured rights to (as set out in Schedule 22 (Intellectual Property Rights)) under previous contracts with the Contractor shall be considered and agreed on an ‘as arising’ basis.

10.13 Notwithstanding Clause **{** REF _Ref49155513 \w \h * MERGEFORMAT **}** above, where practicable, the Contractor shall use reasonable endeavours to include within appropriate contracts with its Sub-Contractors a similar right for the Authority to access third party intellectual property as provided for in this Clause **{** REF _Ref35948526 \w \h **}**. The Contractor shall notify the Authority where this has not been possible, giving details of the relevant Sub-Contractor and applicable Type A Munitions.

11 ENGINEERING SUPPORT

The Contractor shall provide the engineering support services and capabilities in accordance with Schedule 5 (Engineering Requirements).

12 TASKING

The provisions of Schedule 10 (Tasking) shall apply.

13 ACCURACY OF INFORMATION

13.1 The Contractor is the Design Organisation for the Type A Munitions and shall:

(a) be responsible for maintaining and ensuring the accuracy of; and

(b) not be relieved from any of its obligations under this Contract due to any errors, inaccuracies or omissions in,

the Build Standards, the Certification and (subject to Clause **{** REF _Ref31277718 \r \h **}**) the Functional/Performance Information.

13.2 The Contractor shall not be responsible for any errors, inaccuracies or omissions in information:

(a) created prior to the acquisition by BAE Systems of Royal Ordnance plc in 1987; or

(b) provided by the Authority or a third party acting for the Authority,

which forms part of the Functional/Performance Information.

13.3 If during the term of this Contract any Article that is classified as a Type A Munition as at the Effective Date is re-classified as a Type B Munition (a "**Re-Classified Munition**") for any reason then, from the date on which each such re-classification takes effect (the "**Re-Classification Date**"), the Contractor shall:

(a) continue to store for the duration of the Contract the Build Standards, Certification and Functional/Performance Information for the Re-Classified Munition, which shall be accurate as at the Re-Classification Date; and

(b) not be relieved from any of its obligations under this Contract due to any errors, inaccuracies or omissions in the Build Standards, Certification or (subject to Clause **{** REF _Ref31277718 \r \h **}**) Functional/Performance Information as at the Re-Classification Date,

provided that the Contractor shall not be required to update or maintain the Build Standards, Certification or Functional/Performance Information for a Re-Classified Munition after the relevant Re-Classification Date.

14 SPECIAL JIGS, TOOLING AND TEST EQUIPMENT

Introduction

14.1 The Contractor shall provide all 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 any other work in accordance with the Contract Schedule of Requirements, unless supplied by the Authority under the terms of Clause **{** REF _Ref35963530 \r \h **}** (Issued Property).

14.2 The Parties agree and acknowledge that:

(a) no hardware (including for the avoidance of doubt all jigs, tools, patterns moulds, dies, manufacturing gauges and test equipment, together with any associated fixtures, fittings) or software of any kind to be provided by the Contractor upon entry into this Contract and/or as required for the performance of the Contract in accordance with the Schedule of Requirements shall be treated as Special Jigs, Tools Etc.; and

(b) Clauses **{** REF _Ref38613798 \r \h * MERGEFORMAT **}** to **{** REF _Ref_ContractCompanion_9kb9Ur015 \r \h * MERGEFORMAT **}** shall only apply to specific Tasks, if and to the extent agreed between the Parties pursuant to Clause **{** REF _Ref38613768 \r \h * MERGEFORMAT **}** below.

14.3 Where a Task is raised pursuant to Clause **{** REF _Ref28869680 \r \h * MERGEFORMAT **}** (Tasking) which requires the provision of any new and/or additional jigs, tools, patterns moulds, dies, manufacturing gauges, test equipment, or associated fixtures, fittings or software, the Parties shall agree whether any of the same should be treated as Special Jigs, Tools Etc. and shall specify within the Task Form whether the provisions of Clauses **{** REF _Ref38613798 \r \h * MERGEFORMAT **}** to **{** REF _Ref_ContractCompanion_9kb9Ur015 \r \h * MERGEFORMAT **}** apply.

14.4 If the Contract Price has yet to be agreed, the cost of Special Jigs, Tools Etc. will not be accepted by the Authority as a direct charge to the Contract unless approved in writing. The Contractor may make a written application to the Authority that certain hardware or

software, or both are special to the requirements of the Contract and that their provision should be met as a direct charge to the Contract as Special Jigs, Tools Etc. If the Authority accepts the application it shall do so in writing. The Contractor shall not seek approval for Special Jigs, Tools Etc. where the Contract Price is established, or where these are available under other contracts he already holds from the Authority, either under the terms of this Clause **{** REF _Ref25748308 \r \h **}** or as Issued Property under Clause **{** REF _Ref35963530 \r \h **}** (Issued Property). This Clause **{** REF _Ref25748308 \r \h **}** shall not apply to the refurbishment of any Special Jigs, Tools Etc. already held as Issued Property.

Pricing

14.5 Unless specified otherwise in the Contract, the Contract Price shall include 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 **{** REF _Ref_ContractCompanion_9kb9Ur013 \w \h \t * MERGEFORMAT **}**.

14.6 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 cost of any Special Jigs, Tools Etc.

Passing of Property

14.7 Except where otherwise specified in the Contract the Special Jigs, Tools Etc. shall become the property of the Authority:

(a) in accordance with Clause 29 (Vesting) as if they were Articles;

(b) 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 the Contract, upon delivery of the first article so produced for the third party;

(c) in all other cases upon acceptance of the first Article in accordance with Clause **{** REF _Ref52970961 \r \h **}** (Acceptance) or upon Contract completion, whichever is the earlier.

14.8 Where property in the Special Jigs, Tools Etc. passes to the Authority under Clauses **{** REF _Ref_ContractCompanion_9kb9Ur019 \w \h \t * MERGEFORMAT **}** or **{** REF _Ref_ContractCompanion_9kb9Ur01B \w \n \h \t * MERGEFORMAT **}** and they are still required to complete the Contract they shall be transferred to the Public Store Account as Contract Support Items and treated thereafter as Issued Property under the terms of Clause **{** REF _Ref35963530 \r \h **}** (Issued Property).

Modifications

14.9 Notwithstanding the passing of property to the Authority under Clause **{** REF _Ref_ContractCompanion_9kb9Ur017 \w \h \t * MERGEFORMAT **}** and their transfer to the Public Store Account under Clause **{** REF _Ref_ContractCompanion_9kb9Ur024 \w \h \t * MERGEFORMAT **}**, the Contractor shall be free to modify the Special Jigs, Tools Etc. as he considers necessary in order to produce the Articles or to perform the Contract work, and the Authority's approval of those modifications shall not be required.

Accounting and Control

14.10 The Contractor shall account for and control the Special Jigs, Tools Etc. in accordance with the provisions of Clause **{** REF _Ref_ContractCompanion_9kb9Ur024 \n \h **}**. Pending the transfer to the Public Store Account, the Contractor shall:

(a) maintain a list of Special Jigs, Tools Etc. procured or manufactured by the Contractor;

(b) make the list available to the Authority for inspection by the Authority's Asset Accounting Centre;

(c) maintain the list for 3 (three) years, or for such other period as is specified in the Contract, after any disposal of the Special Jigs, Tools Etc. where not transferred to the Public Store Account in accordance with Clause **{** REF _Ref35963530 \r \h **}** (Issued Property).

(d) forward the list to the Authority's Commercial Lead following first Article acceptance and prior to transfer of Special Jigs, Tools Etc. to the Public Store Account;

The Contractor shall remove from the list any Special Jigs, Tools Etc. transferred to the Public Store Account under Clause **{** REF _Ref_ContractCompanion_9kb9Ur024 \n \h **}**.

14.11 The Contractor shall be responsible for safe custody, maintenance and calibration necessary to retain the Special Jigs, Tools Etc. in good order, until transferred to the Public Store Account, delivered or disposed of in accordance with written disposal instructions given by the Authority.

Availability

14.12 Once property in the Special Jigs, Tools Etc. has passed to the Authority in accordance with Clause **{** REF _Ref_ContractCompanion_9kb9Ur258 \w \h \t * MERGEFORMAT **}** or **{** REF _Ref_ContractCompanion_9kb9Ur25A \w \n \h \t * MERGEFORMAT **}**, the Contractor shall, if required, deliver the Special Jigs, Tools Etc. to an individual, company, factory, or Government Establishment 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.

14.13 This Clause **{** REF _Ref25748308 \r \h **}** shall not entitle the Authority to require the Contractor to dispose of the Special Jigs, Tools Etc. to the prejudice of the Contract or other contracts held by the Contractor with the Authority or with another customer, provided the Authority's approval for that use in connection with a contract with another customer has been given in accordance with Clause **{** REF _Ref_ContractCompanion_9kb9Ur015 \w \h \t * MERGEFORMAT **}** below.

14.14 Where the Contractor holds no contracts for articles or services for which the Special Jigs, Tools Etc. will be used, but having received the Authority's approval in accordance with Clause **{** REF _Ref_ContractCompanion_9kb9Ur015 \r \h **}** below, has made a firm written offer to a third party to supply those articles or perform those services, the Authority shall not be entitled to dispose of the Special Jigs, Tools Etc. until the Contractor's offer has expired and no commitment to supply those articles or perform those services remains.

Disposal

14.15 As soon as the Special Jigs, Tools Etc. cease to be required by the Contractor to meet the Authority's requirements or for use as specified in Clause **{** REF _Ref_ContractCompanion_9kb9Ur255 \w \h \t * MERGEFORMAT **}** he shall notify the Authority. The Authority will instruct the Contractor as to their disposal and, where appropriate, the method of crediting the Authority with the proceeds of them less any cost of disposal incurred by the Contractor. The Authority's disposal instructions shall be given within 3 (three) months, or other period stated in the Contract, from receipt of the Contractor's notification.

14.16 Should the Authority fail to issue disposal instructions within this period, an amount will be agreed for storage in accordance with the Change Procedure and, as instructed by the Authority, maintenance and calibration of the Special Jigs, Tools Etc., this sum to be a direct charge against the Contract or allocated as an indirect charge in accordance with the Contractor's approved Questionnaire on the Method of Cost Allocation.

Use for other than the purposes of the Authority

14.17 The Contractor shall not use the Special Jigs, Tools Etc. for any 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 that 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 **{** REF _Ref25748308 \r \h **}** the Contractor shall require that the written approval be obtained direct from the Authority

by the Sub-Contractor.

15 ACCOUNTING FOR PROPERTY OF THE AUTHORITY

15.1 The Contractor shall:

(a) maintain a Public Store Account (PSA) which shall include a complete list of all property of the Authority, as defined in Clause **{** REF _Ref_ContractCompanion_9kb9Ur035 \w \h \t * MERGEFORMAT **}**, and record for that property all transactions or other accounting information specified at Annex B (Accounting for Property of the Authority – Data & Format Requirements for PSA Records) to Schedule 11 (Government Furnished Assets);

(b) supply to the Authority quarterly reports on the current PSA holdings. At least one report in any 12 (twelve) 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 DEFSTAN 05-099. The other 3 (three) 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 the Contract;

(c) ensure that the PSA is available for inspection by the Authority at any reasonable time;

(d) on being given 2 (two) months' notice or any other period as has been stated in the Contract permit, and co-operate with, the Authority to conduct audits of the PSA in a manner to be determined by the Authority; where the Authority has reasonable grounds to doubt the integrity of the PSA to the extent that the Authority is not satisfied of the proper use of property of the Authority, an audit may be conducted without notice;

(e) retain the PSA for a period of 3 (three) years after disposal of the last item of the property of the Authority, or for any other period as may be specified in the Contract;

(f) 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 the Contract, the Contractor shall include in any Sub-Contract with those Sub-Contractors only the provisions corresponding to those set out in this Clause **{** REF _Ref16517706 \n \h **}** that apply to property of the Authority issued in aid of the Sub-Contract, in particular Clauses **{** REF _Ref_ContractCompanion_9kb9Ur026 \w \h \t * MERGEFORMAT **}**, **{** REF _Ref_ContractCompanion_9kb9Ur267 \w \h \t * MERGEFORMAT **}**, **{** REF

_Ref_ContractCompanion_9kb9Ur037 \w \h \t * MERGEFORMAT **}** and **{** REF _Ref_ContractCompanion_9kb9Ur039 \w \h \t * MERGEFORMAT **}**; and

(g) manage the Government Furnished Assets (GFA) component of the PSA in accordance with the provisions of DEFSTAN 05-099; and implement any new edition of or amendment to DEFSTAN 05-099 subject to Clause **{** REF _Ref_ContractCompanion_9kb9Ur039 \w \h **}** within 3 (three) months of the publication date of the new edition. These amendments shall not have retrospective effect.

15.2 For the purposes of this Clause **{** REF _Ref16517713 \n \h **}** 'property of the Authority' means GFA except for property vested in the Authority under Clause **{** REF _Ref17223136 \r \h **}** (Vesting).

15.3 For the avoidance of doubt, it is a condition of this Contract that this Clause **{** REF _Ref16517722 \n \h **}** shall apply to all property of the Authority issued to the Contractor from the date of this Contract in aid of the Contract. Property of the Authority issued prior to the date of this Contract may be subject to separate contractual arrangements.

15.4 The obligations of the Contractor arising under this Clause **{** REF _Ref16517728 \n \h **}** in respect of property of the Authority issued in aid of the Contract shall survive completion of the Contract and shall not be completed until all such obligations are fulfilled including the provisions of Clause **{** REF _Ref_ContractCompanion_9kb9Ur02A \w \h \t * MERGEFORMAT **}**.

15.5 If, after completion of the Contract, no subsequent contract is placed containing the provisions of this Clause **{** REF _Ref16517697 \r \h **}** within the period detailed at Clause **{** REF _Ref_ContractCompanion_9kb9Ur02A \w \h **}**, then the Parties shall agree appropriate terms for the return of any property of the Authority in accordance with Clause **{** REF _Ref28615965 \r \h **}** (Exit Management) and Schedule 19 (Exit Strategy).

15.6 The Authority reserves the right to amend Annex B (Accounting for Property of the Authority – Data & Format Requirements for PSA Records) to Schedule 11 (Government Furnished Assets) without further consultation where the amendments arise from the Authority's proper and reasonable accounting requirements. If the Authority exercises this right:

(a) the amendments will be provided in writing and shall not constitute a formal amendment of the Contract, provided that any alterations that cause a change to:

(i) fit, form, function or characteristics of the Articles or Services;

(ii) the cost;

(iii) delivery dates;

(iv) period required for the production or completion; or

(v) other work caused by the alteration;

shall be subject to the Change Procedure;

(b) the Contractor shall implement the amendment to Annex B (Accounting for Property of the Authority – Data & Format Requirements for PSA Records) to Schedule 11 (Government Furnished Assets) at the commencement of the Authority's next accounting year provided that a notice of 6 (six) months or such other period as may expressly be agreed between the Authority and Contractor is given to the Contractor. These amendments shall not have retrospective effect; and

(c) the Contractor shall inform the Authority as soon as practicable, but in any event within 3 (three) months of notice having been given, if the Contractor cannot comply with the amendment to Annex B (Accounting for Property of the Authority – Data & Format Requirements for PSA Records) to Schedule 11 (Government Furnished Assets).

16 REDUNDANT MATERIEL

16.1 All Redundant Materiel resulting from work carried out under, or procured for the purposes of the Contract, the costs of which have been paid by the Authority under the Contract, or which is otherwise owned by the Authority, shall be disposed of as follows:

(a) As part of the annual audit carried out by the JRCC within Quarter 4 of each Service Year or earlier if requested by the Authority, the Contractor shall prepare:

(i) a list of those items of the Redundant Materiel referred to above which are considered to be serviceable or repairable. The list shall record the condition of each item, its actual cost or estimated value and, in the case of repairable items, the estimated price of repair; and

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

(b) The Contractor shall send the lists referred to in Clauses **{** REF _Ref20734947 \w \h **}** and **{** REF _Ref20734949 \w \h **}** above to the Authority's Commercial Lead.

(c) Within 3 (three) months of the date of receipt of the lists, the Authority shall issue disposal instructions to the Contractor. Such disposal instructions shall require that the items of Redundant Materiel are either:

(i) returned to or collected by the Authority; or

(ii) transferred to other subsisting contracts; or

(iii) subject to contract, retained by the Contractor for use in the performance of future contracts placed with the Contractor; or

(iv) subject to contract, repaired by the Contractor; or

(v) at the direction of the Authority, sold by the Contractor, acting on behalf of the Authority, for the best price reasonably obtainable.

Redundant Materiel designated in accordance with Clause **{** REF _Ref20734949 \w \h **}** above shall be dismantled and disposed of in such a manner as to preclude the possibility of resale in its existing form.

(d) Where in respect of any Redundant Materiel either:

(i) the Authority has not issued any disposal instructions pursuant to Clause **{** REF _Ref20764300 \w \h **}** within 6 (six) months of the date of receipt of the lists;

(ii) the Authority has notified the Contractor in accordance with Clause **{** REF _Ref20931540 \w \h **}** that it intends to collect it but has not done so within 3 (three) months of such notification;

(iii) the Authority has instructed the Contractor to retain it in accordance with Clause **{** REF _Ref20765052 \w \h **}** and the period of such retention exceeds 3 (three) months; or

(iv) the Authority has instructed the Contractor to sell it in accordance with Clause **{** REF _Ref20735075 \w \h **}** but the Contractor has been unable to effect an acceptable sale within 3 (three) months of such notification,

the Contractor shall be entitled at its discretion to either deliver such Redundant Materiel to the Authority or dispose of it.

16.2 The proceeds of the sale of items of Redundant Materiel sold pursuant to Clause **{** REF _Ref20735075 \w \h **}** above shall be credited to the Authority in accordance with arrangements made between the Contractor and the Authority.

16.3 A list of the items sold by the Contractor shall be sent to the Authority's Commercial Lead together with a statement of the proceeds of sale.

17 IMPORT AND EXPORT LICENCES

17.1 If, in the performance of the 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

17.2 When an export licence or import licence or authorisation either singularly or in combination is required from a foreign government for the performance of the Contract, the Contractor shall as soon as reasonably practicable consult with the Authority on the licence requirements. Where the Contractor is the applicant for the licence or authorisation the Contractor shall:

(a) 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 **{** REF _Ref16517774 \w \h **}** shall also include information, technical data and software), the Contractor, unless otherwise agreed with the Authority, shall identify in the application:

(i) the end user as: HM Government; and

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

(b) include in the submission for the licence or authorisation a statement that "information on the status of processing this application may be shared with the Ministry of Defence of the United Kingdom".

17.3 If the Contractor or any Sub-Contractor in the performance of the 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. For the purposes of this Clause **{** REF _Ref16517779 \w \h **}** materiel shall mean information, technical data and items, including Articles, components of Articles and software.

17.4 Where the 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 and Opportunities Register and in the Risk and Opportunities Management Plan, with appropriate review points.

17.5 During the term of the 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 circumstance to make the request. Where, subsequent to such consultation the Authority notifies the Contractor that the Contractor is best placed to make such request:

(a) the Contractor shall, or procure that the Contractor's Sub-Contractor shall, expeditiously consider whether or not there is any reason why it should object to making the request and, where it has no objection, file an application to seek a variation of the applicable export licence or import licence or authorisation in accordance with the procedures of the licensing authority. Where the Contractor has an objection, the Parties shall meet within 5 (five) Business Days to resolve the issue and should they fail the matter shall be escalated to an appropriate level within both Parties' organisations, to include their respective export licensing subject matter experts; and

(b) the Authority shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the application for the requested variation.

17.6 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.

17.7 Where the Authority invokes Clause **{** REF _Ref_ContractCompanion_9kb9Ur06A \w \h \t * MERGEFORMAT **}** or **{** REF _Ref_ContractCompanion_9kb9Ur06C \w \h \t * MERGEFORMAT **}**, this shall be a Price Adjustment Event in accordance with Clause **{** REF _Ref50028586 \r \h **}** (Price Adjustment Events).

17.8 Where the Contractor Sub-Contracts work under the 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 **{** REF _Ref16517787 \w \h **}**. Where it is not possible to include equivalent

terms to those set out in this Clause **{** REF _Ref16517791 \w \h **}**, the Contractor shall report that fact and the circumstances to the Authority.

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

17.9 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 the Contract.

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

Contractor obligation to provide information

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

(a) a non-UK export licence, authorisation or exemption; or

(b) 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. This does not include the intellectual property-specific restrictions of the type referred to in DEFCON 632 (incorporated into this Contract by Schedule 22 (Intellectual Property Rights)).

17.12 If at any time during the term of the Contract the Contractor becomes aware that all or any part of the Contractor Deliverables are subject to Clause **{** REF _Ref_ContractCompanion_9kb9Ur03D \w \h \t * MERGEFORMAT **}** or **{** REF _Ref_ContractCompanion_9kb9Ur046 \w \h \t * MERGEFORMAT **}**, 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 30 (thirty) days of knowledge of any affected Contractor Deliverable and in any event such notification shall be not less than 30 (thirty) days prior to delivery of the Contractor Deliverables.

17.13 If the information to be provided under Clause **{** REF _Ref_ContractCompanion_9kb9Ur048 \w \h \t * MERGEFORMAT **}** has been provided previously to the Authority by the Contractor under the 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 **{** REF

_Ref_ContractCompanion_9kb9Ur269 \w \h \t * MERGEFORMAT **}**.

17.14 During the term of the Contract, the Contractor shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under Clause **{** REF _Ref_ContractCompanion_9kb9Ur048 \w \h **}** or **{** REF _Ref_ContractCompanion_9kb9Ur04A \w \h \t * MERGEFORMAT **}** 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 (or update of the mutually agreed alternative format) to the Authority.

17.15 During the term of the Contract and in response to a specific request by the Authority, the Contractor shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under Clause **{** REF _Ref_ContractCompanion_9kb9Ur048 \w \h **}** or **{** REF _Ref_ContractCompanion_9kb9Ur26B \w \h \t * MERGEFORMAT **}** 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 (or update of the mutually agreed alternative format) to the Authority.

17.16 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 as soon as practicable inform the Authority by issuing an updated DEFFORM 528 (or update of the mutually agreed alternative format). Within 20 (twenty) days of such notification (or such other time period as may be agreed between the Parties), 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 10 (ten) days of receipt of a proposal (or such other time period as may be agreed between the Parties) whether it is acceptable and where appropriate the Contract shall be modified in accordance with its terms to implement the proposal.

17.17 If the restrictions prevent the Contractor from performing its obligations under the 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 the Contract in accordance with the Change Procedure or to terminate the Contract. Except as set out in Clause **{** REF _Ref_ContractCompanion_9kb9Ur059 \w \h \t * MERGEFORMAT **}**, in the event of termination in these circumstances termination shall be pursuant to Clause **{** REF _Ref28875004 \w \h **}** (Force Majeure Events) (notwithstanding that the circumstances described in this Clause **{** REF _Ref50026771 \w \h **}** do not constitute a

Force Majeure Event and that the provisions of Clause **{** REF _Ref17279007 \w \h **}** (Force Majeure Events) do not otherwise apply to such circumstances).

17.18 In the event that the restrictions notified to the Authority pursuant to Clause **{** REF _Ref_ContractCompanion_9kb9Ur048 \w \h **}** 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 **{** REF _Ref_ContractCompanion_9kb9Ur04C \w \h \t * MERGEFORMAT **}** or **{** REF _Ref_ContractCompanion_9kb9Ur04E \w \h \t * MERGEFORMAT **}** were known or ought reasonably to have been known by the Contractor at the date of submission of the most recent DEFFORM 528 (or mutually agreed form) submitted to the Authority in accordance with Clause **{** REF _Ref_ContractCompanion_9kb9Ur048 \w \h **}**:

(a) any termination under Clause **{** REF _Ref36044738 \w \h **}** will be in accordance with Clause **{** REF _Ref28876544 \w \h **}** (Termination) and Clause **{** REF _Ref43463491 \w \h **}** (Compensation on Termination) shall apply; or

(b) unless otherwise agreed by the Authority, amendment to this Contract under Clause **{** REF _Ref36044738 \w \h **}** shall not entail a change to the Contract Price or the delivery dates or otherwise provide relief against the Contractor's obligations pursuant to this Contract; and

(c) the provisions of Clause **{** REF _Ref36044658 \w \h **}** will not apply.

Authority obligation to provide information

17.19 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 the Contract or in respect of which the Services are to be provided, and that materiel is subject to a non-UK export licence, authorisation, exemption or other related transfer or export control as described in the provisions of Clause **{** REF _Ref_ContractCompanion_9kb9Ur03B \w \h \t * MERGEFORMAT **}** above, the Authority shall provide a completed DEFFORM 528 or will provide a new or updated DEFFORM 528 to the Contractor within 30 (thirty) days of the date of knowledge and in any case not later than 30 (thirty) days prior to the delivery of such materiel to the Contractor.

17.20 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 30 (thirty) 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.

17.21 Where:

(a) restrictions are advised by the Authority to the Contractor in a DEFFORM 528 provided pursuant to Clause **{** REF _Ref_ContractCompanion_9kb9Ur05B \w \h \t * MERGEFORMAT **}** or **{** REF _Ref_ContractCompanion_9kb9Ur05D \w \h \t * MERGEFORMAT **}** or both; or

(b) 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 the Contract, the matter shall be handled under the terms of the Change Procedure or as may otherwise be provided by the Contract as appropriate and if no alternative solution satisfies the essential terms of the Contract and the restrictions have not been removed, modified or otherwise satisfactorily managed within a reasonable time the Authority may terminate the Contract pursuant to Clause **{** REF _Ref28875004 \w \h **}** (Force Majeure Events) (notwithstanding that the circumstances described in this Clause **{** REF _Ref_ContractCompanion_9kb9Ur05F \w \h **}** do not constitute a Force Majeure Event and that the provisions of Clause **{** REF _Ref17279007 \w \h **}** (Force Majeure Events) do not otherwise apply to such circumstances).

Interim Position

17.22 Pending agreement of any amendment of the Contract as set out in Clause **{** REF _Ref36044738 \w \h **}** or **{** REF _Ref_ContractCompanion_9kb9Ur05F \w \h \t * MERGEFORMAT **}**, the Contractor shall be entitled to claim a Price Adjustment Event in accordance with Clause **{** REF _Ref50028586 \r \h **}** (Price Adjustment Events) and/or a Delay Event in accordance with Clause **{** REF _Ref521687363 \r \h **}** (Delay Events) (as applicable).

18 EXPORT POTENTIAL

18.1 The Contractor may from time to time submit proposals to the JRCC in respect of any aspect of the contract requirement which, in his opinion, will enhance the export potential of the Article or its sub-systems or major components. Where appropriate, such proposals should relate to any feature of the requirement where export potential might be inhibited

on grounds of security. Any such proposals shall include a description of the suggested changes by reference to performance, reliability, timescale and cost, together with an assessment of the enhanced export potential foreseen for the equipment by reference to the proposed marketing arrangements and possible financial and other benefits which could be expected to accrue to the Authority.

18.2 This Clause **{** REF _Ref20387451 \r \h **}** does not in any way commit the Authority to accept any proposals which might be submitted by the Contractor.

SECTION 4 – AUTHORITY'S OBLIGATIONS

19 AUTHORITY'S WARRANTIES AND REPRESENTATIONS

19.1 The Authority warrants that it has read, understood and agreed to each and all terms, clauses, specifications (including drawings) and conditions specified in the Contract and it accepts, without reservation, the said Contract terms within their normal and common meaning.

19.2 Other than as expressly set out in the Contract, none of the warranties, representations, undertakings, indemnities and other obligations made, given or undertaken by the Authority in this Contract shall be given a limited construction by reference to any other.

20 ISSUED PROPERTY

General

20.1 All Issued Property shall remain the property of the Authority. It shall be used in the execution of the Contract and for no other purpose, without the prior approval in writing of the Authority.

20.2 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 any such lien, are brought to the notice of all Sub-Contractors and other persons dealing with any Issued Property.

20.3 The Authority shall provide to the Contractor free of charge, those items of Issued Property which are listed in Schedule 11 (Government Furnished Assets) in the quantities and at the locations specified in Schedule 11 (Government Furnished Assets), and within the timescales agreed between the Parties in accordance with Annex A (Issued Property Scheduling Process) to Schedule 11 (Government Furnished Assets). All items of Issued Property provided to the Contractor by the Authority shall be provided free from defects and in a condition suitable for their intended purpose. Any packaging items provided as

Issued Property which are provided in a refurbished condition shall comply with Defence Standard 81-102 (The Refurbishment of Metal Ammunition Containers).

Receipt

20.4 Upon receipt of any item(s) of Issued Property, the Contractor shall:

(a) unload the Issued Property from the Authority's transport provider;

(b) inspect the Issued Property in accordance with Clause **{** REF _Ref49348572 \r \h * MERGEFORMAT **}** below;

(c) store the Issued Property safely and securely in its relevant storage facilities until such time as it is required for use during the Contractor's manufacturing process, at which time the Contractor shall be responsible for transporting the Issued Property from its storage facilities to the relevant manufacturing facilities.

20.5 Subject to Clause **{** REF _Ref36039609 \r \h * MERGEFORMAT **}** below, within the time period agreed between the Parties in relation to the relevant item of Issued Property in accordance with Annex A (Issued Property Scheduling Process) to Schedule 11 (Government Furnished Assets), the Contractor shall:

(a) check the Issued Property to verify that it corresponds with the Issued Property specified in Schedule 11 (Government Furnished Assets);

(b) conduct a reasonable visual inspection; and

(c) conduct any such additional inspection and testing as the Contractor deems 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 by raising a non-conformance report.

20.6 Where any Issued Property is agreed to be defective or deficient:

(a) the Authority shall within 30 (thirty) Business Days, or such other period as may be agreed between the Parties, of receipt of any notice under Clause **{** REF _Ref49348572 \r \h **}** replace, re-issue or authorise repair of such Issued Property;

(b) the Contractor shall be entitled to claim a Price Adjustment Event in accordance with Clause **{** REF _Ref50028586 \r \h **}** (Price Adjustment Events) and/or a Delay Event in accordance with Clause **{** REF _Ref521687363 \r \h **}** (Delay Events) (as applicable); and

(c) unless the defective or deficient Issued Property is to be retained by the Contractor to carry out authorised repairs through Tasking, the Authority shall:

(i) remove such Issued Property from the Contractor's Premises or the premises of any Sub-Contractor;

(ii) agree with the Contractor in accordance with Schedule 10 (Tasking) that the Contractor shall be responsible for removal of such Issued Property from the premises of any Sub-Contractor, re-delivery and/or disposal of such Issued Property pursuant to an agreed Task; or

(iii) agree with the Contractor that such Issued Property is to be retained by the Contractor and subject to the annual reconciliation process detailed at Clause **{** REF _Ref50031732 \w \h **}** below.

The Contractor shall co-operate with the Authority and make Issued Property available to the Authority for re-delivery as required.

20.7 The Parties shall carry out an annual reconciliation process in accordance with this Clause **{** REF _Ref50031732 \w \h **}**:

(a) no later than 30 (thirty) Business Days prior to the end of each Contract Year, the Contractor shall provide to the Authority a list of all Issued Property held by the Contractor and not required by the Contractor for the performance of the Contract, including details of any identified defects and/or damage to such Issued Property;

(b) within 15 (fifteen) Business Days of receipt of the Contractor's list, the Authority shall in respect of each item of Issued Property:

(i) notify the Contractor that the Authority intends to arrange re-delivery of such Issued Property and of the timescales within which re-delivery is intended to take place; or

(ii) seek to agree with the Contractor in accordance with Schedule 10 (Tasking) that the Contractor shall be responsible for re-delivery or disposal of such Issued Property pursuant to an agreed Task; and

(c) the Contractor shall co-operate with the Authority and make Issued Property available to the Authority for re-delivery as required.

20.8 In the event that the Authority fails to:

(a) provide the Issued Property to the Contractor in accordance with Clause **{** REF _Ref38612469 \r \h * MERGEFORMAT **}**; or

(b) replace, re-issue or authorise repair of defective or deficient Issued Property within 30 (thirty) Business Days of receipt of a notice in accordance with Clause **{** REF _Ref28603033 \r \h * MERGEFORMAT **}**,

the Contractor shall be entitled to claim a Price Adjustment Event in accordance with Clause **{** REF _Ref50028586 \r \h **}** (Price Adjustment Events) and/or a Delay Event in accordance with Clause **{** REF _Ref521687363 \r \h **}** (Delay Events) (as applicable), provided that the Contractor has taken all reasonable measures to mitigate the consequences of any such delay.

20.9 Clauses **{** REF _Ref28603033 \r \h * MERGEFORMAT **}** to **{** REF _Ref28603049 \r \h * MERGEFORMAT **}** do not apply in the following circumstances:

(a) where, pursuant to a Task, 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 the relevant Task;

(b) 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 the Contract;

(c) where Special Jigs and Tools Etc. become Issued Property under Clause **{** REF _Ref25748308 \w \h **}** (Special Jigs, Tooling and Test Equipment).

Custody

20.10 Subject to Clause **{** REF _Ref36040117 \r \h * MERGEFORMAT **}** below and the limitation of liability specified in Clause **{** REF _Ref50023902 \w \h **}** (Limitation of Liability), the Contractor shall be responsible for:

(a) the safe custody and (if agreed pursuant to Clause **{** REF _Ref38611492 \r \h * MERGEFORMAT **}** above or the Exit Plan, as applicable) due return or disposal of Issued Property, whether or not incorporated into the Articles; and

(b) all loss or damage thereto,

until re-delivery (or disposal, if agreed) in accordance with Clause **{** REF _Ref38611492 \r \h * MERGEFORMAT **}**, **{** REF _Ref50031732 \w \h **}** or the Exit Plan (as applicable). Unless otherwise agreed, re-delivery of Issued Property shall occur at the point that the Issued Property is loaded at the Contractor's Premises onto the Authority's vehicle(s) and moved from the Contractor's Premises by the Authority or a third party on the Authority's behalf.

20.11 The Contractor shall be responsible for such calibration and maintenance of the Issued Property as is specified in Schedule 11 (Government Furnished Assets). The Parties

acknowledge that, as at the Effective Date, no such calibration or maintenance is specified in Schedule 11 (Government Furnished Assets). Any calibration and maintenance requirements for this Contract will be clarified during the Transition Period and incorporated in Schedule 11 (Governance Furnished Assets) in accordance with the Change Procedure.

20.12 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.

20.13 The Contractor shall not be liable in respect of:

(a) defects or deficiencies notified to the Authority in accordance with Clause 20.5 or latent defects which the Contractor can show could not reasonably have been discovered by means of the activities described at Clause **{** REF _Ref28603033 \r \h * MERGEFORMAT **}**;

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

(c) Issued Property rendered unserviceable as a direct result of ordinary performance of the Contract;

(d) 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 Queen's enemies.

Accounting and Return of Issued Property

20.14 The Contractor shall:

(a) open and maintain a Public Store Account (PSA) in accordance with DEF STAN 05-099;

(b) ensure that all property of the Authority recorded in the PSA, including Issued Property, is available for inspection by the Authority at any reasonable time; and

(c) on being given 2 (two) months' notice or such other period as has been stated in the 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; 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.

20.15 Once title in Special Jigs, Tools Etc. has passed to the Authority in accordance with Clause **{** REF _Ref_ContractCompanion_9kb9Ur024 \w \h **}** (Special Jigs, Tooling and Test Equipment) the Contractor shall record that equipment in the PSA in accordance with DEF STAN 05-099.

20.16 On termination or expiry of the Contract, the Contractor shall forward a list of Issued Property still held to the Authority's Commercial Lead named in the Contract. Return or disposal of such Issued Property will be as specified in the Exit Plan, as agreed between the Parties pursuant to Clause **{** REF _Ref28615965 \w \h **}** (Exit Management) and Schedule 19 (Exit Strategy).

21 CONTRACTOR'S PERSONNEL AT GOVERNMENT ESTABLISHMENTS

General

21.1 The following general provisions apply:

(a) The Officer in Charge shall provide such available administrative and technical facilities for the Contractor's Representatives employed at Government Establishments for the purpose of the Contract as may be necessary for the effective and economical discharge of work under the Contract. These facilities will be provided free of charge unless otherwise stated in the Contract. The status to be accorded to the Contractor's Representatives for messing purposes will be at the discretion of the Officer in Charge.

(b) Any land or premises (including temporary buildings) made available to the Contractor by the Authority in connection with the Contract shall be made available to the Contractor free of charge, unless otherwise stated in the Contract, and shall be used by the Contractor solely for the purposes of performing the Contract. The Contractor shall have the use of such land or premises as licensee and shall vacate the same upon completion of the Contract.

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

Liability in Respect of Damage to Government Property

21.2 Without prejudice to the provisions of Clause **{** REF _Ref35963530 \r \h **}** (Issued Property) and of Clause **{** REF _Ref_ContractCompanion_9kb9Ur17G \r \h **}** (Loss of or Damage to the Articles), the Contractor shall, except as otherwise provided for in the Contract, make good or, at the option of the Authority, pay compensation for all damage occurring to any Government property, which includes land or buildings, occasioned by the Contractor, or by any of his representatives, arising from his or their presence on a Government Establishment in connection with the Contract, provided that this Clause 21 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 his or their reasonable control.

21.3 The total liability of the Contractor under Clause **{** REF _Ref_ContractCompanion_9kb9Ur07B \w \h \t * MERGEFORMAT **}** herein shall be subject to the limitation specified at Clause **{** REF _Ref50025749 \w \h **}** (Limitation of Liability).

Contractor's Property

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

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

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

Contractor's Representatives

21.5 The Contractor shall submit in writing to the Authority for approval, initially and as necessary from time to time, a list of those of his representatives who may need to enter a Government Establishment for the purpose of, or in connection with, work under the Contract, giving such particulars as the Authority may require, including full details of

birthplace and parentage of any such Representative who:

(a) was not born in the United Kingdom; or

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

21.6 The Authority shall issue passes for those Representatives of the Authority who are approved by it in accordance with Clause **{** REF _Ref_ContractCompanion_9kb9Ur07D \w \h \t * MERGEFORMAT **}** herein for admission to a Government Establishment and a representative shall not be admitted unless in possession of such a pass. Passes shall remain the property of the Authority and shall be surrendered on demand or on completion of the work.

21.7 Notwithstanding the provisions of Clauses **{** REF _Ref_ContractCompanion_9kb9Ur27C \w \h \t * MERGEFORMAT **}** and **{** REF _Ref_ContractCompanion_9kb9Ur07F \w \h \t * MERGEFORMAT **}** if, in the opinion of the Authority, any Representative of the Contractor shall misconduct himself, or it shall not be in the public interest for any person to be employed or engaged by the Contractor, the Contractor shall remove such person without delay on being required to do so and shall cause the work to be performed by such other person as may be necessary.

21.8 The decision of the Authority upon any matter arising under Clauses **{** REF _Ref_ContractCompanion_9kb9Ur07D \w \h **}** to **{** REF _Ref_ContractCompanion_9kb9Ur07H \w \h \t * MERGEFORMAT **}** inclusive shall be final and conclusive.

Observance of Regulations

21.9 The following provisions apply:

(a) The Contractor shall ensure that his representatives have the necessary probity (by undertaking the Government's Baseline Personnel Security Standard) and, where applicable, are cleared to the appropriate level of security when employed within the boundaries of a Government Establishment.

(b) Where the Contractor requires information on the Government's Baseline Personnel Security Standard (the Standard) or security clearance for his Representatives or is not in possession of the relevant rules, regulations or requires guidance on them, he shall apply in the first instance to the Project Manager/Equipment Support Manager.

(c) On request, the Contractor shall be able to demonstrate to the Authority that the Contractor's processes to assure compliance with the standard have been

carried out satisfactorily. Where that assurance is not already in place, the Contractor shall permit the Authority to inspect the processes being applied by the Contractor to comply with the Standard.

(d) The Contractor shall comply and shall ensure that his representatives comply with the rules, regulations and requirements that are in force whilst at that Government Establishment which shall be provided by the Authority on request.

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

Transport Overseas

21.10 Where the Contractor's Representatives are required by the Contract to join or visit a Government Establishment overseas, transport between the United Kingdom and the place of duty (but excluding transport within the United Kingdom) shall be provided free of charge by the Authority whenever possible, normally by Royal Air Force or by MOD chartered aircraft. The Contractor shall make such arrangements through the Project Manager/Equipment Support Manager named for this purpose in the Contract. When such transport is not available within a reasonable time, or in circumstances where the Contractor wishes his representatives to accompany materiel for installation which he is to arrange to be delivered, the Contractor shall make his own transport arrangements. The Authority shall reimburse the Contractor's Allowable Costs for such transport of his Representatives on presentation of evidence supporting the use of alternative transport and of the costs involved, provided that in the case of rail, air or sea travel the Authority shall reimburse only the costs of standard or economy class travel. Transport of the Contractor's Representatives locally overseas which is necessary for the purposes of the Contract shall be provided wherever possible by the Authority and, where so provided, will be free of charge.

Medical Treatment Overseas

21.11 Out-patient medical treatment given to the Contractor's Representatives by a Service Medical Officer or other Government Medical Officer at a Government Establishment overseas shall be free of charge. Treatment in a Service hospital or medical centre, dental treatment, the provision of dentures or spectacles, conveyance to and from a hospital, medical centre or surgery not within the Establishment, and transportation of the 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

21.12 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

21.13 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 MOD rates.

Provision of Funds Overseas

21.14 The Contractor shall, wherever possible, arrange for funds to be provided to his 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

21.15 Where the Contractor enters a Government Establishment for the purpose of performing work under the Contract:

(a) The Contractor shall notify the Officer in Charge or the site project liaison officer or overseeing officer nominated in the Contract of:

(i) any health and safety hazards associated with the work to be performed by him or any of his representatives;

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

(iii) any precautions to be taken by him as well as any precautions which, in his opinion, ought to be taken by the Authority, in order to control such risks.

(b) The Authority shall notify the Contractor of:

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

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

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

(c) The Contractor shall notify his representatives of and, where appropriate, provide adequate instruction in relation to:

(i) the hazards, risks and precautions notified by him to the Authority under Clause **{** REF _Ref_ContractCompanion_9kb9Ur06E \w \h \t * MERGEFORMAT **}**;

(ii) the hazards, risks and precautions notified by the Authority to the Contractor under Clause **{** REF _Ref_ContractCompanion_9kb9Ur06G \w \h \t * MERGEFORMAT **}**; and

(iii) the precautions which, in his opinion, ought to be taken by his Representatives in order to control those risks.

(d) The Contractor shall provide the Officer in Charge or the site project liaison officer or overseeing officer nominated in the Contract with:

(i) copies of those sections of his own and, where appropriate, his representatives' safety policies which are relevant to the risks notified under Clause **{** REF _Ref_ContractCompanion_9kb9Ur276 \w \h \t * MERGEFORMAT **}**;

(ii) copies of any related risk assessments; and

(iii) copies of any notifications and instructions issued by him to his Representatives under Clause **{** REF _Ref_ContractCompanion_9kb9Ur079 \w \h \t * MERGEFORMAT **}**.

(e) The Authority shall provide the Contractor with:

(i) copies of those sections of its own Safety Policies which are relevant to the risks notified under Clause **{** REF _Ref_ContractCompanion_9kb9Ur278 \w \h \t * MERGEFORMAT **}**;

(ii) copies of any related risk assessments; and

(iii) copies of any notifications and instructions issued by it to its employees similar to those called for from the Contractor under Clause **{** REF _Ref_ContractCompanion_9kb9Ur27A \w \h \t * MERGEFORMAT **}**.

22 ACCESS AND FACILITIES TO BE PROVIDED BY THE CONTRACTOR

22.1 The Contractor shall provide to the Representatives of the Authority, following reasonable notice, relevant accommodation / facilities, at no direct cost to the Authority, and all reasonable access to its premises for monitoring the Contractor's progress and quality standards in performing the Contract.

22.2 As far as reasonably practical, the Contractor shall ensure that the provisions of Clause **{** REF _Ref_ContractCompanion_9kb9Ur08A \w \h \t * MERGEFORMAT **}** are included in their Sub-Contracts with those suppliers identified in the Contract. The Authority, through the Contractor, shall arrange access to such Sub-Contractors.

23 TRANSPORT (IF AUTHORITY IS RESPONSIBLE FOR TRANSPORT)

23.1 When the Articles required under the Contract are ready for delivery in accordance with the Contract, the Contractor shall apply for transport instructions (if these have not already been received) to the Authority's Transport Officer using the contact details set out in box 10 of Schedule 27 (DEFFORM 111) and provide him with the following information:

(a) Consignee's name and address.

(b) The number of packages.

(c) The dead-weight and dimensions of each package.

(d) A general description of the contents. (for overseas consignments only)

23.2 All Customs clearance shall be the responsibility of the Transport Officer.

23.3 The Articles required under the Contract must be accompanied by the Transit Documentation specified by the Transport Officer.

SECTION 5 – PRICING AND PAYMENT

24 PRICING

Total price payable

24.1 For the purposes of Regulation 10 (Pricing of contracts) of the SSCR, the total price payable to the Contractor under this Contract is the sum of:

(a) the prices payable to the Contractor for all Service Years in accordance with Clause **{** REF _Ref49792703 \w \h * MERGEFORMAT **}**;

(b) to the extent not included in the prices payable for Service Years in accordance with Clause **{** REF _Ref49792703 \r \h * MERGEFORMAT **}**, the prices payable to the Contractor for Ad Hoc Tasks, Engineering Tasks and Ad Hoc Engineering Tasks placed in accordance with Schedule 10 (Tasking) in accordance with Clause **{** REF _Ref49809412 \w \h * MERGEFORMAT **}**;

(c) if applicable, the prices payable to the Contractor for any Exceptional Costs Components that are incorporated into this Contract in accordance with Clause **{** REF _Ref43219117 \w \h **}**; and

(d) if applicable, the prices payable to the Contractor for any Unavoidable Order Shortfall Costs that are incorporated into this Contract in accordance with Clause **{** REF _Ref47668739 \r \h **}**.

Price payable for each Service Year

24.2 **REDACTED**

Service Year Target Cost

24.3 Subject to Paragraph 7 (Labour Rates) of Schedule 12 (Pricing), for each Service Year, a target sum of Allowable Costs to be incurred by the Contractor in performing the work required under this Contract in relation to that Service Year has been determined and specified in Paragraph 1 (Service Year Target Prices) of Schedule 12 (Pricing) (the "**Service Year Target Cost**"), comprising the following elements:

(a) an Enabling Charge Target Cost; and

(b) a Product Target Cost for each Article Type to be delivered during that Service Year, calculated in accordance with the following formula:

$$PTC = UPTC \times QA$$

where:

PTC means the Product Target Cost for the Article Type;

UPTC means the Unit Product Target Cost for the Article Type; and

QA means, subject to Clauses **{** REF _Ref43217541 \w \h **}** to **{** REF _Ref43217972 \w \h **}**, the quantity of Articles of that Article Type to be delivered by the Contractor during that Service Year.

The Parties acknowledge that the Unit Product Target Costs for each Article Type are specified in the Contract Pricing Model rather than Schedule 12 (Pricing) because the Unit Product Target Costs are variable in accordance with the Contract Pricing Model on the basis of the quantity of Type A Munitions ordered by the Authority. For reference, the Unit Product Target Costs that would be produced by the Contract Pricing Model for each Article Type if all the Contracted Article Order Quantities for all Type A Munitions equalled the Minimum Article Volume Thresholds are set out in Annex G (Reference Unit Product Target Costs) of Schedule 12 (Pricing).

Service Year Target Fee

24.4 Subject to Paragraph 7 (Labour Rates) of Schedule 12 (Pricing), for each Service Year, a target sum of profit to be earned by the Contractor in performing the work required under this Contract in relation to that Service Year (excluding any Earned KPI Incentives) has been determined and specified in Paragraph 1 (Service Year Target Prices) of Schedule 12 (Pricing) (the "**Service Year Target Fee**"), being the *"CPR x TC"* value described in Clause **{** REF _Ref49792703 \w \h **}**.

Allowable Costs

24.5 In accordance with Section 20(2) of the Defence Reform Act 2014:

(a) the costs that the Contractor is entitled to include within each Service Year Target Cost are the costs estimated by the Contractor that the Authority and the Contractor are satisfied are appropriate, attributable to this Contract and reasonable in the circumstances, having regard to the Statutory Guidance on Allowable Costs; and

(b) the costs that the Contractor is entitled to be paid by the Authority in each Service Year are the costs actually incurred by the Contractor in performing this Contract during that Service Year that the Authority and the Contractor are satisfied are appropriate, attributable to this Contract and reasonable in the circumstances, having regard to the Statutory Guidance on Allowable Costs.

24.6 Unless otherwise agreed by the Parties in writing, the Parties agree that they shall not be satisfied that a cost meets the requirements of Clause **{** REF _Ref43217609 \w \h **}** to the extent that either Party has made an application to the Single Source Regulations Office (SSRO) to determine the extent to which it is an allowable cost pursuant to Section 20 of the Defence Reform Act and the SSRO has not yet made its determination.

Adjustments to the Service Year Target Prices

<u>Pre-Service Year adjustment for Contracted Article Order Quantities</u>

24.7 **REDACTED**

24.8 Accordingly, within 20 (twenty) Business Days after the Authority has issued the Schedule of Contracted Orders for each Service Year in accordance with Schedule 8 (Manufacturing and Supply), the Parties shall adjust the Service Year Target Cost, the Service Year Target Fee and the Service Year Target Price to reflect the differences between the Indicative Article Order Quantities and the Contracted Article Order Quantities by entering the Contracted Article Order Quantity for each Article Type to be delivered during that Service Year as an input value into the Contract Pricing Model in place of the Indicative Article Order Quantity for each Article Type to be delivered during that Service Year. As soon as reasonably practicable following each such adjustment, the Parties shall incorporate an amendment to this Contract to update the tables set out in Paragraphs 1, 2 and 3 of Schedule 12 (Pricing), including to:

(a) acknowledge where any values in the tables in those Paragraphs have been changed to reflect Contracted Article Order Quantities; and

(b) reflect the adjusted Unit Product Target Costs produced by the Contract Pricing Model.

<u>Indexation adjustments, foreign exchange adjustments and metal cost adjustments</u>

24.9 **REDACTED**

Determination of the Service Year Price Payable

24.10 Within 20 (twenty) Business Days after acceptance by the Authority of the Contract Costs Statement for each Service Year in accordance with Clause **{** REF _Ref47651279 \r \h **}** (and after the adjustment to the Service Year Target Price for indexation has been made pursuant to **{** REF _Ref43217972 \r \h **}**), the Parties shall calculate the Service Year Price Payable as follows:

$$SYPP = AC + (TF + PGS(TC - AC))$$

where:

SYPP means the Service Year Price Payable;

AC means the Service Year Actual Cost;

TF means the Service Year Target Fee;

PGS means the Contractor's Pain/Gain Share; and

TC means the Service Year Target Cost.

Verification of Allowable Costs incurred during each Service Year

24.11 Within 1 (one) month after the end of each Service Year, the Contractor shall provide to the Authority:

(a) a Contract Costs Statement in respect of all work performed during the relevant Service Year, which shall:

(i) state the Allowable Costs incurred by the Contractor in performing the work required under this Contract during the Service Year; and

(ii) categorise those Allowable Costs in accordance with the method of cost allocation set out in Annex F (Method of Cost Allocation) of Schedule 12 (Pricing) and itemise those Allowable Costs in accordance with the itemisation of costs in the Contract Pricing Model; and

(b) a costs certificate signed by the Contractor's Finance Director (or other signatory authorised by the Authority) in the form set out in Paragraph 11 (Form of Costs Certificate) of Schedule 12 (Pricing); and

(c) such supporting information as may be required by the Authority to verify that the costs incurred by the Contractor in performing the work required under this Contract during the Service Year are Allowable Costs.

24.12 **REDACTED**

24.13 **REDACTED**

Contract Pricing Model

24.14 **REDACTED**

24.15 **REDACTED**

24.16 **REDACTED**

24.17 **REDACTED**

24.18 **REDACTED**

Exceptional Costs Recovery

24.19 If at any time during the term of this Contract an Exceptional Costs Event occurs, the Contractor may request that the Authority considers the inclusion of the Exceptional Costs caused by that Exceptional Costs Event within the Contract Price on a cost-plus basis in accordance with Clause **{** REF _Ref43218181 \w \h **}** and Clause **{** REF _Ref43218195 \w \h **}**.

24.20 To make a request for the Authority to consider the inclusion of Exceptional Costs within the Contract Price on a cost-plus basis, the Contractor shall:

(a) as soon as reasonably practicable, and in any event within 20 (twenty) Business Days, after it becomes aware that an Exceptional Costs Event has occurred, notify the Authority's Commercial Lead of the occurrence of the Exceptional Costs Event and its intention to make a request pursuant to this Clause **{** REF _Ref43218181 \w \h **}**;

(b) as soon as reasonably practicable, and in any event within 40 (forty) Business Days after notifying the Authority's Commercial Lead pursuant to Clause **{** REF _Ref43218232 \w \h **}**, submit the request giving:

(i) full details of the Exceptional Costs Event demonstrating that the Exceptional Costs Event:

(A) was beyond the reasonable control of the Contractor and not caused by any act or omission of the Contractor;

(B) could not have been avoided by steps which might reasonably be expected to have been taken by the Contractor;

(C) could not have been reasonably foreseen by the Contractor at the Effective Date; and

(D) has directly caused the Contractor to incur Exceptional Costs;

(ii) full details of the Exceptional Costs caused by the Exceptional Costs Event and such evidence as is necessary to enable the Authority to be satisfied that those Exceptional Costs are Allowable Costs (including such specific additional analysis and evidence as may be required to arrive at an agreement on suitable treatment); and

(iii) such other information as may be necessary to demonstrate to the Authority that:

(A) the Contractor has taken and continues to take all steps necessary to minimise the Exceptional Costs caused by the Exceptional Costs Event in accordance with Good Industry Practice;

(B) the Exceptional Costs do not include any costs that have already been included within the Contract Price or have been incurred by the Contractor as a result of risks insured against (or which would have been insured against had the Contractor taken out

all appropriate insurances in accordance with Good Industry Practice and taken all necessary action not to vitiate such insurances); and

(C) the inclusion of the Exceptional Costs within the Contract Price is otherwise justified in the circumstances.

24.21 **REDACTED**

24.22 Without prejudice to Clause **{** REF _Ref43218195 \w \h **}**:

(a) prior to the Authority's determination pursuant to Clause **{** REF _Ref43218195 \w \h **}** the Parties shall inform the Single Source Regulations Office of the request made pursuant to Clause **{** REF _Ref43218181 \w \h **}**; and

(b) if the Parties are unable to agree whether or the extent to which any costs comprising the Exceptional Costs are Allowable Costs then either Party may refer the matter to the SSRO for guidance.

24.23 If and to the extent that the Authority determines, or the Parties agree, that the Exceptional Costs caused by an Exceptional Costs Event shall be included within the Contract Price on a cost-plus basis pursuant to Clause **{** REF _Ref43218195 \w \h **}**:

(a) the Parties shall incorporate a new separately defined component of this Contract for the payment of the Exceptional Costs, priced in accordance with the cost-plus pricing method for the purposes of Regulation 10 (Pricing of contracts) of the SSCR (an "**Exceptional Costs Component**");

(b) when calculating the contract profit rate for the Exceptional Costs Component in accordance with Regulation 11 (Steps in determining contract profit rate) of the SSCR, the maximum negative cost risk adjustment shall be applied at Step 2 (Cost Risk Adjustment) of the contract profit rate calculation, and no adjustment shall be applied at Step 5 (Incentive Adjustment) of the contract profit rate calculation;

(c) the Parties shall agree when the Contractor shall be entitled to claim Exceptional Costs Payment(s) in respect of the Exceptional Costs Component, and how the Exceptional Costs Payment(s) shall be calculated (comprising both the Exceptional Costs and the profit calculated in accordance with Clause **{** REF _Ref43218578 \w \h **}**; and

(d) all Exceptional Costs that the Authority has determined to be included within the Contract Price shall be attributed to the Exceptional Costs Component (and not

to any Service Year or other component of this Contract) and no adjustment shall be made to any Service Year Target Price.

24.24 Nothing in Clauses **{** REF _Ref43218195 \r \h **}** to **{** REF _Ref43219117 \r \h **}** shall prejudice or otherwise affect the Contractor's rights under this Contractor to be paid Allowable Costs subject to and in accordance with the other provisions of this Contract.

Pricing of Ad Hoc Tasks, Engineering Tasks and Ad Hoc Engineering Tasks

24.25 If and to the extent that an Ad Hoc Task, Engineering Task or Ad Hoc Engineering Task that the Authority proposes to place in accordance with Schedule 10 (Tasking) comprises work that, in accordance with the provisions of this Contract and as evidenced by the Contract Pricing Model, has not been priced within the Service Year Target Costs:

(a) the Parties shall determine a separate price for the unpriced work comprising the Ad Hoc Task, Engineering Task or Ad Hoc Engineering Task in accordance with Regulation 10 of the SSCR prior to approval of the Ad Hoc Task, Engineering Task or Ad Hoc Engineering Task in accordance with Schedule 10 (Tasking);

(b) if approved in accordance with Schedule 10 (Tasking), the unpriced work comprising the Ad Hoc Task, Engineering Task or Ad Hoc Engineering Task shall be incorporated as a new separately defined component of this Contract within line item n.2 (as applicable to the relevant Service Year) of the Schedule of Requirements for the purposes of Regulation 10 (Pricing of contracts) of the SSCR; and

(c) unless otherwise agreed by the Parties, the price payable to the Contractor for that work shall be priced by the firm pricing method.

24.26 When determining the price for any Ad Hoc Task, Engineering Task or Ad Hoc Engineering Task:

(a) the Parties shall use the labour rates specified in Paragraph 7 (Labour rates) of Schedule 12 (Pricing), unless the use of such labour rates would cause either Party to fail to comply with its obligations under the Defence Reform Act 2014 and the SSCR; and

(b) the Contract Profit Rate shall be the applicable Contract Profit Rate calculated in accordance with Clause **{** REF _Ref529476461 \w \h **}**, provided that if when approving the Ad Hoc Task, Engineering Task or Ad Hoc Engineering Task in accordance with Schedule 10 (Tasking) the Parties do not agree any contracted

performance metric(s) for the payment of an adjustment made at Step 5 (Incentive Adjustment) of that calculation, the amount of that adjustment shall be zero (0).

24.27 Prior to 1 April in Contract Year 2022 and each subsequent Contract Year (or as soon as reasonably practicable thereafter), the Parties shall calculate the Contract Profit Rate to be used to determine the prices for Ad Hoc Tasks, Engineering Tasks or Ad Hoc Engineering Tasks approved by the Authority until the following 31 March. For the purposes of this calculation:

(a) at Step 1 (Baseline profit rate), the Parties shall use the baseline profit rate in force with effect from 1 April in that Contract Year;

(b) at Step 2 (Cost risk adjustment), unless otherwise agreed by the Parties the adjustment shall be -25% (minus twenty five per cent) in the case of cost-plus prices or estimate-based fee prices and zero in the case of prices determined using other pricing methods;

(c) at Step 3 (Profit on cost once), no adjustment shall be made (provided that the Contractor shall notify the Authority if that approach would fail to comply with the SSCR and in such case a compliant adjustment shall be calculated);

(d) at Step 4 (SSRO funding adjustment), the Parties shall use the SSRO funding adjustment in force with effect from 1 April in that Contract Year;

(e) at Step 5 (Incentive adjustment), any adjustment shall be made at the Authority's discretion and shall be subject to Clause **{** REF _Ref4002843 \w \h **}**(b); and

(f) at Step 6 (Capital servicing adjustment):

(i) the Parties shall have regard to the capital servicing rates in force with effect from 1 April in that Contract Year; and

(ii) the Parties shall use the fixed and working capital levels and cost of production taken from the Contractor's latest audited accounts as at the time the calculation is made.

Pricing processes and worked examples

24.28 Schedule 13 (Pricing Processes and Worked Examples) describes the key processes to be carried out by the Parties prior to the commencement and after the completion of each Service Year to manage the financial aspects of this Contract, and illustrates these processes with worked examples. It has been included in this Contract solely for the purposes of illustration, and shall not create any rights, obligations or liabilities for either Party.

25 CHANGES TO THE CONTRACT PRICE

Permitted amendments and adjustments

25.1 **REDACTED**

Pricing of Changes and Contract Price Adjustments in accordance with the SSCR

25.2 **REDACTED**

Adjustments for Contracted Article Order Quantities, indexation, foreign exchange rates and metal costs

25.3 **REDACTED**

Changes to Article Types

25.4 **REDACTED**

Order Shortfalls

25.5 **REDACTED**

26 PAYMENT

26.1 **REDACTED**

Amounts payable

26.2 **REDACTED**

Enabling Charge Payments

26.3 **REDACTED**

26.4 **REDACTED**

Monthly Product Payments

26.5 **REDACTED**

Delivery Product Payments

26.6 **REDACTED**

Annual Reconciliation Payment

26.7 **REDACTED**

26.8 **REDACTED**

26.9 **REDACTED**

26.10 **REDACTED**

KPI Incentive Payments

26.11 **REDACTED**

Additional Task Payments

26.12 **REDACTED**

Exceptional Costs Payments

26.13 **REDACTED**

Claims for Payment

Enabling Charge Payments

26.14 **REDACTED**

Monthly Product Payments

26.15 **REDACTED**

Delivery Product Payments

26.16 **REDACTED**

Annual Reconciliation Payments

26.17 **REDACTED**

26.18 **REDACTED**

KPI Incentive Payments

26.19 **REDACTED**

Additional Task Payments

26.20 **REDACTED**

Exceptional Costs Payments

26.21 **REDACTED**

Payment Process

26.22 **REDACTED**

26.23 **REDACTED**

26.24 **REDACTED**

26.25 **REDACTED**

Interest on late payments

26.26 **REDACTED**

26.27 **REDACTED**

26.28 **REDACTED**

Set-off

26.29 **REDACTED**

No acceptance or waiver

26.30 **REDACTED**

27 KEY PERFORMANCE INDICATORS

27.1 The Parties have agreed a series of key performance indicators in respect of the Contractor's performance of this Contract, which are specified in Schedule 14 (Key Performance Indicators) (the "**Key Performance Indicators**" or "**KPIs**").

27.2 **REDACTED**

27.3 If in respect of a Service Year, during the relevant Period of Measurement the Contractor Achieves the KPI Target for a KPI, the Contractor shall be entitled to be paid the proportion of the Service Year Available KPI Incentive that applies to that KPI (or, where applicable, the percentage of the proportion of the Service Year Available KPI that corresponds to the KPI Target), as set out in Schedule 14 (Key Performance Indicators) (the "**Earned KPI Incentive**").

27.4 Except to the extent provided for in Schedule 14 (Key Performance Indicators), if in respect of a Service Year a KPI Target is not Achieved, the Contractor shall not be entitled to be paid the proportion of the Service Year Available KPI Incentive that applies to that KPI (or any part of it).

27.5 For the purposes of Clause **{** REF _Ref44443486 \w \h **}** (Payment), the "**KPI Incentive Payment**" for a Service Year shall be the aggregate of all Earned KPI Incentives for that Service Year.

28 THIRD PARTY SALES

28.1 **REDACTED**

28.2 **REDACTED**

28.3 **REDACTED**

28.4 **REDACTED**

28.5 **REDACTED**

28.6 **REDACTED**

28.7 **REDACTED**

29 VESTING

29.1 Subject to the following provisions of this Clause **{** REF _Ref36140530 \r \h **}**:

(a) each Article as it is constructed together with its component parts and equipment so far as incorporated in the Articles; and

(b) all materiel which the Contractor acquires or allocates for incorporation in any of the Articles,

shall vest in and become the absolute property of the Authority, as from the time the construction of the Article begins or the materiel is acquired specifically for or is allocated for incorporation in any of the Articles and shall from that time be in the possession of the Contractor for the sole purpose of completing the Articles and delivering them when completed to the Authority, and shall not be within the control or disposition of the Contractor other than for that purpose.

29.2 Neither the Contractor, nor a subcontractor, nor any other person shall have a lien on any Article or materiel which have vested in the Authority under Clause **{** REF _Ref17223136 \r \h **}** for any sum due to the Contractor, subcontractor or other person. The Contractor shall take all reasonable steps necessary to ensure that the provisions of this Clause **{** REF _Ref36140530 \r \h **}** are brought to the notice of all subcontractors and other persons dealing with any such Articles or materiel.

29.3 Without prejudice to Clause **{** REF _Ref17223136 \r \h **}**, the Contractor shall ensure that from the time when the construction of any Article begins, or as soon as practicable thereafter, or when any materiel is acquired specifically for or is allocated for incorporation in any of the Articles, they are marked or recorded so that they are readily identifiable as the property of the Authority. The Contractor shall comply with any direction given by the Authority in this respect.

29.4 Any Article or materiel which is rejected by the Authority in accordance with the terms of Clause **{** REF _Ref27989192 \r \h **}** (Rejection) shall immediately re-vest in the Contractor.

29.5 If the Authority terminates the Contract otherwise than under Clause **{** REF _Ref17223210 \r \h **}** (Voluntary Termination), any Article which has not been delivered in accordance with Clause **{** REF _Ref46325924 \r \h **}** (Delivery) and any materiel which has not been incorporated in any Article which has been delivered in accordance with Clause **{** REF _Ref46325924 \r \h **}** (Delivery) shall re-vest in the Contractor. Such re-vesting shall occur on the expiry of 30 (thirty) days from the date on which that termination shall take effect, unless the Authority has given the Contractor notice, prior to that expiry, that the Authority elects to retain the property in the Article or materiel.

29.6 Any payment made by the Authority in respect of any Article or materiel which re-vest in the Contractor under Clauses **{** REF _Ref17223290 \r \h **}** or **{** REF _Ref17223291 \r \h **}** shall be recoverable from the Contractor.

29.7 The Contractor shall hand over to the Authority any Article or materiel in which the Authority has elected to retain the property under Clause **{** REF _Ref17223291 \r \h **}**. If the Contractor fails to do so, the Authority shall have the right to enter the Contractor's premises and remove the Article or materiel and recover the cost of doing so from the Contractor.

29.8 The Authority shall pay a fair and reasonable price for any Article or materiel in which it has elected to retain the property under Clause **{** REF _Ref17223291 \r \h **}** and which are handed over to it by the Contractor or otherwise come into his possession.

29.9 Where any Article or materiel in the Authority's possession or control has re-vested in the Contractor in accordance with Clauses **{** REF _Ref17223290 \r \h **}** or **{** REF _Ref17223291 \r \h **}**, the Contractor shall bear the cost of resuming possession and control of them from the place of delivery in the UK as specified in the Contract. If the Article or materiel is on the premises of the Authority or the premises of any Government Department (including any agencies thereof), the Contractor shall remove them within 14 (fourteen) days of their re-vesting.

30 QUALIFYING DEFENCE CONTRACT

30.1 The Authority has notified the Contractor that it believes that the Contract is a Qualifying Defence Contract for the purposes of the Defence Reform Act 2014 and the Single Source Contract Regulations 2014.

31 OPEN BOOK ON SUB-CONTRACTS THAT ARE NOT QUALIFYING SUB-CONTRACTS (QSC)

31.1 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 Paragraph 2 of Part B to Schedule 21 (Flow-Down Provisions) (inserting relevant party names and / or definitions where appropriate).

31.2 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 Paragraph 2 of Part B to Schedule 21 (Flow-Down Provisions), or where it believes that the inclusion of those terms will prevent the achievement of a fair and reasonable price for that Sub-Contract.

32 CONTRACTOR'S RECORDS

32.1 The Contractor and its Sub-Contractors shall maintain all records specified in and connected with the Contract (expressly or otherwise).

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

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

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

32.3 With regard to the records maintained under Clause **{** REF _Ref50018913 \r \h **}**, and subject to the provisions of Clause **{** REF _Ref35948526 \r \h **}** (Security of Supply), Clause **{** REF _Ref17131988 \r \h **}** (Intellectual Property Rights) and Clause **{** REF _Ref16518193 \r \h * MERGEFORMAT **}** (Disclosure of Information), the Contractor shall permit records to be examined by the Authority, or Representative of the Authority, as the Authority may require, and if reasonably necessary copied for the purposes of monitoring, audit and/or the internal recordkeeping of the Authority only.

32.4 Unless the Contract specifies otherwise the records referred to in this Clause **{** REF _Ref20327703 \r \h * MERGEFORMAT **}** shall be retained for a period of at least 6 (six) years from:

(a) the end of the Contract term;

(b) the termination of the Contract; or

(c) the final payment,

whichever occurs latest.

33 EXCHANGE

The provisions of Schedule 20 (Exchange) shall apply.

34 VAT

34.1 The Contract Price excludes any UK output Value Added Tax (VAT) and any similar EU (or non-EU) taxes chargeable on the supply of Contractor Deliverables by the Contractor to the Authority.

34.2 If the Contractor is required by UK VAT law to be registered for UK VAT (or has registered voluntarily) in respect of his business activities at the time of any supply, and the circumstances of any supply are such that the Contractor is liable to pay the tax due to HM Revenue and Customs (HMRC), the Authority shall pay to the Contractor in addition to the Contract Price (or any other sum due to the Contractor) a sum equal to the output VAT chargeable on the tax value of the supply of Contractor Deliverables, and all other payments under the Contract according to the law at the relevant tax point.

34.3 The Contractor is responsible for the determination of VAT liability. The Contractor shall consult its Client Relationship Manager or the HMRC Enquiries Desk (and not the Commercial Lead) in cases of doubt. The Contractor shall notify the Authority's Commercial Lead of the Authority's VAT liability under the Contract, and any changes to it, within 20 (twenty) Business 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 may require the Contractor to obtain, and pass to the Authority, a formal ruling from HMRC. The Contractor shall comply promptly with any such requirement. Where the Contractor obtains a ruling from HMRC, it shall supply a copy to the Authority within 3 (three) Business Days of receiving that ruling unless it proposes to challenge the ruling. Where the Contractor challenges the ruling it shall supply to the Authority a copy of any final decisions issued by HMRC on completion of the challenge within 3 (three) Business Days of receiving the decision.

34.4 Where supply of 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 it takes into account any changes in VAT law regarding registration.

34.5 Where Contractor Deliverables are deemed to be supplied to the Authority outside the UK, the Contractor may be required by the laws of the country where the supply takes place to register there for EU (or non-EU) turnover or similar tax. In that event, the Authority shall pay to the Contractor in addition to the Contract Price (and any other sum due to the Contractor under the Contract) a sum equal to the tax the Contractor is liable to pay to the tax authorities of the country in question in relation to the Contractor Deliverables within 30 (thirty) calendar days of a written request for payment of any such sum by the Contractor

34.6 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 (or similar EU or non-EU or both input taxes). However, these input taxes will be allowed where it is established that, despite the Contractor having taken all reasonable steps to recover them, it has not been possible to do so. Where there is any doubt that the Contractor has complied with this requirement the matter shall be resolved under Clause **{** REF _Ref16517939 \w \h **}** (Dispute Resolution) or some other form of dispute resolution as agreed between the Parties.

34.7 Should HMRC decide that the Contractor has incorrectly determined the VAT liability, in accordance with Clause **{** REF _Ref_ContractCompanion_9kb9Ur09B \w \h \t * MERGEFORMAT **}** above, the Authority will pay the VAT assessed by HMRC. In the event that HMRC so determines, the Contractor shall pay any interest charged on any assessment or penalties or both directly to HMRC. Such interest or penalties or both shall not be recoverable from the Authority under this Contract or any other contract. The Contractor shall supply the Authority with a copy of all correspondence between HMRC and the Contractor's advisors regarding the VAT assessment within 3 (three) Business Days of a written request from the Authority for such correspondence.

35 TAX COMPLIANCE

Warranty

35.1 The Contractor represents and warrants that at the date this Contract came into effect, it has notified the Authority in writing of any OOTNC or any litigation that it is involved in that is in connection with any OOTNC.

Duty of the Contractor to notify OOTNC

35.2 If, at any point during the performance of this Contract, an OOTNC occurs, the Contractor shall:

(a) notify the Authority in writing of such fact within 20 (twenty) Business Days of its occurrence; and

(b) 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.

35.3 For the avoidance of doubt, the obligation at Clause **{** REF _Ref_ContractCompanion_9kb9Ur09F \w \h \t * MERGEFORMAT **}** 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.

Default

35.4 Each of the following events shall be treated as a Material Breach of this Contract:

(a) the warranty given by the Contractor pursuant to Clause **{** REF _Ref_ContractCompanion_9kb9Ur09D \w \h \t * MERGEFORMAT **}** is materially untrue; or

(b) the Contractor commits a material breach of its obligation to notify the Authority of any OOTNC as required by Clause **{** REF _Ref_ContractCompanion_9kb9Ur287 \w \h \t * MERGEFORMAT **}**; or

(c) the Contractor fails to provide details of proposed mitigating factors which in the reasonable opinion of the Authority, are acceptable.

35.5 In the event that the Authority terminates the Contract under Clause **{** REF _Ref_ContractCompanion_9kb9Ur18H \r \h **}** (Termination) as a result of a Material Breach in any of the circumstances listed in Clause **{** REF _Ref17191546 \r \h **}** above, the Authority shall be entitled to recover from the Contractor:

(a) the amount of any loss resulting from the termination; and

(b) any other loss sustained in consequence of any breach of this Clause **{** REF _Ref16517959 \w \h **}**, where the Contract has not been terminated.

Duties of the Authority

35.6 In exercising its rights or remedies under this Clause **{** REF _Ref16517965 \w \h **}**, the Authority shall:

(a) 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.

(b) Without prejudice to Clause **{** REF _Ref_ContractCompanion_9kb9Ur09J \w \h \t * MERGEFORMAT **}**, seriously consider, where appropriate, action other than termination of the Contract to deal with the failure by the Contractor to comply with this Clause **{** REF _Ref16517970 \w \h **}**.

36 CUSTOMS DUTY DRAWBACK

The Contract Price shall be inclusive of any UK Customs and Excise or other duty payable. The Contractor shall not make any claim for drawback of UK import duty on any portion of the Articles supplied which may be for shipment overseas.

37 UNIQUE IDENTIFIERS

Use

37.1 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. In relation to correspondence relating to payment and/or invoicing only, the Contractor must quote the applicable Unique Identifier in any communication concerning a line item, provided that this obligation shall not apply until such time as the Authority has issued the applicable Unique Identifier to the Contractor.

37.2 For EBC contractor logistic support contracts, the Contractor will generate EUPIs in fulfilling demands raised under a contractor logistic support contract. A 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.

Confirmation of Receipt

37.3 Confirmation of receipt of deliveries by Unique Identifiers shall not be construed as an acceptance of the Articles for the purposes of Clause **{** REF _Ref27990179 \r \h **}**

(Acceptance) or any other term of the Contract relating to acceptance by the Authority.

SECTION 6 – SAFETY AND SECURITY

38 SAFETY AND ENVIRONMENT

Contractor's obligations

38.1 The Contractor shall:

(a) ensure that in performing the Contract it complies with all statutory duties and obligations relating to safety and the environment and shall be responsible for ensuring that no Contract requirement causes the Contractor to be in breach of any statutory duty or obligation relating to safety and the environment;

(b) as soon as reasonably practicable draw to the Authority's attention if it appears that any Contract requirement or Clause may render the Contractor in breach of any statutory duty or obligation relating to safety and the environment; and

(c) ensure that all risks have been reduced to a level that is as low as reasonably practicable prior to the operation of the system by in service personnel.

38.2 Nothing in the Contract or in any other document created or signed on behalf of the Authority shall constitute a written undertaking for the purposes of Section 6(8) of the Health and Safety at Work etc. Act 1974 relieving the Contractor of any of his duties under Section 6 of that Act.

Breaches of safety and environmental Law

38.3 If the Contractor becomes aware of any prosecution or proceedings for criminal breaches of any safety or environmental Law related to the subject matter or the execution of this Contract, against the Contractor or any Contractor Personnel engaged in performance of this Contract, the Contractor shall immediately notify the Authority. Following such notification, the Contractor shall keep the Authority regularly informed on the progress and outcome of such prosecution or proceedings.

38.4 Within 10 (ten) Business Days of notification pursuant to Clause **{** REF _Ref44584530 \r \h **}** (or such other time period as may be agreed between the Parties), the Contractor shall provide to the Authority a plan setting out:

(a) details of the relevant breach (or alleged breach) and its likely impact (if any) on the Contractor's ability to perform its obligations under this Contract;

(b) the actions required to:

(i) remedy the breach; and

(ii) ensure that reasonable steps are taken to prevent the occurrence of similar future events which, if appropriate, may include ensuring that relevant Contractor Personnel are no longer involved in performance of the Contract;

(c) a timetable for the above actions to be implemented as soon as is reasonably practicable; and

(d) a timetable for reporting by the Contractor to the Authority on the progress of implementation of the above actions; and

the Contractor shall implement the plan in accordance with its terms (including as may be amended pursuant to Clause **{** REF _Ref44605745 \r \h **}**).

38.5 Following submission of a plan in accordance with Clause **{** REF _Ref44585587 \r \h **}**:

(a) the Authority shall consider the plan and advise the Contractor in writing of any concerns the Authority may have;

(b) if requested by the Authority, the Parties shall meet to discuss the Authority's concerns; and

(c) the Parties shall work together in good faith to agree any amendments and/or additions required to the Contractor's proposed plan to satisfy the Authority's concerns.

Environmental practice

38.6 The Contractor shall in all its operations to perform this Contract, adopt a sound proactive environmental approach that identifies, considers, and where possible, mitigates the environmental impacts of the Contractor and its supply chain. The Contractor shall provide evidence of so doing to the Authority on demand.

38.7 The Contractor is encouraged to bring to the attention of the Authority any measures which might promote sustainable procurement from a social, economic and environmental point of view.

39 OFFICIAL SENSITIVE SECURITY REQUIREMENTS

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

39.2 The Contractor shall include the requirements and obligations set out in Clause **{** REF _Ref_ContractCompanion_9kb9Ur0AI \w \h \t * MERGEFORMAT **}** in any Sub-Contract placed in connection with or for the purposes of the 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 **{** REF _Ref17122947 \r \h **}** to its Sub-Contractors and through all levels of the supply chain to the lowest level where any OFFICIAL-SENSITIVE Information is handled.

40 CYBER

40.1 The incorporation of this Clause **{** REF _Ref16518007 \r \h **}** within this Contract shall not be construed as acceptance by the Contractor of DEFCON 658 (Edition 10/17) for any future contracts or arrangements, or acceptance by the Authority of any deviations from DEFCON 658 (Edition 10/17) for any future contracts or arrangements.

40.2 The incorporation of this Clause 40 within this Contract shall not prejudice the ongoing discussions between the Authority, BAE Systems Plc and other representative defence prime contractors and ADS participating in the Defence Cyber Protection Partnership to develop a revised edition of DEFCON 658.

Authority Obligations

40.3 The Authority shall:

(a) determine the Cyber Risk Profile appropriate to this Contract and notify the Contractor of the same at the earliest possible date; and

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

Contractor Obligations

40.4 The Contractor shall, and shall (i) procure that its direct Material Sub-Contractors and (ii) require that its Sub-Contractors shall:

(a) comply with DEFSTAN 05-138 or, where applicable, the Cyber Implementation Plan attached to this Contract and for the avoidance of doubt any Cyber Implementation Plan shall be prepared and implemented in accordance with Good Industry Practice taking account of any risk-balance case and any mitigation measures required by the Authority and shall ensure that any measures taken to protect MOD Identifiable Information are no less stringent than those taken to protect the proprietary information of the Contractor;

(b) complete the CSM Risk Assessment Process in accordance with the Authority's instructions, ensuring that any change in the Cyber Risk Profile is notified to any affected Sub-Contractor, and complete a further CSM Risk Assessment or CSM Supplier Assurance Questionnaire where a change is proposed to the Contractor's supply chain or on receipt of any reasonable request by the Authority;

(c) re-perform the CSM Supplier Assurance Questionnaire no less than once in each year of this Contract commencing on the first anniversary of completion of the CSM Supplier Assurance Questionnaire to demonstrate continued compliance with the Cyber Security Instructions;

(d) having regard to the state of technological development, implement and maintain all appropriate technical and organisational security measures to discharge its obligations under this Clause **{** REF _Ref16518007 \r \h **}** in accordance with Good Industry Practice provided always that where there is a conflict between the Contractor's obligations under Clause **{** REF _Ref28943741 \w \h **}** above and this Clause **{** REF _Ref28943743 \w \h **}** the Contractor shall notify the Authority in accordance with the notification provisions in DEFSTAN 05-138 as soon as it becomes aware of the conflict and the Authority shall determine which standard or measure shall take precedence;

(e) comply with all Cyber Security Instructions notified to it by the Authority as soon as reasonably practicable, and if such Cyber Security Instructions require a Change to the terms of this Contract the Change Procedure shall apply;

(f) notify the JSyCC WARP in accordance with ISN 2017/03 as amended or updated from time to time and the Contractors NSA/DSA, and in the case of a Sub-Contractor also notify the Contractor, immediately in writing as soon as they know or believe that a Cyber Security Incident has or may have taken place providing initial details of the circumstances of the incident and any mitigation measures already taken or intended to be taken, and providing further information in phases, as full details become available;

(g) in coordination with its NSA/DSA, investigate any Cyber Security Incidents fully and promptly and co-operate with the Authority and its agents and representatives to take all steps to mitigate the impact of the Cyber Security Incident and minimise the likelihood of any further similar Cyber Security Incidents. For the avoidance of doubt, this shall include complying with any reasonable technical or organisational security measures deemed appropriate by the Authority and the Contractors NSA/DSA in the circumstances and taking into account the Cyber Risk Profile;

(h) consent to the Authority recording and using information obtained via the Supplier Cyber Protection Service in relation to the Contract for the purposes of the Cyber Security Model which shall include any agreed Cyber Implementation Plan, provided always that such information shall not be confidential to the Contractor. For the avoidance of doubt such information shall include the cyber security accreditation of the Contractor and / or Sub-Contractor as appropriate; and

(i) include provisions equivalent to those set out in Paragraph 3 of Part A of Schedule 21 (Flow-Down Provisions) in all relevant Sub-Contracts, and shall notify the Authority upon becoming aware of any material breach of such provisions by any of its Sub-Contractors.

Management of Sub-Contractors

40.5 The Authority agrees that the Contractor shall be entitled to rely on the self-certification by the Sub-Contractor of its compliance with this Clause **{** REF _Ref16518007 \r \h **}** in accordance with Clause **{** REF _Ref28943741 \w \h **}**. In the event that the Sub-Contractor is found to be in breach of its obligations, and where the Contractor has relied upon the Sub-Contractor's self-certification, the Contractor shall not be in breach of this Clause **{** REF _Ref16518007 \r \h **}** and shall have no liability whatsoever.

40.6 Where a Sub-Contractor notifies the Contractor that it cannot comply with the requirements of DEFSTAN 05-138, the Contractor shall require a Sub-Contractor to prepare and implement a Cyber Implementation Plan in accordance with Good Industry Practice taking account of any risk-balance case and any mitigation measures required by the Contractor and shall ensure that any measures taken to protect MOD Identifiable Information are no less stringent than those taken to protect the proprietary information of the Sub-Contractor. Where the Contractor has reasonably relied on the Sub-Contractor's self-certification and the Sub-Contractor is subsequently found to be in breach of its obligations, the Contractor shall not be in breach of this Clause **{** REF _Ref16518007 \r \h * MERGEFORMAT **}**.

Records

40.7 The Contractor shall keep and maintain, and shall ensure that any Sub-Contractor shall keep and maintain, until 6 (six) years after termination or expiry of or final payment under this Contract, or as long a period as may be agreed between the Parties, including:

(a) all documents required to demonstrate compliance with DEFSTAN 05-138 and this Clause **{** REF _Ref16518007 \r \h **}**, including any information used to inform the CSM Risk Assessment Process and to carry out the CSM Supplier Assurance Questionnaire, together with any certificates issued to the Contractor and/or Sub-Contractor; and

(b) copies of documents demonstrating compliance with Clause **{** REF _Ref44952117 \w \h **}** and in relation to any notifications made under Clause **{** REF _Ref44952150 \w \h **}** and/or investigation under Clause **{** REF _Ref44952166 \w \h **}**.

40.8 The Contractor shall, and shall ensure that any Sub-Contractor shall on request provide the Authority, the Authority's representatives and/or the Contractors NSA/DSA such access to the aforementioned records as may be required in connection with this Clause **{** REF _Ref16518007 \r \h **}**.

Audit

40.9 In the event of a Cyber Security Incident the Contractor agrees that the Authority and its representatives, in coordination with the Contractor's NSA/DSA, may, subject to Clauses **{** REF _Ref51340592 \r \h * MERGEFORMAT **}** and **{** REF _Ref51340594 \r \h * MERGEFORMAT **}**, conduct such audits as are required to establish (i) the cause of the Cyber Security Incident; (ii) the impact of the Cyber Security Incident; (iii) the MOD Identifiable Information affected; and (iv) the work carried out by the Contractor to resolve the Cyber Security Incident and to mitigate the effects, so that the Cyber Security Incident is resolved to the satisfaction of the Authority and the NSA/DSA.

40.10 In addition to the rights in Clause **{** REF _Ref44952638 \w \h **}**, the Authority or its representatives and/or the Contractor's NSA/DSA, either solely or in combination, may at any time during a period of 6 (six) years following the termination or expiry of or final payment under this Contract, but not more than once in any calendar year, conduct an audit for the following purposes where the Contractor continues to hold MOD Identifiable Information:

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

(b) to review the Contractor's and/or any Sub-Contractor's compliance with its obligations under DEFSTAN 05-138 or a Cyber Implementation Plan; and

(c) to review any records created during the provision of the Contractor Deliverables, including any documents, reports and minutes which refer or relate to the Contractor Deliverables, for the purposes of Clauses **{** REF _Ref_ContractCompanion_9kb9Ur0AK \w \h \t * MERGEFORMAT **}** and **{** REF _Ref_ContractCompanion_9kb9Ur123 \w \n \h \t * MERGEFORMAT **}** above.

Subject to Clause **{** REF _Ref51866679 \r \h **}**, in the event of an audit by the Authority or its representatives, the audit shall be carried out at the Authority's expense (including the Contractor's reasonable costs of the audit).

40.11 The Authority acting reasonably shall propose the scope of each audit in writing with a view to seeking the agreement of the Contractor but shall make the ultimate decision on the scope. For the avoidance of doubt the scope of the audit shall not grant the Authority any unsupervised access to any of the Contractor's information systems or electronic communications networks. The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor and/or Sub-Contractor or delay the provision of the Contractor Deliverables and supplier information received by the Authority in connection with the audit shall be treated as confidential information. Provided that the Contractor is not in breach of its obligations under this Clause **{** REF _Ref16518007 \r \h **}**, where as a result of such audit the Contractor is unable to or is delayed in fulfilling its obligations under the Contract the Contractor shall be entitled to claim a Delay Event in accordance with Clause **{** REF _Ref521687363 \r \h **}** (Delay Events).

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

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

(b) reasonable access to any Sites controlled or operated by the Contractor or any Associated Company and used in the performance of the Contract to the extent required within the permitted scope of the audit and, where such Sites are outwith the control of the Contractor, shall use reasonable endeavours to secure sufficient rights of access for the Auditors as shall be necessary to allow audits to take place; and

(c) access to any relevant staff.

40.13 The Authority shall endeavour to (but is not obliged to) provide at least 15 (fifteen) calendar days' notice of its intention to conduct an audit.

40.14 Subject to Clauses **{** REF _Ref51340869 \r \h **}** and **{** REF _Ref51866679 \r \h **}**, the Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause **{** REF _Ref16518007 \r \h **}**.

40.15 Where an audit identifies a material breach by the Contractor of the terms of this Clause **{** REF _Ref16518007 \r \h **}**, the Contractor shall reimburse the Authority for all the Authority's reasonable costs incurred (which shall be evidenced to the Contractor) in the course of the audit.

40.16 The Contractor shall in its Sub-Contracts include rights for the Authority to enforce the terms of Clauses **{** REF _Ref44952638 \w \h **}** to **{** REF _Ref44953427 \w \h **}** (inclusive) in accordance with the Contracts (Rights of Third Parties) Act 1999.

General

40.17 On termination or expiry of this Contract the provisions of this Clause **{** REF _Ref16518007 \r \h **}** excepting **{** REF _Ref_ContractCompanion_9kb9Ur138 \r \h **}** and **{** REF _Ref16518136 \r \h **}** above shall continue in force so long as the Contractor and/or any Sub-Contractor holds any MOD Identifiable Information relating to this Contract.

40.18 Termination or expiry of this Contract shall not affect any rights, remedies, obligations or liabilities of the Parties under this Clause **{** REF _Ref16518007 \r \h **}** that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

40.19

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

(b) Subject to Clause **{** REF _Ref28872837 \w \h **}** above, where the Contractor seeks such adjustment or extension, the Authority will proceed in accordance with the Change Procedure to determine the request for adjustment or extension. The Contractor must deliver a Contractor Change Proposal to the Authority within 8 (eight) weeks (or other period agreed by the Parties) of the occurrence of the change in DEFSTAN 05-138 or Cyber Risk Profile or both, identifying the impact of that change and accompanied by full details of the request for adjustment. For the avoidance of doubt, the Authority shall not be required to withdraw any Notice of Change which may have been issued insofar as it relates to the Cyber Risk Profile or Cyber Security Instructions or both whether or not the Contractor Change Proposal is rejected. If the Contractor does not agree with the Authority's determination, then the provisions of Clause **{** REF _Ref16517939 \r \h **}** (Dispute

Resolution Procedure) or any agreed alternative dispute resolution procedure shall apply.

40.20 The Contractor shall not recover any costs and/or other losses under or in connection with this Clause **{** REF _Ref16518007 \r \h **}** where such costs and/or other losses:

(a) have been recovered by the Contractor elsewhere in this Contract or otherwise; or

(b) are recoverable by the Contractor through another route, including insured losses or losses recoverable from the Contractor's Sub-Contractors or suppliers, provided that if the Contractor has used reasonable endeavours to recover such costs and/or losses elsewhere and has been unable to do so, the Contractor shall (to the extent it is entitled to do so under the provisions of this Clause **{** REF _Ref16518007 \r \h **}**) be entitled to recover such costs and/or losses from the Authority.

For the avoidance of doubt this shall include the cost of implementing any upgrades or changes to any information system or electronic communications network whether in response to a Cyber Security Incident or otherwise, where the Contractor is able to or has recovered such sums in any other provision of this Contract or has recovered such costs and/or losses in other contracts between the Contractor and the Authority or with other bodies.

Deviation from DEFCON 658 (Edition 10/17)

40.21 On incorporation of the provisions of DEFCON 658 (Edition 10/17) into this Clause **{** REF _Ref16518007 \r \h **}** as at the Effective Date, the Parties have agreed certain deviations to those provisions in anticipation of those deviations being reflected in the next agreed revised edition of DEFCON 658 to be issued after the Effective Date. To the extent that the deviations agreed by the Parties conflict with any equivalent provision of the next agreed revised edition of DEFCON 658, the equivalent provision of the next revised edition of DEFCON 658 shall be incorporated in accordance with the Change Procedure.

SECTION 7 – CONTRACT MANAGEMENT

41 GOVERNANCE AND CONTRACT MANAGEMENT

The provisions of Schedule 17 (Governance and Contract Management) shall apply.

42 EARNED VALUE MANAGEMENT

The provisions of Schedule 16 (Earned Value Management) shall apply.

43 DISPUTE RESOLUTION (ENGLISH LAW)

43.1 Except as otherwise expressly provided by the Contract, the Parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this Contract in accordance with Schedule 18 (Dispute Resolution Procedure).

43.2 Where in respect of any dispute:

(a) the relevant terms of this Contract state that such dispute is to be referred to the Fast-Track Dispute Resolution Procedure;

(b) the Notifying Party, acting reasonably, believes that the subject matter of the dispute is not capable of determination by arbitration in accordance with the remainder of this Clause **{** REF _Ref16517939 \r \h **}**; or

(c) the Parties otherwise agree that it is appropriate to refer that dispute to the Fast-Track Dispute Resolution Procedure,

that dispute shall be referred to the Fast-Track Dispute Resolution Procedure in accordance with Paragraph 3 of Schedule 18 (Dispute Resolution Procedure). Any other dispute or claim arising out of or relating to this Contract shall be referred to the Dispute Resolution Procedure in accordance with Paragraph 2 of Schedule 18 (Dispute Resolution Procedure).

43.3 In the event that the dispute or claim is not resolved by the use of the procedure set out in Schedule 18 (Dispute Resolution Procedure), the dispute shall be referred to arbitration in accordance with this Clause **{** REF _Ref16517939 \r \h **}**, provided that the Parties agree that disputes referred to the Fast-Track Dispute Resolution Procedure in accordance with Clause **{** REF _Ref50027360 \w \h **}** above shall not be referred to arbitration.

43.4 The Party initiating the arbitration shall give a written Notice of Arbitration to the other Party. The Notice of Arbitration shall specifically state:

(a) that the dispute is referred to arbitration; and

(b) the particulars of the Contract out of or in relation to which the dispute arises.

43.5 Unless otherwise agreed in writing by the parties, the arbitration and this Clause **{** REF _Ref16517939 \r \h **}** shall be governed by the provisions of the Arbitration Act 1996.

43.6 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.

43.7 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.

44 EXIT MANAGEMENT

44.1 The draft Exit Plan scope is set out in Schedule 19 (Exit Strategy). The Parties acknowledge that if:

(a) the Authority serves a Termination Notice; or

(b) by the date falling 3 (three) years prior to the Expiry Date the Authority has not confirmed that it intends to enter into a Follow-on Contract,

it will be necessary to update the Exit Plan to set out the activities that need to be carried out by the Contractor as a result of termination or expiry of this Contract. The Exit Plan shall be updated in accordance with Clause **{** REF _Ref17188083 \r \h **}** (Consequences of Termination) and shall address the matters set out in Clause **{** REF _Ref527566936 \r \h **}**.

44.2 The matters which must be addressed in any update to the Exit Plan include:

(a) arrangements for compliance with any Authority directions on the completion of Contractor Deliverables issued pursuant to Clause **{** REF _Ref17188083 \r \h **}** (Consequences of Termination);

(b) arrangements for the transfer of information, records and rights in accordance with any Authority instructions;

(c) delivery to the Authority of details of all unused and undamaged materiel and any Contractor Deliverables in the course of manufacture issued pursuant to Clause **{** REF _Ref17188083 \r \h **}** (Consequences of Termination);

(d) arrangements for the transfer of any unused and undamaged materiel and any Contractor Deliverables in the course of manufacture in accordance with any Authority instructions issued pursuant to Clause **{** REF _Ref17188083 \r \h **}** (Consequences of Termination);

(e) return or disposal of GFA that have been issued to the Contractor;

(f) compliance with any legal and contractual obligations arising as a result of termination of this Contract;

(g) settling of financial liabilities between the Parties;

(h) arrangements for the termination, amendment or continuation of Sub-Contracts;

(i) provision of co-operation and assistance to the Authority in accordance with Clause **{** REF _Ref17283970 \r \h **}**;

(j) Authority actions or decisions required to enable the Contractor to perform its obligations under the Exit Plan; and

(k) timescales, individual responsibility owners, risks and opportunities and security aspects in relation to the completion of the matters set out in this Clause **{** REF _Ref527566936 \w \h **}**.

Co-operation and assistance on termination or expiry

44.3 Following the issue of a Termination Notice or during the 3 (three) year period prior to the Expiry Date (as applicable), the Contractor shall provide such reasonable co-operation and assistance as may reasonably be required by the Authority to ensure that the termination or expiry of this Contract is effected with the minimum amount of disruption to the NGMS programme. Such assistance shall include responding with information and documentation to the Authority's reasonable questions relating to the provision of the Contractor's obligations under this Contract.

45 CO-OPERATION ON EXPIRY OF CONTRACT

45.1 Upon the expiry of the Contract the Contractor agrees to comply with the Exit Plan, and to co-operate with the Authority to such extent as he may be reasonably required to do so for a period of up to 6 (six) months from the date of expiry, such period to be determined by the Authority, to ensure an orderly and efficient transition from the management by the Contractor to management by the Authority or some other person.

45.2 The Authority and the Contractor shall agree a fair and reasonable price for satisfying the provisions of this Clause **{** REF _Ref16518169 \n \h **}**.

SECTION 8 – SUPPLY CHAIN MANAGEMENT AND SUB-CONTRACTING

46 SUB-CONTRACTING

Accountability

46.1 The Contractor shall be responsible to the Authority for acts and omissions of any Sub-Contractor in relation to such Sub-Contractor's performance in connection with this Contract, and any act or omission of that Sub-Contractor in relation to such Sub-Contractor's performance in connection with this Contract shall be regarded for the purposes of this Contract as an act or omission by the Contractor.

46.2 The Contractor shall:

(a) report to the Authority on Sub-Contractor performance via the bi-monthly supply chain review sessions held in accordance with Paragraphs 3.15 and 3.16 (Supporting Reviews) of Schedule 17 (Governance and Contract Management); and

(b) without prejudice to Clause **{** REF _Ref50020563 \w \h **}** above, inform the Authority as soon as practicable after becoming aware of any material breaches, performance issues or non-compliances in relation to any Sub-Contract.

46.3 The Contractor shall provide a copy, at no charge to the Authority, of any Material Sub-Contract on receipt of a request for such by the Authority's authorised representative. The Contractor shall be entitled to redact any part of such Material Sub-Contract which the Contractor is prohibited from disclosing to the Authority pursuant to the terms of that Material Sub-Contract, provided that the Contractor shall have used reasonable endeavours to include in all Material Sub-Contracts provisions which allow the Contractor to provide a copy of the full Material Sub-Contract to the Authority.

Management of Material Single Source Sub-Contracts (Non-Qualifying)

46.4 The Parties acknowledge that, as at the Effective Date, certain of the Specifications for this Contract require the Contractor to enter into a Material Single Source Sub-Contract (Non-Qualifying) with a particular Sub-Contractor and do not permit the Contractor to appoint an alternative Sub-Contractor within the scope of the relevant Specifications.

46.5 Without prejudice to the Contractor's obligations in relation to management of Sub-Contracts generally, the Contractor shall be responsible for monitoring the performance and capability of all Material Single Source Sub-Contracts (Non-Qualifying). If the Contractor becomes aware (or reasonably ought to have become aware) of any act or omission of a Sub-Contractor under any Material Single Source Sub-Contract (Non-Qualifying) or of any change in that Sub-Contractor's capability and/or performance which may have or is likely to have an impact on the Contractor's ability to perform its obligations under this Contract:

(a) the Contractor shall be responsible for identifying:

(i) an alternative Sub-Contractor who is capable of providing the required goods and/or services to ensure that the Contractor is able to continue to satisfy its obligations under this Contract; and

(ii) any Change required to be made to the Contract (including to the relevant Specifications) to allow the Contractor to enter into a Sub-Contract with such alternative Sub-Contractor;

(b) the Contractor shall serve a Change Proposal in relation to such required Change in accordance with Clause **{** REF _Ref17361079 \w \h **}** (Change) as soon as practicable; and

(c) where the Contractor is unable to meet its obligations under this Contract due to the act, omission or change in the capability and/or performance of a Sub-Contractor under a Material Single Source Sub-Contract (Non-Qualifying) and:

(i) the Contractor could not reasonably have been expected to identify and/or resolve the issue at an earlier stage in order to meet the current delivery schedule; and/or

(ii) the Authority has failed to comply or is delayed in complying with the Change Procedure,

the Contractor shall, provided that it has complied with its obligations under this Clause **{** REF _Ref50021401 \w \h **}**, be entitled to a Delay Event in accordance with Clause **{** REF _Ref521687363 \r \h **}** (Delay Events) in respect of the Article(s) to which the relevant Material Single Source Sub-Contract (Non-Qualifying) relates only.

Supply chain management

46.6 The Contractor shall produce and maintain a Supply Chain Management Plan satisfying the requirements of Paragraph 3.17 (Supporting Reviews) of Schedule 17 (Governance and Contract Management) and shall procure and manage its sub-contracts in connection with this Contract in accordance with the Supply Chain Management Plan, which shall be provided by the Contractor on an annual basis in accordance with Paragraph 5.2 (Reporting and Deliverables) of Schedule 17 (Governance and Contract Management).

46.7 Details of the Material Sub-Contractors for the Contract as at the Effective Date will be set out in the first issue of the Supply Chain Management Plan. When the Contractor enters into a new Material Sub-Contract, it shall as soon as reasonably practicable provide the Authority with the following information in relation to that Material Sub-Contract:

(a) the Material Sub-Contractor's name and registered address; and

(b) the scope of supply under the Material Sub-Contract, by reference to the Statement of Requirements and/or the relevant Specifications (as appropriate).

Determining whether a contract is a qualifying sub-contract

46.8 If the Contractor proposes to enter into a Sub-Contract the Contractor shall comply with its obligations under section 29 of the Defence Reform Act and Regulation 61 of the SSCR in relation to assessing whether the proposed Sub-Contract would be a qualifying sub-contract for the purposes of the Defence Reform Act 2014 and the SSCR.

Supply chain security

46.9 The Contractor shall have in place supply chain security management systems which monitor supplier performance, business risk (including continuity, security of supply and change of control of Sub-Contractors), financial risk, ethical and reputational risk and information / asset security in accordance with Good Industry Practice.

Flow-down of obligations to Sub-Contractors

46.10 The Contractor shall comply with Schedule 21 (Flow-Down Provisions).

46.11 The Contractor shall:

(a) use reasonable endeavours to include in its Sub-Contracts appropriate termination provisions which reflect the termination provisions agreed under Clauses **{** REF _Ref28876507 \r \h **}** (Force Majeure Events), **{** REF _Ref17223210 \r \h **}** (Voluntary Termination), **{** REF _Ref28876544 \r \h **}** (Termination) and **{** REF _Ref28862052 \r \h **}** (Change of Control of Contractor); and

(b) obtain Sub-Contract terms that enable the Contractor to terminate any Sub-Contract at the minimum cost to the Contractor and/or the Authority that is reasonably possible, having due regard to the duration and value of the Sub-Contract.

46.12 The Contractor shall use its reasonable endeavours to include in all Sub-Contracts in relation to this Contract:

(a) a requirement that either party to the Sub-Contract may release to the Authority any of those parts of the sub-contract documentation as are necessary to demonstrate the Contractor's compliance with the provisions of the Contract and that any such release shall not amount to a breach of any provision of confidentiality contained within the Sub-Contract; and

(b) provisions that the Authority's rights, which are otherwise enforceable under the Contracts (Rights of Third Parties) Act 1999, are not rendered unenforceable.

47 SUB-CONTRACTING AND PROMPT PAYMENT

47.1 Sub-Contracting any part of the Contract shall not relieve the Contractor of any of the Contractor's obligations, duties or liabilities under the Contract

47.2 Where the Contractor enters into a Sub-Contract with:

(a) a Sub-Contractor who is an SME, the Contractor shall; or

(b) any other Sub-Contractor, the Contractor shall use its reasonable endeavours to,

cause a term to be included in such Sub-Contract:

(i) providing that where the Sub-Contractor submits an invoice to the Contractor, the Contractor will consider and verify that invoice in a timely fashion;

(ii) providing that the Contractor shall pay the Sub-Contractor any sums due under such an invoice no later than a period of 30 (thirty) days from the date on which the Contractor has determined that the invoice is valid and undisputed;

(iii) providing that where the Contractor fails to comply with paragraph **{** REF _Ref_ContractCompanion_9kb9Ur149 \w \n \h \t * MERGEFORMAT **}** above, and there is an undue delay in considering and verifying the invoice, that the invoice shall be regarded as valid and undisputed for the purposes of paragraph **{** REF _Ref_ContractCompanion_9kb9Ur14B \w \n \h \t * MERGEFORMAT **}** after a reasonable time has passed; and

(iv) requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards to any Sub-Contractor, provisions having the same effect as paragraphs **{** REF _Ref_ContractCompanion_9kb9Ur149 \n \h **}** to **{** REF _Ref36041278 \n \h **}**.

SECTION 9 – INTELLECTUAL PROPERTY RIGHTS, RECORDS AND DATA

48 INTELLECTUAL PROPERTY RIGHTS

48.1 The provisions of Schedule 22 (Intellectual Property Rights) shall apply.

48.2 The Contractor shall not place any sub-contract or order involving the design or development of equipment required under this Contract without the prior written consent of the Authority. Unless otherwise agreed, such consent shall be conditional upon the

proposed sub-contractor entering into a direct agreement with the Authority in the form set out in Annex B to Schedule 22 (Intellectual Property Rights) (the "**DEFFORM 177**").

48.3 The Contractor shall notify the Authority as soon as it becomes aware that it is required to or intends to place a sub-contract or order to which Clause **{** REF _Ref51272321 \w \h **}** above relates, and:

(a) the Contractor shall provide details of:

(i) the company that it intends to place the relevant sub-contract or order with;

(ii) the scope of the relevant sub-contract or order and any intellectual property expected to be generated under it which the Authority is funding; and

(iii) the impact (if any) that a delay in placing the relevant sub-contract or order may have on the Contractor's ability to deliver the Articles;

(b) wherever possible such notification shall be accompanied by 2 (two) copies of the DEFFORM 177 signed by the sub-contractor;

(c) where the Contractor is not able to provide signed copies of the DEFFORM 177 with the notification, the Authority shall engage with the sub-contractor directly to negotiate the DEFFORM 177; and

(d) if the sub-contractor has not signed or agreed to sign the DEFFORM 177 within 6 (six) months of the Contractor's notification under this Clause **{** REF _Ref51928207 \r \h **}{** REF _Ref51272321 \w \h **}** (or such other time period as may be agreed between the Parties), the Parties shall consider and discuss other suitable options and/or mitigations available, which may include identification by the Contractor of an alternative sub-contractor.

49 DISCLOSURE OF INFORMATION

49.1 Subject to Clause **{** REF _Ref21609983 \w \h **}** to **{** REF _Ref21609986 \w \h **}** each Party:

(a) shall treat in confidence all Information it receives from the other;

(b) shall not disclose any of that Information to any third party without the prior written consent of the other Party, which consent shall not unreasonably be withheld, except that the Contractor may disclose Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of the Contract,

(c) shall not use any of that Information otherwise than for the purposes of the Contract; and

(d) shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under the Contract.

49.2 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 the Contract:

(a) is disclosed to its employees and Sub-Contractors, only to the extent necessary for the performance of the Contract ; and

(b) 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 the Contract or any sub-contract under it.

49.3 The Contractor shall ensure that its employees are aware of its arrangements for discharging the obligations at Clauses **{** REF _Ref21610102 \w \h **}** and **{** REF _Ref21610103 \w \h **}** before they receive Information and take such steps as may be reasonably practicable to enforce such arrangements.

49.4 Clauses **{** REF _Ref21610102 \w \h **}**, **{** REF _Ref21610103 \w \h **}**, **{** REF _Ref50019575 \n \h **}** and **{** REF _Ref50019713 \n \h **}** shall not apply to any Information to the extent that either Party:

(a) exercises rights of use or disclosure granted otherwise than in consequence of, or under, the Contract;

(b) has the right to use or disclose the Information in accordance with other conditions of the Contract; or

(c) can show:

(i) that the Information was or has become published or publicly available for use otherwise than in breach of any provision of the 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 the Contract;

(iii) that the Information was received without restriction on further disclosure from a third party who lawfully acquired it and who is himself 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 the Contract;

provided the relationship to any other Information is not revealed.

49.5 Neither Party shall be in breach of this Clause **{** REF _Ref51593667 \r \h **}** 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.

49.6 The Authority may disclose the Information:

(a) on a confidential basis 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;

(b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

(c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

(d) on a confidential basis to a professional adviser, consultant or other person engaged by the Authority for any purpose relating to or connected with this Contract;

(e) on a confidential basis for the purpose of the exercise of its rights under the Contract; or

(f) on a confidential basis to a proposed body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under the 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 **{** REF _Ref51593698 \r \h **}**.

49.7 Before sharing any Information in accordance with Clause **{** REF _Ref_ContractCompanion_9kb9Ur15E \r \h **}** above, the Authority shall where reasonably practicable consult with the Contractor and may redact the Information following such

consultation. The Authority shall take into consideration any representations made by the Contractor, but any decision to redact information made by the Authority shall be final.

49.8 The Authority shall take all reasonable precautions necessary to ensure that all Contractor Information disclosed by the Authority to a third party pursuant to Clauses **{** REF _Ref50019504 \r \h **}** to **{** REF _Ref50019514 \n \h **}**:

(a) is disclosed to such third party's employees and sub-contractors only to the extent necessary for the performance of or exercise of the Authority's rights under the Contract; and

(b) is treated in confidence by them and not disclosed except with prior written consent or used for any purpose not relating to or connected with this Contract.

49.9 The Authority shall ensure that the employees of any third party recipient of Information pursuant to Clause **{** REF _Ref50019504 \r \h **}** to **{** REF _Ref50019514 \n \h **}** above are aware of its arrangements for discharging the obligations at Clauses **{** REF _Ref21610102 \w \h * MERGEFORMAT **}** and **{** REF _Ref50019575 \n \h **}** before they receive Information and take such steps as may be reasonably practicable to enforce such arrangements.

49.10 The Authority shall not be in breach of the Contract where it can show that any disclosure of Information is made solely and to the extent necessary to comply with the Freedom of Information Act 2000 ("**the Act**") or the Environmental Information Regulations 2004 ("**the Regulations**"). To the extent permitted by the time for compliance under the Act or the Regulations, the Authority shall consult the Contractor where the Authority is considering the disclosure of Information under the 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 Act or the Regulations is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Act or the Regulations. For the avoidance of doubt, nothing in this Clause shall affect the Contractor's rights at law.

49.11 Nothing in this Clause shall affect the Parties' obligations of confidentiality where Information is disclosed orally in confidence.

50 AUTHORITY DATA

50.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.

50.2 The Contractor shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority, provided that this Clause **{** REF _Ref50127245 \r \h **}** shall not apply to limb (b) of the definition of Authority Data.

50.3 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, provided that this Clause **{** REF _Ref36109544 \r \h **}** shall not apply to limb (b) of the definition of Authority Data.

50.4 Subject to Clause **{** REF _Ref527712254 \r \h **}**, the Contractor shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data.

50.5 The Contractor shall perform secure back-ups of all electronic Authority Data held on its IT systems and shall ensure that up-to-date back-ups are stored in accordance with its business continuity plans and the Contractor shall procure (as reasonably required by the Authority) that the Sub-Contractors perform secure backups 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 upon reasonable request, provided that the Authority has the right to request copies of the Authority Data contained on such back-ups.

50.6 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 the requirements of Clause **{** REF _Ref16518007 \r \h **}** (Cyber).

50.7 If the Authority Data is corrupted, lost or sufficiently degraded because of the Contractor's default to be unusable, the Authority may, where it does not already have a copy:

(a) 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; and/or

(b) itself restore or procure the restoration of Authority Data, and shall be repaid by the Contractor any reasonable proven expenses (in the same level of detail as recurred by the Authority from the Contractor) incurred directly in doing so.

50.8 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 and/or Authority may be required to take, giving reasonable available details (which shall be updated by the Contractor as more information becomes available).

50.9 Where the Contractor stores Authority Data on the Authority's IT systems, the Authority shall be responsible for preserving the integrity of Authority Data and preventing the loss or corruption of such data when in the Authority's possession or control. The Authority shall ensure that up to date back-ups are stored in accordance with its business continuity plans and such back-ups are made available to the Contractor upon reasonable request.

51 SUPPLY OF DATA FOR HAZARDOUS ARTICLES, MATERIAL AND SUBSTANCES

51.1 The Contractor shall provide to the Authority:

(a) for each hazardous material or substance supplied, a Safety Data Sheet (SDS) in accordance with the Classification, Labelling and Packaging (CLP) Regulation 1272/2008; and

(b) for each hazardous Article, safety information as required by the Health and Safety at Work, etc Act 1974, at the time of supply.

Nothing in this Clause **{** REF _Ref16518216 \n \h **}** shall reduce or limit any statutory duty or legal obligation of the Authority or the Contractor.

51.2 If the item of supply contains or is a substance falling within the scope of the REACH Regulation (EC) No 1907/2006:

(a) the Contractor shall provide to the Authority an SDS for the substance in accordance with the Regulation. 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 and forward it to the Authority and to the address listed in Clause **{** REF _Ref_ContractCompanion_9kb9Ur17A \w \h \t * MERGEFORMAT **}** below, and

(b) the Authority, if it becomes aware of new information regarding the hazardous properties of the substance, or any other information that might call into question the appropriateness of the risk management measures identified in the safety data sheet supplied, shall report this information in writing to the Contractor.

51.3 If the Contractor is required, under, or in connection with the Contract, to supply Articles or components of Articles that, in the course of their use, maintenance, disposal, or in the event of an accident, may release hazardous materials or substances, they shall provide to the Authority a list of those hazardous materials or substances, and for each hazardous material or substance listed, provide an SDS.

51.4 The Contractor shall provide to the Authority a completed DEFFORM 68.

51.5 If the Articles, materials or substances are ordnance, munitions or explosives, in addition to the requirements of the CLP Regulation 1272/2008 and REACH the Contractor shall

comply with hazard reporting requirements of DEF STAN 07-085 Design Requirements for Weapons and Associated Systems.

51.6 If the Articles, materials or substances are or contain or embody a radioactive substance as defined in the Ionising Radiation Regulations SI 1999/3232, the Contractor shall additionally provide details of:

(a) activity; and

(b) the substance and form (including any isotope).

51.7 If the Articles, materials or substances have magnetic properties, the Contractor shall additionally provide details of the magnetic flux density at a defined distance, for the condition in which it is packed.

51.8 Any SDS to be provided in accordance with this Clause **{** REF _Ref16518224 \n \h **}**, including any related information to be supplied in compliance with the Contractor's statutory duties under Clauses **{** REF _Ref_ContractCompanion_9kb9Ur169 \w \h \t * MERGEFORMAT **}** and **{** REF _Ref_ContractCompanion_9kb9Ur16B \w \h \t * MERGEFORMAT **}**, any information arising from the provisions of Clauses **{** REF _Ref_ContractCompanion_9kb9Ur16D \w \h \t * MERGEFORMAT **}**, **{** REF _Ref_ContractCompanion_9kb9Ur16F \w \h \t * MERGEFORMAT **}** and **{** REF _Ref_ContractCompanion_9kb9Ur178 \w \h \t * MERGEFORMAT **}** and the completed DEFFORM 68, shall be sent directly to the Authority's Commercial Lead as soon as practicable, and no later than 8 (eight) weeks prior to the Contract delivery date, unless otherwise stated in the Contract. In addition, so that the safety information can reach users without delay, a copy shall be sent preferably as an email with attachment(s) in Adobe PDF or MS WORD format, or, if only hardcopy is available, to the addresses below:

(a) Hard copies to be sent to:

Hazardous Stores Information System (HSIS)
Department of Safety & Environment, Quality and Technology (D S & EQT)
Spruce 2C, #1260,
MOD Abbey Wood (South)
Bristol BS34 8JH

(b) Emails to be sent to:

{ HYPERLINK "mailto:DESTECH-QSEPEnv-HSISMulti@mod.gov.uk" **}**

51.9 Failure by the Contractor to comply with the requirements of this Clause **{** REF _Ref16518233 \n \h **}** shall be grounds for rejecting the affected Articles. Any breach by

the Contractor of this Clause **{** REF _Ref16518237 \n \h **}** shall be regarded as a Contractor Default for which the Authority reserves the right to require the Contractor to rectify the breach in accordance with Clause **{** REF _Ref17122948 \r \h **}** (Contractor Default) and the provisions of Clause **{** REF _Ref_ContractCompanion_9kb9Ur18F \w \n \h \t * MERGEFORMAT **}** (Persistent Breach) and **{** REF _Ref_ContractCompanion_9kb9Ur18H \w \n \h \t * MERGEFORMAT **}** (Termination) shall apply in the event of failure by the Contractor to rectify the breach.

51.10 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.

52 SUPPLY OF INFORMATION FOR NATO CODIFICATION AND DEFENCE INVENTORY INTRODUCTION

52.1 The purpose of Codification is to catalogue Items of Supply, using the minimum information required to distinguish them from similar items available. The cataloguing information is not normally a full technical specification and definition that could be used for manufacture of alternative items.

52.2 In the case of an Item of Supply for which the Contractor is the DCA, the Contractor shall:

(a) provide Technical Data to the Codification Authority, or the Authority's Agent specified by the Codification Authority, where:

(i) the Item of Supply is not already codified in the NATO Codification System (NCS); or

(ii) the Contractor has not previously supplied that information either in the recommended spare parts list supplied by the Contractor in the initial provisioning phase or under another contract.

(b) where the Item of Supply has already been NATO codified, supply the NSN(s) to the Codification Authority, or the Authority's Agent.

(c) inform the Codification Authority, or it's Agent, when and to whom the data was supplied if the information has previously been supplied by the Contractor.

52.3 In the case of an Item of Supply for which the Contractor is not the DCA, the Contractor shall ensure that the Technical Data is supplied, either by the Sub-Contract DCA or by the Contractor. The Contractor shall, where appropriate, consider including the terms of this Clause **{** REF _Ref16518266 \n \h **}**, or equivalent text, in any Sub-Contract(s), to ensure delivery of the cataloguing information.

52.4 Unless otherwise provided by the Contract, the cost of supplying the information under

Clauses **{** REF _Ref_ContractCompanion_9kb9Ur19A \w \h \t * MERGEFORMAT **}** and **{** REF _Ref_ContractCompanion_9kb9Ur19C \w \h \t * MERGEFORMAT **}** above, and any other information specifically called for under the Contract, shall be deemed to have been included in the Contract Price.

52.5 The Contractor may from time to time be requested to supply additional information necessary for Codification. To the extent that it has the right to do so, the Contractor shall supply that additional data. The extent of additional information shall be governed by the requirements of the Codification system at that time. Full details of the Codification system can be obtained from the Codification Authority.

(a) At any time during the life of the Contract the Contractor shall notify the Codification Authority of all modifications or design changes made to an Item of Supply, which affect the Item Identification, including reference number changes, Form, Fit or Function.

(b) Any payment, based upon the actual work involved, made to the Contractor for the supply of additional information under Clause **{** REF _Ref_ContractCompanion_9kb9Ur19E \w \h \t * MERGEFORMAT **}** above and, in respect of modifications and design changes approved by the Authority; the supply of updated information under Clause **{** REF _Ref_ContractCompanion_9kb9Ur19G \w \h \t * MERGEFORMAT **}** above shall be processed in accordance with the Change Procedure.

52.6 Subject to the restrictions resulting from Clause **{** REF _Ref_ContractCompanion_9kb9Ur19I \w \h \t * MERGEFORMAT **}**, the Authority shall have the right, free of charge, to use and copy or have used and copied for Codification Purposes information supplied under the provisions of this Clause **{** REF _Ref16518274 \n \h **}**, use and copying being limited to that necessary for Codification Purposes. The Authority may convert or have converted any Technical Data provided in whatever format to an alternative format, including digital formats.

52.7 Subject to the restrictions resulting from Clause **{** REF _Ref_ContractCompanion_9kb9Ur2A9 \w \h \t * MERGEFORMAT **}**, the information constituting the Item Identification may be included in the databases of codification data which are produced by the Authority or any international organisation of which the Authority is a member and may be made available to other Governments, contractors, organisations or individuals who are authorised to have access to those databases by the Authority or the organisation(s) of which the Authority is a member.

52.8 The Contractor shall endeavour to ensure that all information supplied under this Clause **{** REF _Ref16518247 \r \h **}** can be used for Codification Purposes; however, where any

of the information supplied is marked to indicate it is proprietary in nature the Contractor shall indicate the restrictions which apply to its use.

52.9 The Codification Authority shall not retain or use the Technical Data supplied under this Clause **{** REF _Ref16518282 \n \h **}** for any purpose other than for Codification.

52.10 If the DCA is located in a NATO country other than the UK, the equivalent organisation in that NATO country shall be substituted for the UKNCB. All contact between the Contractor and those equivalent organisations will be via the UKNCB.

52.11 If the DCA is located in a country which is not a member of the NATO Alliance or a NATO sponsored (NCS participating) country, the Codification Authority will be deemed to be the UKNCB, which may nominate an agent to act on its behalf.

52.12 The Contractor, Sub-Contractor or supplier may contact the Codification Authority for any information concerning the NCS.

52.13 The requirements set out in Schedule 24 (NATO Codification Requirements) shall apply in relation to Item Identification.

53 MARKING OF ARTICLES

53.1 Each Article shall be marked in accordance with the procedure laid out in Clause **{** REF _Ref16518562 \r \h **}** (Packaging for Explosives). 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 the Contract or Specifications. In the absence of such requirements, the Articles shall be marked with the MOD stock reference, NATO Stock Number (NSN) or alternative reference number shown in the Contract. Any marking method used shall not have a detrimental effect on the strength, serviceability or corrosion resistance of the Articles.

53.2 The marking shall include any serial numbers allocated to the Article.

53.3 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 **{** REF _Ref16518562 \r \h **}** (Packaging for Explosives).

54 PUBLIC RELATIONS AND PUBLICITY

54.1 Neither party shall by itself, its employees or agents communicate with representatives of the press, television, radio or other media on any matter concerning the Contract without the prior written consent of the other party.

54.2 No facilities to photograph or film in, or upon, any property used in relation to the Contract, other than the Contractor's own premises or property, shall be given or permitted by the Contractor unless the Authority has given its prior written consent, which shall not be unreasonably withheld or delayed.

54.3 As far as is reasonably practicable the Contractor shall ensure that the provisions in Clauses **{** REF _Ref27047014 \r \h **}** and **{** REF _Ref27047015 \r \h **}** are included in any Sub-Contracts.

55 USE OF ASBESTOS

Prohibition of Asbestos

55.1 Subject to Clauses **{** REF _Ref_ContractCompanion_9kb9Ur1AB \w \h \t * MERGEFORMAT **}** and **{** REF _Ref_ContractCompanion_9kb9Ur1AD \w \h \t * MERGEFORMAT **}** below, no asbestos of any type shall be incorporated into any Articles or other material to be supplied under the Contract.

Notification

55.2 The Contractor shall notify the Authority in writing as soon as they become aware that Asbestos may be incorporated in Articles or other materials to be supplied or processed during performance of the Contract.

Exemption

55.3 The Secretary of State may issue a Defence Exemption Certificate under the REACH Enforcement Regulations 2008 (the "**Regulations**") exempting the Contractor from parts of the Regulations. The Contractor may incorporate Asbestos into Articles and / or material supplied, or use or process it in the performance of services under the Contract in accordance with the conditions set out in the Defence Exemption Certificate.

55.4 If at any stage during the lifetime of the Contract, an alternative substance becomes available, the Contractor shall bring this to the attention of the Authority immediately, by notice in writing. The Authority shall then determine, in consultation with the Contractor and the Health and Safety Executive where appropriate, whether the substance would be suitable for incorporation into any Articles or material which have yet to be supplied under the Contract. The Authority may require the Contractor to suspend any further production of such Articles or material or delivery of services, pending such determination, thereby relieving the Contractor (for the time being) of any contractual obligations to provide such Articles, material or services. In the event that the Authority determines that the alternative substance would be suitable for incorporation into such Articles or material or in the performance of services in lieu of Asbestos, the Authority may vary its requirements in the light of any such determination.

55.5 If, at any stage during the lifetime of the Contract, the Secretary of State issues a further certificate which varies or revokes any Defence Exemption Certificate granted in accordance with the Regulations, the effect of which is that any further supply of the Articles or delivery of services under the Contract would be prohibited by the Regulations, the Contractor shall, on becoming aware of the further certificate, immediately refrain from incorporating Asbestos into any such Articles or performing the service and shall provide the Authority with written confirmation of this within 48 (forty-eight) hours. The Authority reserves the right to vary its requirements in the light of any such decision.

56 PACKAGING FOR EXPLOSIVES

Specifications for Explosives Packaging

56.1 General requirements for Explosives Packaging, are contained in:

(a) Def Stan 00-088 “Packaging of Ammunition and Explosives”;

(b) Def Stan 00-810 “Marking of Ammunition and Associated Packages”;

(c) Def Stan 81-041 (Parts 1 and 6) “Packaging of Defence Materiel”;

(d) STANAG 2828 “Military Pallets, Packages and Containers”;

(e) Def Stan 00-814 “Unit Loads of Ammunition for Military Use”; and

(f) Def Stan 81-146 “Packaging, Static Shielding Bags & Dissipative Materials”

56.2 Def Stans, NATO Standardisation Agreements (STANAGs), and further information are available as follows:

(a) Soft copies from the DStan internet site: https://www.dstan.mod.uk.

(b) Paper copies from:

Ministry of Defence
UK Defence Standardization
Kentigern House
65 Brown Street
GLASGOW G2 8EX

56.3 Unless specifically stated otherwise in the invitation to tender or the Contract, reference to any standard including Def Stans or STANAGs in any invitation to tender or Contract document means the edition and all amendments extant at the date of such tender or Contract.

56.4 In the event of conflict between the Contract and any Def Stan, STANAG, or other referenced standard, the Contract shall take precedence.

Contractor Responsibilities for Packaging

56.5 Where the Contractor is the PDA:

(a) they shall be responsible for seeking and gaining approval of the packaging design from the Vehicle Certification Agency, who are the competent Government authority;

(b) and intends to transfer responsibility for the Packaging design, they shall notify the Authority prior to doing so.

56.6 UN Packaging Performance Certification Approvals (UN Marks) obtained by the Contractor on behalf of MOD shall be owned by the MOD.

56.7 The Contractor and the Authority (as applicable) shall supply Explosives Packaging that fully complies with Clause **{** REF _Ref16518572 \w \h **}** and the Contract requirements stated in the SOPR, and shall also supply as appropriate, ammunition marking drawings, AC design drawings, ACA design drawings, ULS design drawings and ULS label drawings for each Explosives Package. In addition the Packaging supplied by the Contractor or the Authority (as applicable) shall:

(a) ensure that each Article may be transported and delivered to the consignee named in the Contract in an undamaged and serviceable condition; and

(b) be labelled in accordance with Def Stan 00-810 to enable the contents to be identified without need to breach the package; and

(c) be of a quality and durability to withstand the conditions indicated in Annex A to NATO Allied Ordnance Procedure 15 “Questionnaire to Identify the Environment Life Cycle Profile of a Munition in Service”;

(d) be compliant with:

(i) The Health and Safety at Work etc. Act 1974 (as amended);

(ii) The Chemicals (Hazard Information and Packaging for Supply) Regulations (CHIP4) 2009 (as amended);

(iii) Regulation (EC) No. 1907/2006 (The REACH Regulations 2007) (as amended); and

(iv) Regulation (EC) No. 1272/2008 (The Classification, Labelling and Packaging Regulations (CLP) 2009) (as amended).

56.8 The Contractor shall package the Explosives for UK or worldwide shipment by all modes of transport in accordance with the:

(a) Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 (CDG) (as amended 2011) (As amended);

(b) European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR) (Latest published version / edition);

(c) Regulations Concerning the International Carriage of Dangerous Goods by Rail (RID) (Latest published version / edition);

(d) International Maritime Dangerous Goods (IMDG) Code (Latest published version / edition);

(e) International Civil Aviation Organisation (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods by Air (Latest published version / edition);

(f) International Air Transport Association (IATA) Dangerous Goods Regulations (Latest published version / edition);

(g) International Convention on the Safety Of Lives At Sea (SOLAS) 1974 (as amended); and

(h) UK Statutory Instrument 3015/2009 (The Air Navigation Order (2009)).

56.9 As soon as possible, and in any event no later than 1 (one) month before delivery is due, the Contractor shall provide a safety data sheet in respect of each Article in accordance with the REACH Regulations 2007 (as amended) and the Health and Safety At Work etc. Act 1974 (as amended).

56.10 Where applicable the Contractor shall provide wooden pallets for ULS that comply with Def Stan 00-088 and Def Stan 00-814.

56.11 The Contractor shall ensure that all relevant information which it is necessary to provide to its Sub-Contractors for the effective performance of its obligations under this Clause **{** REF _Ref16518581 \w \h **}** is made available to all Sub-Contractors.

56.12 The Contractor shall, at no additional cost, annotate agreed design drawings for packaging with a unique MOD reference number supplied by the MOD, no later than 4 (four) weeks after receiving the reference number.

56.13 Where the Articles contain primary Explosives, electrical Explosive devices or electronic circuitry, which have a minimum ignition energy (MIE) of 156m3 or below, the Contractor shall supply inner Packaging and fitments in electro static discharge (ESD) dissipative materials, in accordance with Clause **{** REF _Ref21595187 \w \h **}**.

56.14 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 Clause **{**

REF _Ref16518247 \r \h **}**.

56.15 The Contractor shall only supply Commercial Packaging when specifically called for by the Authority in the SOPR.

56.16 When there is a requirement stated by the Authority within the SOPR to move packaged stores in bulk, the Contractor shall produce a ULS and gain approval from the Authority prior to moving the stores.

Drawing Delivery format

56.17 The default electronic media format of drawings shall be Adobe “pdf”.

Intellectual Property Rights

56.18 Packaging design drawings, ammunition marking drawings, AC design drawings, ACA design drawings, ULS design drawings and any supporting documents shall be considered as contract data requirements and be subject to the terms of Clause **{** REF _Ref17131988 \r \h **}** (Intellectual Property Rights).

Provision for Package Sealing

56.19 The Contractor shall ensure all Explosives Packaging is sealed as specified in the SOPR and that the method of sealing complies with Def Stan 00-810 Pt 20.

Tooling

56.20 If special jigs, tooling etc., are required for the production of the required Packaging designs the Contractor shall obtain written approval from the Authority’s Commercial Lead before providing them. Any approval given will be subject to the terms of Clause **{** REF _Ref25748308 \r \h **}** (Special Jigs, Tooling and Test Equipment), as appropriate.

Environmental - Requirements for Wood used in Packaging

56.21 Each Party shall ensure that timber and wood-containing products supplied by it under the Contract comply with:

(a) Annexes I and II of the International Standards for Phytosanitary Measures, “Guidelines for Regulating Wood Packaging Material in International Trade”, Publication No 15 (ISPM 15); and

(b) BS 7195 - The Guide for Prevention of Corrosion of Metals Caused by Vapours from Organic Materials, where timber is used in the packaging of items containing Cadmium.

Environmental - Packaging and Packaging Waste

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

56.23 In any design work the Party which is the Design Organisation (the Contractor or the Authority, as applicable) shall comply with the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (as amended) or equivalent legislation.

Packaging Design Liability Statement

56.24 Where there is a failure of suitable Packaging (a design failure), or Packaging fails and this is attributed to the Packaging supplier (which for the avoidance of doubt shall mean either the Authority or the Contractor, as applicable) then the supplier shall be liable for the cost of replacing the Packaging. 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 the Contract.

SECTION 10 – CHANGE

57 CHANGE

57.1 All Changes relating to this Contract shall be dealt with in accordance with the Change Procedure set out in this Clause **{** REF _Ref17361079 \r \h **}**.

Initiation of Change

57.2 At any time during the term of this Contract, a proposed Change may be initiated by:

(a) the Authority submitting a notice to the Contractor's Commercial Lead in the form agreed by the JRCC (a "**Notice of Change**"); or

(b) the Contractor submitting a Change Proposal in accordance with Clause **{** REF _Ref_ContractCompanion_9kb9Ur1AJ \r \h * MERGEFORMAT **}** below.

57.3 Each Notice of Change shall describe the proposed Change in sufficient detail to enable the Contractor to provide a Change Proposal.

57.4 Each Party shall provide reasonable co-operation and assistance to the other Party in connection with the preparation of any Notice of Change or Change Proposal (as applicable).

Change Proposal

57.5 As soon as reasonably practicable, and in any event within 15 (fifteen) Business Days (or

such other period as the Parties may agree) after having received a Notice of Change pursuant to Clause **{** REF _Ref17361134 \r \h **}**, the Contractor shall deliver to the Authority a Change Proposal.

57.6 The Change Proposal shall include:

(a) the effect of the Change on the Contractor's obligations under the Contract;

(b) a detailed breakdown of any costs, and schedule impacts, which result from the Change;

(c) the programme for implementing the Change;

(d) any amendment required to this Contract as a result of the Change, including, where appropriate, to the Contract Price;

(e) any other matter which the Contractor considers relevant; and

(f) such other information as the Authority may reasonably require.

Change Proposal — Process and Implementation

57.7 As soon as reasonably practicable after the Authority receives a Change Proposal (having regard to the nature and scope of the proposed Change), the Authority shall:

(a) evaluate the Change Proposal; and

(b) where necessary:

(i) meet or otherwise engage with the Contractor to discuss any matters set out in the Change Proposal;

(ii) request such additional information and/or clarification of the information provided in the Change Proposal as may be reasonably required to enable the Authority to approve or reject the Change Proposal; and

(iii) request the Contractor to submit an amended Change Proposal addressing any matters that the Parties have agreed to address following any meeting or other engagement pursuant to Clause **{** REF _Ref51595805 \w \h **}** above.

57.8 The Contractor shall provide such additional information and/or clarification requested under Clause **{** REF _Ref45533740 \r \h **}** and/or amended Change Proposal requested under Clause **{** REF _Ref45533810 \r \h **}** as soon as reasonably practicable and in any event within 10 (ten) Business Days (or such other period as the Parties may agree) after receipt of such request and Clause **{** REF _Ref51595833 \w \h **}** shall apply to the Change Proposal as amended, provided that:

(a) if a Change Proposal has not been approved or rejected by the Authority in accordance with Clause **{** REF _Ref50132820 \w \h **}** within 6 (six) months (or such other period as the Parties may agree) after the date of receipt by the Authority of the Change Proposal, either Party may refer the matter to the Fast-Track Dispute Resolution Procedure (provided that, in the case of referral by the Contractor, the Contractor has complied with its obligations under this Clause **{** REF _Ref17361079 \w \h **}** and has acted reasonably and in good faith in seeking to agree the Change Proposal with the Authority); and

(b) in respect of Changes initiated by the Authority, if no resolution is reached following completion of the Fast-Track Dispute Resolution Procedure, the Authority's Notice of Change shall be deemed to be withdrawn.

57.9 As soon as reasonably practicable after the Authority has evaluated the Change Proposal (amended as necessary), the Authority shall:

(a) notify the Contractor that the Change Proposal is approved and issue to the Contractor's Commercial Lead:

(i) a serially numbered amendment letter reflecting the terms of the Change Proposal; and

(ii) a DEFFORM 10B signed by the Authority's Commercial Lead,

(an "**Offer of Amendment**"); or

(b) notify the Contractor that the Change Proposal is rejected.

57.10 Within 10 (ten) Business Days after receipt of an Offer of Amendment pursuant to Clause **{** REF _Ref17361185 \w \h **}**, the Contractor shall issue to the Authority's Commercial Lead an unqualified acceptance of the Offer of Amendment by returning the DEFFORM 10B to the Authority completed and countersigned by the Contractor's Commercial Lead (an "**Acceptance of Amendment**").

Withdrawal of Change

57.11 Either Party may at any time prior to the Contractor's Acceptance of Amendment pursuant to Clause **{** REF _Ref17361288 \w \h **}** withdraw a Notice of Change, Change Proposal or Offer of Amendment (as applicable) that it has initiated by notifying the other Party's Commercial Lead.

Refusal of Change

57.12 The Authority may at its absolute discretion refuse to proceed with a Change initiated by the Contractor at any time prior to the Contractor's issue of the Acceptance of Amendment

pursuant to Clause **{** REF _Ref17361288 \w \h **}**, provided that in so doing the Authority shall have regard to whether such Change is necessary to comply with a Change in Law. The Authority shall not be obliged to give reasons for such refusal, however each proposed Change initiated under this Contract shall be tabled for discussion at the JRCC.

57.13 The Contractor shall have the right to refuse to proceed with a Change initiated by the Authority if and to the extent that the Change:

(a) would materially increase the risk of an adverse effect on the health and safety of any person;

(b) is not physically possible due to a design, engineering, construction or other technical reason;

(c) would cause the Contractor to be in breach of any applicable Law;

(d) would result in the Contractor being unable to perform the Contract in a way that is consistent with Good Industry Practice; or

(e) would require the Contractor to implement the change in an unreasonable period of time.

The Contractor shall have no other entitlement to refuse a Change initiated by the Authority.

57.14 The Contractor shall notify the Authority of its refusal to proceed with any Change initiated by the Authority within 15 (fifteen) Business Days of receiving the Authority's Notice of Change. Such notice identifying that refusal shall set out in detail the Contractor's reasons for refusing to proceed with the Change. If the Authority disagrees with the Contractor's refusal it may refer the matter to the Dispute Resolution Procedure. In the event that the Authority's disagreement with that refusal is upheld under the Dispute Resolution Procedure, the Authority's Notice of Change in relation to that Change which was refused shall be deemed to have been issued on the date of the final determination under the Dispute Resolution Procedure. The Parties shall thereafter comply with this Clause **{** REF _Ref17361079 \w \h **}** in relation to the Notice of Change which relates to the Change that was refused.

Effectiveness of Changes

57.15 Any and all proposed Changes must be given effect in accordance with this Change Procedure and shall come into effect only when:

(a) the Authority's Commercial Lead has issued an Offer of Amendment pursuant to Clause **{** REF _Ref17361185 \w \h **}**; and

(b) the Authority has received the Acceptance of Amendment issued by the Contractor pursuant to Clause **{** REF _Ref17361288 \w \h **}**.

Change Proposal Costs

57.16 The Authority shall not be liable to the Contractor for any additional work undertaken or expense incurred unless a Change Proposal has been accepted in accordance with Clause **{** REF _Ref51595913 \w \h **}**.

Contract Pricing Statement

57.17 If a proposed Change entails a change to the Contract Price, the Authority may require the Contractor to provide an updated version of the Contract Pricing Statement for approval by the Authority:

(a) prior to approval of the Change Proposal pursuant to Clause **{** REF _Ref17361185 \w \h **}**; or

(b) within 1 (one) month after the Change comes into effect in accordance with Clause **{** REF _Ref17361387 \w \h **}**,

and following approval by the Authority the change to the Contract Pricing Statement shall be given effect by way of a serially numbered updated version being issued by the Contractor to the Authority.

58 CHANGE IN LAW

Notification of Changes in Law

58.1 The Contractor shall issue a Change Proposal in accordance with Clause **{** REF _Ref17361134 \w \h **}** (Change) as soon as reasonably practicable if at any time during the term of this Contract a Change is necessary to comply with a Change in Law. Such Change Proposal shall include in as much detail as reasonably practicable:

(a) any necessary change(s) to the work required under this Contract;

(b) the change(s) required to the terms of this Contract to deal with the Change in Law (including the obligations, if any, that the Contractor will be unable to comply with as a result of the Change in Law);

(c) if the Change in Law is a Qualifying Change in Law:

(i) any estimated change in the Target Cost that directly results from the Qualifying Change in Law;

(ii) evidence that the Contractor has minimised any increase in Allowable Costs or maximised any reduction in Allowable Costs, including in

respect of the costs of its Sub-Contractors;

(iii) evidence as to how the Qualifying Change in Law has affected the cost of performing the work required under this Contract; and

(iv) evidence demonstrating that any expenditure that has been avoided has been taken into account in the estimated change in the Target Cost; and

(d) the procedure for implementing the Change.

Adjustments to the Contract Price and delivery dates

58.2 A Change which is necessary to comply with a Change in Law shall not provide for any adjustment to the Contract Price or any agreed delivery dates unless the Change in Law is a Qualifying Change in Law.

58.3 Where a Change is necessary to comply with a Qualifying Change in Law any adjustment to the Contract Price and/or any delivery dates shall be made as part of the Change initiated pursuant to Clause **{** REF _Ref17361113 \w \h **}**.

59 CHANGE AND CONFIGURATION CONTROL PROCEDURE

59.1 The Contractor shall maintain and make available to the Authority an up-to-date, accurate and complete register of all Notices of Change and Change Proposals.

59.2 The Contractor shall maintain and make available to the Authority an up-to-date, accurate and complete record of the status of all proposed Changes in progress (the "**Change Register**"). The Change Register shall set out in respect of each proposed Change:

(a) the number, title, subject matter and the responsible Contractor and Authority representatives;

(b) the date of the Notice of Change, Change Proposal and due or actual date of submission of the Change Proposal;

(c) as and when applicable, the date of issue by the Authority of the Offer of Amendment or rejection of the Change Proposal pursuant to Clause **{** REF _Ref17361185 \w \h **}** (Change), and the date of issue by the Contractor of the Acceptance of Amendment pursuant to Clause **{** REF _Ref17361288 \w \h **}** (Change).

59.3 The Contractor shall use a configuration control system to control changes to the Specifications. The configuration control system shall be compatible with ISO 9001 (latest published version).

60 AMENDMENTS TO QUALIFYING DEFENCE CONTRACTS

60.1 For the purposes of this Clause **{** REF _Ref_ContractCompanion_9kb9Ur17E \w \n \h \t * MERGEFORMAT **}**, "consolidated version" means a version of the Contract which incorporates into the body of the Contract all amendments made to the Contract.

60.2 The JRCC shall produce a consolidated version and issue it to both Parties:

(a) annually within Quarter 1; and

(b) additionally as may be agreed between the Parties from time to time.

60.3 The consolidated version issued in accordance with Clause **{** REF _Ref_ContractCompanion_9kb9Ur1BI \w \h \t * MERGEFORMAT **}** shall incorporate only amendments previously agreed between the Parties in accordance with Clause **{** REF _Ref17361079 \w \h **}** (Change).

60.4 Each Party shall, within 14 (fourteen) calendar days of receiving it:

(a) sign and return to the other Party a copy of the consolidated version issued in accordance with to Clause **{** REF _Ref_ContractCompanion_9kb9Ur2AB \w \h \t * MERGEFORMAT **}**, to confirm that it properly incorporates all amendments made to the Contract; or

(b) notify the other Party in writing why it believes that the consolidated version does not properly incorporate all amendments made to the Contract.

60.5 Following any notification made under Clause **{** REF _Ref_ContractCompanion_9kb9Ur1BK \w \h \t * MERGEFORMAT **}**, 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 Fast-Track Dispute Resolution Procedure.

60.6 Within 14 (fourteen) calendar days of the Parties reaching agreement or the matter being determined through the Fast-Track Dispute Resolution Procedure, the JRCC shall reissue a consolidated version which accords with that agreement or determination and which each Party shall sign and return to the other within 14 (fourteen) calendar days of receiving it.

61 CONCESSIONS

61.1 If at any time the Contractor proposes to:

(a) deliver any Contractor Deliverables; or

(b) use, embody or deliver any component, equipment, packaging or other product to be incorporated into the Contractor Deliverables,

that does not conform with the relevant Specifications or any other requirement of this Contract that applies to the Contractor Deliverables, the Contractor shall process the non-conformance in accordance with DEF-STAN 05-061 Part 1.

61.2 Where the Contractor makes an application for a Concession pursuant to DEF-STAN 05-061 Part 1:

(a) the application and all supporting information shall be submitted to the Authority's Commercial Lead and the Contractor shall notify the JRCC of the application at the same time as it is made;

(b) the Authority's decision as to whether to approve or reject that application shall be at its absolute discretion (notwithstanding any prior decision or action taken by the Authority or the Contractor (or taken jointly via the JRCC));

(c) the Authority may request the Contractor to submit such additional information as is reasonably required to enable the Authority to approve or reject the application; and

(d) the Authority shall notify the Contractor within 20 (twenty) Business Days of receipt of the Contractor's formal application to confirm whether the Concession is approved or rejected. If the Authority has not issued a notification by the relevant date, the Contractor shall be entitled to a Delay Event in accordance with Clause **{** REF _Ref521687363 \r \h **}** (Delay Events) in respect of the Article(s) to which the applicable Concession application relates from that date until such time as the Authority notifies the Contractor of its decision only, and provided always that the Contractor has co-operated with the Authority and provided all information and input within the timescales required by the Authority.

61.3 If the Authority approves an application for a Concession in accordance with DEF-STAN 05-061 Part 1, subject to Clause **{** REF _Ref17361703 \w \h **}** that approval shall not constitute an amendment to this Contract but (subject to Clauses **{** REF _Ref17361700 \w \h **}** and **{** REF _Ref528150179 \w \h **}**):

(a) the non-conformance that is the subject of the Concession shall not constitute a failure by the Contractor to comply with its obligations under Schedule 2 (Statement of Requirements) to manufacture the Contractor Deliverables in accordance with the standards and specifications listed in Schedule 6 (Technical Requirements and Quality Standards); and

(b) subject to Clause **{** REF _Ref17361700 \w \h **}**, the Contractor shall not be obliged to rectify the non-conformance that is the subject of the Concession;

in each case to the extent specified in the Concession application form approved by the Authority.

61.4 The Authority may approve a Concession on the condition that the relevant non-conformance is resolved by the Contractor at a later date prior to expiry of the Warranty Period in accordance with terms specified in the Concession application form approved by the Authority. Where such a Concession is approved by the Authority:

(a) the Contractor shall resolve the non-conformance in accordance with the terms specified in the Concession application form approved by the Authority;

(b) any verification activities necessary to demonstrate that the non-conformance has been resolved in accordance with those terms shall be specified in the Concession application form approved by the Authority (or agreed with the Authority in accordance with terms specified in the Concession application form approved by the Authority); and

(c) Clause **{** REF _Ref528186932 \w \h **}** shall apply only to the extent specified in the Concession application form approved by the Authority.

61.5 If a Concession has been approved in circumstances where it subsequently becomes apparent that:

(a) any information provided to the Authority in support of the application for the Concession was materially inaccurate; or

(b) any material information relevant to the application for the Concession was withheld by the Contractor knowingly or in breach of Good Industry Practice,

the Concession shall be void and of no effect and Clause **{** REF _Ref528186932 \w \h **}** shall not apply to that Concession.

61.6 Any approval of a Concession that causes or will cause the Contractor to incur a reduction in Allowable Costs shall entitle the Authority to an appropriate reduction in the Target Cost and shall be processed using the Change Procedure.

61.7 Without prejudice to the Authority's rights under DEF-STAN 05-061 Part 1, if the Authority re-classifies a minor non-conformance as a major non-conformance in accordance with DEF-STAN 05-061 and the Contractor disagrees with that classification, the Contractor may within 5 (five) Business Days refer the matter to the Contractor's Head of Engineering Land UK and the Authority's Head of Engineering WOC for resolution. If those representatives are unable to resolve the disagreement within 5 (five) Business

Days after referral by the Contractor the Authority's Head of Engineering in the Weapons Operating Centre shall have the right to determine the classification of the non-conformance.

61.8 In performing their respective obligations under this Clause **{** REF _Ref50450739 \w \h **}**, neither Party shall take any action or omit to take any action in connection with the management of non-conformances or applications for Concessions that is intended to manipulate or influence the way in which KPI 4 (Concessions raised for Major Non-Conformances) applies or the measurement of the Contractor's performance against that KPI.

62 OBSOLESCENCE MANAGEMENT

62.1 The Contractor shall manage obsolescence throughout the duration of the Contract in accordance with Paragraph 7 (Management of Obsolescence) of Schedule 5 (Engineering Requirements).

SECTION 11 – SUPERVENING EVENTS

63 FORCE MAJEURE EVENTS

63.1 The Contractor shall not be in breach subject to of this Contract, nor liable for late or non-performance of any of its obligations under this Contract, if such delay or failure result from a "**Force Majeure Event**". For the purposes of this Contract a Force Majeure Event is defined as one of the following:

(a) acts of nature;

(b) war;

(c) hostilities;

(d) fire or explosion at any of the Contractor's premises or those of its suppliers except to the extent that such fire or explosion was caused by their own negligence;

(e) national strikes;

(f) terrorism;

(g) biohazards;

(h) sonic booms;

(i) civil commotion;

(j) any blockade or embargo;

(k) any national failure or unavailability of power, fuel or transport; and

(l) any failure of a statutory undertaker or similar body to carry out works or provide services.

63.2 The Contractor shall as soon as practicable, and in any event within 3 (three) Business Days of becoming aware of the occurrence of a Force Majeure Event, notify the Authority in writing on the occurrence of a Force Majeure Event, including available details of the Force Majeure Event (which shall be updated by the Contractor as more information becomes available), its effect on the Contractor's obligations under this Contract, and the actions proposed to mitigate its effect.

63.3 Without prejudice to the operation of Clause **{** REF _Ref38538868 \r \h **}** below, if appropriate, the Enabling Charge Target Costs may be reduced by an amount to reflect the reduction in the actual costs attributable to a reduction in the capability or Services which are not available or being provided as a result of the Force Majeure Event. Such reduction shall be agreed by the Parties and implemented in accordance with the Change Procedure.

63.4 Subject to Clause **{** REF _Ref28875004 \r \h **}** below, the Contractor shall be entitled to an appropriate extension of time for performing the obligations affected by the Force Majeure Event provided always that the Contractor has used, to the satisfaction of the Authority (acting reasonably), all reasonable endeavours, both to mitigate the effects of the Force Majeure Event, and to facilitate the continued performance of its obligations under this Contract.

63.5 The maximum extension of time granted under this clause shall be limited to 6 (six) calendar months after which time the Authority may, on giving written notice to the Contractor:

(a) issue a Notice of Change pursuant to Clause **{** REF _Ref17361134 \r \h * MERGEFORMAT **}** (Change); or

(b) terminate this Contract, without seeking compensation from the Contractor, with immediate effect and the provisions of Clause **{** REF _Ref50027042 \w \h **}** (Compensation on Termination) shall apply.

In exercising its rights under this Clause **{** REF _Ref44582195 \r \h * MERGEFORMAT **}**, the Authority shall have due regard to the nature and circumstances of the Force Majeure Event and its impact on the Contractor's ability to perform its obligations under the Contract.

64 PRICE ADJUSTMENT EVENTS

Entitlements to Contract Price Adjustments

64.1 If as a direct result of the occurrence of a Price Adjustment Event the Contractor incurs or will incur additional Allowable Costs the Contractor shall be entitled to a Contract Price Adjustment subject to and in accordance with this Clause **{** REF _Ref50028586 \w \h **}**.

64.2 If as a direct result of the occurrence of a Price Adjustment Event the Contractor incurs or will incur a reduction in Allowable Costs, the Authority shall be entitled to a Contract Price Adjustment subject to and in accordance with this Clause **{** REF _Ref50028586 \w \h **}**.

Procedure for Contract Price Adjustments

64.3 Subject to Clause **{** REF _Ref521875516 \w \h * MERGEFORMAT **}**, to claim a Contract Price Adjustment the Contractor must:

(a) as soon as reasonably practicable, and in any event within 20 (twenty) Business Days, after it becomes aware that the Price Adjustment Event has caused or is likely to cause the Contractor to incur additional Allowable Costs, notify the Authority of its intention to claim a Contract Price Adjustment;

(b) as soon as reasonably practicable, and in any event within 10 (ten) Business Days after notifying the Authority pursuant to Clause **{** REF _Ref36375413 \w \h * MERGEFORMAT **}**, submit its claim giving:

(i) full details of the Price Adjustment Event and the Estimated Change in NGMS Target Costs caused by the Price Adjustment Event; and

(ii) such evidence as is necessary to enable the Authority to be satisfied that the costs comprising the Estimated Change in NGMS Target Costs are Allowable Costs and to demonstrate that the Estimated Change in NGMS Target Costs reflects both the costs and benefits (actual or anticipated) of any steps taken or to be taken pursuant to Clause **{** REF _Ref524532105 \w \h * MERGEFORMAT **}** below; and

(c) demonstrate to the Authority's reasonable satisfaction that:

(i) the Estimated Change in NGMS Target Costs has been directly caused by the Price Adjustment Event;

(ii) the Contractor has taken and continues to take all steps necessary to minimise the additional Allowable Costs incurred as a result of the Price Adjustment Event in accordance with Good Industry Practice; and

(iii) the Authority has, wherever reasonably practicable, been given a reasonable opportunity to remedy any act or omission on the part of the Authority which relates to the claim.

64.4 As soon as reasonably practicable, and in any event within 20 (twenty) Business Days, after the Contractor becomes aware that a Price Adjustment Event has caused or is likely to cause the Contractor to incur a reduction in Allowable Costs, the Contractor shall notify the Authority of its entitlement to a Contract Price Adjustment. If requested by the Authority, the Contractor shall:

(a) as soon as reasonably practicable, and in any event within 20 (twenty) Business Days after receipt of the Authority's request, submit:

(i) full details of the Price Adjustment Event and the Estimated Change in NGMS Target Costs caused by the Price Adjustment Event; and

(ii) such evidence as is necessary to enable the Authority to be satisfied that any costs comprising the Estimated Change in NGMS Target Costs are Allowable Costs and to demonstrate that the Estimated Change in NGMS Target Costs reflects both the costs and benefits (actual or anticipated) of any steps taken or to be taken pursuant to Clause **{** REF _Ref524773255 \w \h * MERGEFORMAT **}** below; and

(b) demonstrate to the Authority's reasonable satisfaction that:

(i) the Estimated Change in NGMS Target Costs has been directly caused by the Price Adjustment Event; and

(ii) the Contractor has taken and continues to take all steps necessary to maximise the reduction in Allowable Costs incurred as a result of the Price Adjustment Event in accordance with Good Industry Practice.

Agreement of Contract Price Adjustment

64.5 As soon as reasonably practicable after receipt by the Authority of a claim for a Price Adjustment Event in accordance with Clause **{** REF _Ref521875759 \w \h * MERGEFORMAT **}** or the submissions set out in Clause **{** REF _Ref524774164 \w \h * MERGEFORMAT **}** (as applicable), the Parties shall meet to seek to agree the Estimated Change in NGMS Target Costs. If the Parties are unable to agree within 20 (twenty) Business Days (or such other period as may be agreed by the Parties):

(a) that a Price Adjustment Event has occurred (or its consequences);

(b) that the Contractor or the Authority (as applicable) is entitled to a Contract Price Adjustment under this Clause **{** REF _Ref50028586 \w \h **}**; and/or

(c) the Estimated Change in NGMS Target Costs,

the Parties shall resolve the matter in accordance with the Fast-Track Dispute Resolution Procedure.

Effect of Contract Price Adjustment

64.6 Following agreement or determination (as applicable) of an Estimated Change in NGMS Target Costs pursuant to Clause **{** REF _Ref524774338 \w \h * MERGEFORMAT **}**, the Contract Price shall be adjusted in accordance with Clause 25 (Changes to the Contract Price).

64.7 Except to the extent expressly stated elsewhere in this Contract, where a Contract Price Adjustment is made in accordance with this Clause **{** REF _Ref50028586 \w \h **}**, the Contractor's sole remedy in relation to the Price Adjustment Event shall be the Contract Price Adjustment, and the Contract Price Adjustment shall be in full and final settlement of the liability of the Authority to the Contractor in respect of the Price Adjustment Event.

Late provision of information

64.8 If the Contractor fails to provide the information required by Clause **{** REF _Ref521875759 \w \h * MERGEFORMAT **}** within the notification periods referred to in that Clause:

(a) that failure shall not prevent the Contractor from claiming a Contract Price Adjustment (unless that failure prevents the Contractor from complying with Clause **{** REF _Ref521685567 \w \h * MERGEFORMAT **}**, including where the Authority is prevented from carrying out a reasonably thorough investigation of the circumstances and/or consequences of the claim); and

(b) the amount of any Contract Price Adjustment to which the Contractor would otherwise be entitled pursuant to this Clause **{** REF _Ref50028586 \w \h **}** shall be reduced to reflect any costs incurred by the Authority as a result of that failure.

65 DELAY EVENTS

Entitlement to Order Schedule Adjustments or Milestone Adjustments

65.1 If as a direct result of the occurrence of a Delay Event:

(a) the Contractor is unable or will be unable to meet the Schedule of Contracted Orders, the Contractor shall be entitled to an Order Schedule Adjustment subject to and in accordance with this Clause **{** REF _Ref521687363 \w \h * MERGEFORMAT **}**; or

(b) where there are Authority dependencies specified in a Task Form in accordance with Paragraph 6.11(e) of Schedule 10 (Tasking) and the Contractor is unable or will be unable to meet the milestones for completion of the relevant Task, the Contractor shall be entitled to a Milestone Adjustment subject to and in accordance with this Clause 65,

and Order Schedule Adjustments and Milestone Adjustments shall together be referred to as "**Delay Adjustments**".

Procedure for claiming Delay Adjustments

65.2 Subject to Clause **{** REF _Ref521688613 \w \h * MERGEFORMAT **}**, to claim a Delay Adjustment the Contractor must:

(a) as soon as reasonably practicable, and in any event within 20 (twenty) Business Days after it becomes aware that the Delay Event has caused or is likely to cause the Contractor to be unable to meet the Schedule of Contracted Orders or milestone (as applicable), notify the Authority of its intention to claim a Delay Adjustment;

(b) as soon as reasonably practicable, and in any event within 10 (ten) Business Days after notifying the Authority pursuant to Clause **{** REF _Ref521876335 \w \h * MERGEFORMAT **}**, submit its claim giving full details of the Delay Event and the delay to the Schedule of Contracted Orders (including identifying which Article or Articles are impacted by the Delay Event) or relevant milestone directly caused by the Delay Event (the "**Authority Delay**"); and

(c) demonstrate to the Authority's reasonable satisfaction that:

(i) the Authority Delay has been directly caused by the Delay Event;

(ii) the Contractor has taken and continues to take all steps necessary to minimise the Authority Delay in accordance with Good Industry Practice; and

(iii) the Authority has, wherever reasonably practicable, been given a reasonable opportunity to remedy any act or omission on the part of the Authority which relates to the claim.

Agreement of Delay Adjustments

65.3 As soon as reasonably practicable after receipt by the Authority of a claim for a Delay Adjustment in accordance with Clause **{** REF _Ref521691449 \w \h * MERGEFORMAT **}**, the Parties shall meet to seek to agree the duration of the Authority Delay. If the Parties

are unable to agree within 20 (twenty) Business Days (or such other period as may be agreed by the Parties):

(a) that a Delay Event has occurred (or its consequences);

(b) that the Contractor is entitled to a Delay Adjustment under this Clause **{** REF _Ref521687363 \w \h * MERGEFORMAT **}**; and/or

(c) the duration of the Authority Delay,

the Parties shall resolve the matter in accordance with the Fast-Track Dispute Resolution Procedure.

Effect of Order Schedule Adjustments

65.4 Following agreement or determination (as applicable) of the duration of an Authority Delay pursuant to Clause **{** REF _Ref524803692 \w \h * MERGEFORMAT **}**, the Schedule of Contracted Orders shall, in relation to the affected Article or Articles only, be adjusted by the duration of the Authority Delay as agreed or determined.

65.5 Except to the extent expressly stated elsewhere in this Contract, where a Delay Adjustment is made in accordance with this Clause **{** REF _Ref521687363 \w \h * MERGEFORMAT **}**, the Contractor's sole remedy in relation to the Delay Event shall be the Order Schedule Adjustment, and the Delay Adjustment shall be in full and final settlement of the liability of the Authority to the Contractor in respect of the Delay Event.

Late provision of information

65.6 If the Contractor fails to provide the information required by Clause **{** REF _Ref521691449 \w \h * MERGEFORMAT **}** within the notification periods referred to in that Clause:

(a) that failure shall not prevent the Contractor from claiming a Delay Adjustment (unless that failure prevents the Contractor from complying with Clause **{** REF _Ref521691567 \w \h * MERGEFORMAT **}**, including where the Authority is prevented from carrying out a reasonably thorough investigation of the circumstances and/or consequences of the claim); and

(b) the extent of any Delay Adjustment to which the Contractor would otherwise be entitled pursuant to this Clause **{** REF _Ref521687363 \r \h * MERGEFORMAT **}** shall be reduced to reflect any delay incurred as a result of that failure.

Documentation of Delay Adjustments

65.7 Where an Order Schedule Adjustment is required to be made in accordance with this Clause **{** REF _Ref521687363 \w \h * MERGEFORMAT **}**, the Authority shall issue an

amendment to this Contract and DEFFORM 10B in accordance with the Change Procedure recording the Order Schedule Adjustment.

65.8 Where a Milestone Adjustment is required to be made in accordance with this Clause **{** REF _Ref521687363 \w \h * MERGEFORMAT **}**, the Authority shall issue an amendment to the relevant Task Form recording the Milestone Adjustment.

66 DISRUPTION

66.1 The Contractor shall as soon as reasonably practicable inform the Authority of any actual or potential industrial action, whether such action is by its own employees or others, which affects or might affect its ability at any time to perform its obligations under this Contract.

66.2 The Contractor shall have robust contingency plans in place 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 inspect.

SECTION 12 – LIABILITY AND WARRANTY

67 LOSS OF OR DAMAGE TO THE ARTICLES

67.1 Until delivery, the risk of loss of or damage to the Articles remains with the Contractor. Without prejudice to any other rights or remedies of the Authority, the Contractor shall make good any such loss or damage however caused or occasioned which occurs before delivery.

67.2 Clause **{** REF _Ref17224495 \r \h **}** shall apply notwithstanding:

(a) that the Articles may have been inspected by the Authority; or

(b) that the property therein may have passed earlier than upon delivery.

67.3 Unless otherwise agreed, the Contractor shall not after delivery be at risk in respect of the Articles, except where the Authority rejects any Article under Clause **{** REF _Ref27989192 \w \h **}** (Rejection) or makes a Warranty claim under Clause **{** REF _Ref51362396 \r \h **}** (Warranty), in which case the risk in the rejected Article shall revert to the Contractor on (as applicable):

(a) the removal of the Article by the Contractor in accordance with Clause **{** REF _Ref31287458 \w \h **}**; or

(b) the return of the Article by the Authority in accordance with Clause **{** REF _Ref31295008 \w \h **}**.

67.4 This Clause **{** REF _Ref_ContractCompanion_9kb9Ur17G \w \n \h \t * MERGEFORMAT **}** shall not apply to any Articles issued to the Contractor by or on behalf of the Authority in connection with which the Contractor is required to carry out any Service. Such Articles shall be subject to Clause **{** REF _Ref35963530 \r \h **}** (Issued Property).

68 DELIVERY

68.1 The Contractor shall deliver the Articles in accordance with the terms of the Contract.

68.2 Unless otherwise agreed, delivery of the Articles shall occur at the point that the Articles are loaded at the Contractor's Premises onto the Authority's vehicle(s) and moved from the Contractor's Premises by the Authority or a third party on the Authority's behalf.

68.3 Unless otherwise agreed, where:

(a) the Contractor is required under the Contract to carry out any Service in connection with any Issued Property; or

(b) the results of a Service which the Contractor is required to deliver are to be received by the Authority in the form of a deliverable (such as a report)

delivery of the Service, or the relevant part of the Service, shall occur upon the Issued Property or the deliverable being handed over by the Contractor to the Authority or to the Representative of the Authority.

68.4 Unless otherwise agreed, and subject to Clause **{** REF _Ref27665886 \r \h * MERGEFORMAT **}** and the provisions of Clause 29 (Vesting) where applicable, the property in the Articles shall pass from the Contractor to the Authority upon the earlier of delivery in accordance with Clause **{** REF _Ref28614316 \r \h * MERGEFORMAT **}** or receipt of payment.

68.5 Following written notification by the Contractor to the Authority that the Articles are available for collection:

(a) the risk of loss or damage to the Articles shall remain with the Contractor until delivery in accordance with Clause **{** REF _Ref28614316 \r \h * MERGEFORMAT **}**;

(b) the Authority shall procure delivery of the Articles within 30 (thirty) calendar days, or such longer period as may be agreed between the Parties, of receipt of such notification; and

(c) the Contractor shall be entitled to submit to the Authority a claim for the Delivery Product Payment for such Articles in accordance with Clause **{** REF _Ref51362397 \r \h **}** (Payment) within 5 (five) Business Days of such notification regardless of whether or not delivery has taken place, provided that it is agreed no such invoicing or payment shall cause the risk of loss or damage to the Articles

to pass to the Authority before such time as the Authority has taken delivery of those Articles.

68.6 The Contractor shall ensure that the Articles are packaged in accordance with the terms of the Contract, in particular Clause 56 (Packaging for Explosives).

68.7 The Authority may occasionally issue instructions that differ from the transport or consignment arrangements in the Contract. These instructions will be the subject of a Contract amendment which shall also account for any resulting change in Contract Price, delivery or both.

69 ACCEPTANCE

69.1 Acceptance of an Article occurs on the earlier of:

(a) 30 (thirty) calendar days after the date of delivery of the Article by the Contractor in accordance with Clause **{** REF _Ref27989151 \r \h * MERGEFORMAT **}** (Delivery); or

(b) 35 (thirty five) calendar days after the date of written notification by the Contractor that the Article is available for collection,

unless such Article has been rejected by the Authority in accordance with Clause **{** REF _Ref27989192 \r \h * MERGEFORMAT **}** (Rejection).

69.2 Acceptance shall be governed by this Clause 69 to the exclusion of any common law or Statutory provision relating to acceptance of goods.

70 REJECTION

70.1 Prior to acceptance by the Authority in accordance with Clause **{** REF _Ref27990179 \r \h * MERGEFORMAT **}** (Acceptance), the Authority may reject any Article or consignment (whether or not after inspection) which does not conform with the Warranty. The provisions of Clauses 72.2 to 72.17 (Warranty) and **{** REF _Ref31292640 \w \h * MERGEFORMAT **}** (Defect Investigation and Liability) shall apply to any such rejection.

70.2 For the purposes of this Clause **{** REF _Ref27989192 \r \h * MERGEFORMAT **}**, an item of Issued Property in connection with which the Contractor is required under the Contract to carry out any Service, shall, following completion of the Service, be subject to rejection under Clause **{** REF _Ref36042045 \n \h * MERGEFORMAT **}** as if it was an Article, but without prejudice to the Authority's proprietary and other rights in that item of Issued Property.

71 COUNTERFEIT MATERIEL

71.1 Where the Authority suspects that any Article or consignment of Articles contains Counterfeit Materiel, it shall:

(a) notify the Contractor of its suspicion and reasons therefor;

(b) where reasonably possible, and if requested by the Contractor within 10 (ten) Business Days of such notification, (at the Contractor's own risk and expense and subject to any reasonable controls specified by the Authority) afford the Contractor the facility to:

(i) inspect the Article or consignment; and/or

(ii) obtain a sample thereof for validation or testing purposes;

(c) give the Contractor a further 20 (twenty) Business Days or such other reasonable period agreed by the Authority, from the date of the inspection at Clause **{** REF _Ref51161314 \w \h **}** or the provision of a sample at Clause **{** REF _Ref51161317 \w \h **}**, to comment on whether the Article or consignment meets the definition of Counterfeit Materiel; and

(d) determine, on the balance of probabilities and strictly on the evidence available to it at the time, whether the Article or consignment meets the definition of Counterfeit Materiel.

Where the Authority has determined that the Article, part or consignment of Articles contain Counterfeit Materiel then it may (whether or not after Acceptance) reject the Article, part or consignment and the provisions of Clauses **{** REF _Ref31990477 \w \h **}** to **{** REF _Ref50066871 \w \h **}** (Warranty) shall apply.

71.2 In addition to its rights under Clauses **{** REF _Ref31990477 \w \h **}** to **{** REF _Ref50066871 \w \h **}** (Warranty), where the Authority reasonably believes that any Article or consignment of Articles contains Counterfeit Materiel, it shall be entitled to:

(a) retain any Counterfeit Materiel; and/or

(b) retain the whole or any part of such Article or consignment where it is not possible to separate the Counterfeit Materiel from the rest of the Article, or consignment.

71.3 Where the Authority intends to exercise its rights under Clause **{** REF _Ref50067228 \w \h **}** it shall where reasonable permit the Contractor, within a period specified by the Authority, to arrange at its own risk and expense and subject to any reasonable controls specified by the Authority, for:

(a) the separation of Counterfeit Materiel from any Article or part of an Article; and/or

(b) the removal of any Article or part of an Article that the Authority is satisfied does not contain Counterfeit Materiel.

71.4 In respect of any Article, consignment or part thereof that is retained in accordance with Clause **{** REF _Ref50067228 \w \h **}**, including where the Authority permits the Contractor to remove non-Counterfeit Materiel under Clause **{** REF _Ref50067287 \w \h **}** but the Contractor fails to do so within the period specified by the Authority and subject to Clause **{** REF _Ref50067291 \w \h **}**, the Authority shall be entitled to exercise any, all, or any combination of, the following rights:

(a) to dispose of it responsibly, and in a manner that does not permit its reintroduction into the supply chain or market;

(b) to pass it to a relevant investigatory or regulatory authority;

(c) to retain conduct or have conducted further testing including destructive testing, for further investigatory, regulatory or risk management purposes. Results from any such tests shall be shared with the Contractor; and/or

(d) to recover the reasonable costs of testing, storage, access, and/or disposal of it from the Contractor.

71.5 Any scrap or other disposal payment received by the Authority shall be off set against any amount due to the Authority under Clause **{** REF _Ref50067361 \w \h **}**. If the value of the scrap or other disposal payment exceeds the amount due to the Authority under Clause **{** REF _Ref50067361 \w \h **}** then the balance shall accrue to the Contractor.

71.6 The Authority shall not use a retained Article or consignment other than as permitted in this Clause **{** REF _Ref50067444 \w \h **}**.

71.7 The Authority may without restriction report a discovery of Counterfeit Materiel and disclose information necessary for the identification of similar materiel and its possible sources.

71.8 Where the Contractor has objected in writing to the notification of the rejection by the Authority within 20 (twenty) Business Days of such notification:

(a) if the objection is not resolved within a reasonable time, either Party shall be entitled to refer the matter to the Fast-Track Dispute Resolution Procedure; and

(b) the Authority shall not exercise its rights at Clause **{** REF _Ref50067438 \w \h **}** unless and until the objection or dispute has been resolved in favour of the Authority.

If no such written objection is received, then the Contractor shall be deemed to have waived any rights to object to the Authority exercising the rights granted at Clause **{** REF _Ref50067438 \w \h **}**.

71.9 The Contractor shall not be entitled to any payment or compensation from the Authority as a result of the Authority exercising the rights set out in this Clause **{** REF _Ref50067444 \w \h **}** except where it has been determined by the Fast-Track Dispute Resolution Procedure that the Authority has made an incorrect determination under Clause **{** REF _Ref50067510 \w \h **}**. In such circumstances the Authority shall reimburse the Contractors reasonable costs of complying with Clause **{** REF _Ref50067507 \w \h **}**.

72 WARRANTY

Terms of the Warranty

72.1 Subject to the remainder of this Clause 72, the Contractor warrants that the Articles supplied under this Contract shall conform to the Build Standards and be free of defects arising from defective Design, materials, workmanship and/or manufacture for the Warranty Period (the "**Warranty**").

72.2 In the event of any breach (as determined in accordance with Clause **{** REF _Ref31303069 \w \h * MERGEFORMAT **}**) of the Warranty, the Contractor's sole liability in respect of the affected Article shall be limited at the Authority's discretion (acting reasonably) to:

(a) replacement or repair of the affected Article or part thereof free of charge; or

(b) repayment of the Price relating to such Article (to the extent that this has been paid by the Authority),

provided that any Article (or part thereof) which is replaced or repaired in accordance with this Clause **{** REF _Ref28614914 \r \h * MERGEFORMAT **}** shall be guaranteed for the remainder of the Warranty Period. This Clause **{** REF _Ref28614914 \w \h * MERGEFORMAT **}** shall be without prejudice to any other rights of the Authority arising under this Contract for any loss of or damage to any persons or property other than the affected Article due to the breach of Warranty.

72.3 Where the Authority becomes aware that any Article or consignment does not comply with the Warranty:

(a) the Authority shall notify the Contractor's Chief Engineer (or other authorised representative) of the alleged defect and/or non-conformity as soon as reasonably practicable, and in any event within:

(i) in respect of any alleged Safety-Related Defect, 7 (seven) calendar days; or

(ii) in respect of any other alleged defect and/or non-conformity, 21 (twenty one) calendar days

of the Authority (which for the purposes of this clause shall include any employee of the Authority or any third party acting for the Authority) becoming aware of such defect and/or non-conformity and, once aware, shall cease use of the relevant Article immediately. The Parties agree that notification under this Clause **{** REF _Ref31303456 \w \h * MERGEFORMAT **}** may be validly given by telephone; and

(b) in respect of any alleged Safety-Related Defect, the Authority shall provide a MID Report to the Contractor as soon as reasonably practicable following its initial notification in accordance with Clause **{** REF _Ref31303323 \w \h * MERGEFORMAT **}** above.

72.4 The Warranty is subject to the following conditions:

(a) the Authority shall give the Contractor the opportunity, in accordance with the Authority's instructions in relation to access to its records and/or facilities, to examine:

(i) the relevant Article and/or any other Articles from the same batch (provided that this requirement shall not apply where the Articles in question have been disposed of in accordance with Clause **{** REF _Ref31287458 \w \h * MERGEFORMAT **}** or **{** REF _Ref31286380 \w \h * MERGEFORMAT **}**); and

(ii) any relevant records of usage, handling and/or storage; and

(b) the serial and/or identification numbers must not have been deliberately removed from the affected Article by the Authority, provided that if the serial and/or identification numbers are removed through the Authority's use in accordance with the MTDS this shall not be deemed to be deliberately removed for the purposes of this Clause **{** REF _Ref31386929 \w \h * MERGEFORMAT **}**.

Exclusions from the Warranty

72.5 The Contractor shall not be in breach of the Warranty where the investigation carried out pursuant to Clause **{** REF _Ref31303069 \r \h **}** below determines that an Article does not comply with the Warranty due to:

(a) defects arising from defective Design where:

(i) the Design was created prior to the acquisition by BAE Systems of Royal Ordnance plc in 1987;

(ii) the Design was provided to the Contractor by the Authority or a third party acting for the Authority; or

(iii) the Design was based upon an original design provided by the Authority or a third party not instructed by the Contractor but only to the extent that the defect arises from the original design;

(b) defects arising as a result of any of the following occurring after the time of delivery of the relevant Article in accordance with Clause **{** REF _Ref27989151 \r \h * MERGEFORMAT **}** (Delivery):

(i) any storage, handling, use or maintenance of the Article by the Authority, or any third party, which is not in accordance with the MTDS or Good Industry Practice;

(ii) wilful damage or negligence by the Authority or any third party; and/or

(iii) modification by persons other than the Contractor provided that this shall not include:

(A) the alteration of markings; or

(B) the fitting or replacement of fuzes, save where:

1) any fitting and/or replacement is not carried out in accordance with the MTDS or Good Industry Practice; or

2) such fuze has been supplied by the Authority is found to be defective; or

(c) any defect and/or non-conformity in any Issued Property incorporated into the relevant Article, provided that this exclusion shall not apply if such defect and/or non-conformity:

(d) ought reasonably to have been identified by the Contractor during the inspection and testing carried out pursuant to Clause **{** REF _Ref49348572 \w \h **}** (Issued Property); and/or

(i) arises as a result of any of the following occurring prior to the time of delivery of the relevant Article in accordance with Clause 65.2 (Delivery):

(ii) any storage, handling, use or maintenance of the Issued Property by the Contractor, or any third party, which is not in accordance with the MTDS or Good Industry Practice; and/or

(iii) wilful damage or negligence by the Contractor or any third party.

Removal or disposal of affected Articles

72.6 Subject to Clause **{** REF _Ref31286380 \w \h * MERGEFORMAT **}**, the Contractor shall arrange for the relevant Article or consignment to be removed as soon as reasonably practicable following receipt of the Authority's notification under Clause **{** REF _Ref31303456 \w \h * MERGEFORMAT **}** (or within any other period agreed by the Parties) at the Contractor's risk and expense, and returned to the Contractor's works in the United Kingdom for examination in accordance with Clause **{** REF _Ref31303069 \r \h **}** provided that where either Party, acting reasonably, determines that the removal and/or transport of the Article or consignment would be unsafe:

(a) it shall notify the other Party of such determination as soon as reasonably practicable and, following notification, the Contractor shall not be required to take any further action under this Clause **{** REF _Ref31287458 \r \h * MERGEFORMAT **}**;

(b) the Authority shall arrange for the safe disposal of the Article(s); and

(c) the provisions of Clause **{** REF _Ref31386977 \w \h * MERGEFORMAT **}** shall apply.

72.7 The Contractor shall only be responsible for the removal of Articles from locations in the United Kingdom. Where the Authority becomes aware of any defect and/or non-compliance of an Article while the relevant Article is located outside of the United Kingdom:

(a) the Authority shall arrange for the Article to be returned on the next reasonably available Authority transport to the Contractor's works in the United Kingdom for examination or, if no Authority transport is available within a reasonable time period (in the Authority's opinion, acting reasonably), the Authority shall be entitled to make alternative arrangements for the transport of the Article and the Contractor shall reimburse the Authority for its reasonable costs incurred; or

(b) where the Authority determines, acting reasonably, that it would be either unsafe or not economically beneficial to transport the Article to the United Kingdom:

(i) the Authority shall arrange for the safe disposal of the Article; and

(ii) the provisions of Clause **{** REF _Ref31386977 \w \h * MERGEFORMAT **}** shall apply.

72.8 Where any Article is required to be disposed of in accordance with Clause **{** REF _Ref31287458 \r \h * MERGEFORMAT **}** or **{** REF _Ref31287665 \r \h * MERGEFORMAT **}**:

(a) the Contractor shall provide all reasonable assistance to the Authority and/or any third party instructed by the Authority in relation to the disposal process, including allowing

access to the Contractor's Premises (if the relevant Article is located at the Contractor's Premises at the time that disposal is required); and

(b) subject to it being determined in accordance with Clause **{** REF _Ref31303069 \w \h * MERGEFORMAT **}** that the Contractor is in breach of the Warranty, the Contractor shall reimburse the Authority for its reasonable costs incurred (if any) for disposal.

72.9 If it is determined in accordance with Clause **{** REF _Ref31303069 \w \h * MERGEFORMAT **}** that the Contractor is not in breach of the Warranty:

(a) any:

(i) costs reasonably incurred by the Contractor in connection with the Investigation Programme including:

(A) carriage or disposal under Clause **{** REF _Ref31287458 \r \h **}** or **{** REF _Ref31286380 \w \h * MERGEFORMAT **}** (as applicable); and/or

(B) examination of the Article, including travel costs, labour and administration costs; and/or

(ii) payments made to the Authority in accordance with Clause **{** REF _Ref46325921 \r \h **}** or **{** REF _Ref46325922 \r \h **}**.

shall be reimbursed by the Authority upon receipt of reasonable evidence of such costs; and

(b) the cost of any return carriage shall be the responsibility of the Authority.

Investigation and rectification

72.10 Upon the earlier of the return of the relevant Article to the Contractor's works or confirmation from the Authority that the Article is to be disposed of in accordance with Clause **{** REF _Ref31287458 \w \h * MERGEFORMAT **}** or **{** REF _Ref31286380 \w \h * MERGEFORMAT **}** (the "**Return Date**"):

(a) as soon as reasonably practicable, and in any event within 30 (thirty) calendar days of the Return Date, the Parties shall agree an investigation programme (the "**Investigation Programme**") which shall include:

(i) details of any Article(s) other than the returned Article (if any) which are to be examined as part of the investigation; and

(ii) a Notification Date which shall (unless otherwise agreed) be no later than:

(A) in respect of any Safety-Related Defect, 6 (six) months; or

(B) in respect of any other alleged defect and/or non-conformity, 12 (twelve) months,

after the Return Date;

(b) the Contractor shall examine the relevant Article(s) in accordance with the Investigation Programme and shall permit authorised representatives of the Authority to observe such examinations and to access any reports or other documentation produced in connection with the same;

(c) both Parties shall co-operate and, if requested, shall use their reasonable endeavours to provide all assistance and documentation reasonably required by the other Party in connection with the Investigation Programme;

(d) the Contractor shall notify the Authority on or prior to the Notification Date:

(i) that it agrees that it is in breach of the Warranty; or

(ii) that it has determined that it is not in breach of the Warranty, and shall provide reasonable evidence in support of such determination; and

(e) if the Contractor does not notify the Authority in accordance with Clause **{** REF _Ref31988660 \w \h * MERGEFORMAT **}** by the Notification Date then, unless the Parties (acting reasonably) agree to extend the Notification Date, the Contractor shall be deemed to have accepted that it is in breach of the Warranty.

72.11 Where:

(a) the Contractor has notified the Authority under Clause **{** REF _Ref31988660 \r \h * MERGEFORMAT **}** that it is not in breach of the Warranty; and

(b) the Authority disagrees with such determination,

the Authority may escalate the matter in accordance with Clause 42 (Dispute Resolution Procedure) within 30 (thirty) calendar days of the Contractor's notification.

72.12 Where the Contractor has agreed (or has been deemed to have accepted) that it is in breach of the Warranty, the Contractor shall:

(a) at the Authority's discretion (acting reasonably):

(i) repair or replace the affected Article in accordance with the rectification plan to be agreed under Clauses **{** REF _Ref31307883 \w \h *

MERGEFORMAT **}** to **{** REF _Ref31306312 \w \h * MERGEFORMAT **}** below; or

(ii) repay to the Authority the Price relating to such Article (to the extent that this has been paid by the Authority) within 30 (thirty) calendar days (or such other period as is agreed between the Parties);

(b) reimburse the Authority for any costs reasonably incurred by the Authority in connection with the Investigation Programme, including travel costs, labour and administration costs, upon receipt of reasonable evidence of such costs; and

(c) within 30 (thirty) calendar days of the Notification Date submit a rectification plan to the Authority in accordance with Clauses **{** REF _Ref31306309 \w \h * MERGEFORMAT **}** to **{** REF _Ref31990449 \w \h * MERGEFORMAT **}**, which shall include:

(i) if applicable, details of the proposed repair or replacement of the affected Article including the date by which the repaired and/or replacement Article will be delivered to the Authority;

(ii) the actions required to ensure that reasonable steps are taken to prevent the occurrence of similar breaches in future; and

(iii) a timetable for reporting by the Contractor to the Authority on the progress of implementation of the rectification plan.

72.13 The Authority shall, within 21 (twenty one) calendar days (or such other period as may be agreed by the Parties) after receipt of the rectification plan, acting reasonably:

(a) accept the rectification plan; or

(b) reject the rectification plan, providing its reasons for such rejection and, to the extent reasonably practicable, proposing such amendments to the rectification plan as would render it acceptable to the Authority.

72.14 If the Authority rejects the rectification plan pursuant to Clause **{** REF _Ref31306309 \r \h * MERGEFORMAT **}**, the Contractor shall within 21 (twenty one) calendar days of receipt of such rejection:

(a) accept the Authority's proposed amendments in full;

(b) submit a revised rectification plan to the Authority, addressing the Authority's reasons for rejection (and Clause **{** REF _Ref31306309 \r \h * MERGEFORMAT **}** above shall apply to such revised submission); or

(c) refer the matter to the Fast-Track Dispute Resolution Procedure,

provided that if the Parties (acting reasonably) have been unable to agree a rectification plan within 114 (one hundred and fourteen) calendar days of the Notification Date, the matter shall be referred to the Fast-Track Dispute Resolution Procedure.

72.15 If the Authority fails to take any action in accordance with Clause **{** REF _Ref31989280 \r \h * MERGEFORMAT **}** within 21 (twenty one) calendar days of receipt of the Contractor's rectification plan under Clause **{** REF _Ref31990477 \w \h * MERGEFORMAT **}** or revised rectification plan under Clause **{** REF _Ref31989280 \w \h * MERGEFORMAT **}**, the Authority shall be deemed to have accepted the Contractor's rectification plan in full.

72.16 If the Contractor fails to take any action in accordance with Clause **{** REF _Ref31989280 \r \h * MERGEFORMAT **}** within 21 (twenty one) calendar days of receipt of the Authority's rejection under Clause **{** REF _Ref31306309 \r \h * MERGEFORMAT **}**, the Contractor shall be deemed to have accepted the Authority's proposed amendments in full.

72.17 Following acceptance (or deemed acceptance) of the rectification plan, the Contractor shall implement the rectification plan in accordance with its terms.

73 DEFECT INVESTIGATION AND LIABILITY

73.1 The procedure for the reporting, investigation and rectification of all defects whether or not they relate to design, software or manufacturing shall be in accordance with Clause 72 (Warranty).

73.2 Where it is established that, pursuant to Clause 72 (Warranty) or any other provision or contract relating to the Contractor Deliverables, the Contractor bears the liability for any of the costs of investigating, repairing or rectifying a defect, the costs of any such work undertaken by the Contractor shall be borne by the Contractor.

73.3 If liability for the defect is in dispute, the Contractor shall separately identify and record all related costs.

73.4 Any Contractor Deliverable, and work thereon, which after examination is required to be rectified/repaired at the Authority's or Contractor's expense, (or if liability is in dispute), is to be notified to the Authority's Project Team Project Manager or Project Team Commercial Officer, prior to any work being put in hand, or transfer to any other contract placed by the Authority, e.g. for repair, overhaul and/or modification.

73.5 The Contractor shall submit to the Authority's Project Team Commercial Officer a tasks list, in duplicate, countersigned by the Authority's Project Team Project Manager, of the Contractor Deliverables or work which have been investigated/rectified. The list shall be

submitted in accordance with the timescales laid down in the Contract and if none is specified within 4 (four) weeks of completion of all work. The list shall include:

(a) the description, including, where appropriate, the Stores Reference Number, Serial Number and Lot details and quantities of all Contractor Deliverables or work investigated;

(b) the description of all other tasks (e.g. design of modification, amendments of drawings);

(c) against each Item, whether liability has been accepted by the Authority or the Contractor, or is still to be determined, quoting dates and references of relevant correspondence;

(d) against each Item, the Contract Number and, where appropriate, Stores Reference Number, Serial Number and Lot details and quantities against which repair, overhaul and/or modification of the Contractor Deliverables has been or will be carried out;

(e) where liability rests with the Contractor or where overhaul, repair or modification has already been completed for any item, the Unique Order Identifier generated by the Contracting, Purchasing and Finance (CP&F) electronic procurement tool.

74 LIMITATION OF LIABILITY

74.1 **REDACTED**

74.2 **REDACTED**

Excluded losses

74.3 **REDACTED**

74.4 **REDACTED**

Mitigation

74.5 **REDACTED**

74.6 **REDACTED**

75 PARENT COMPANY GUARANTEE

75.1 The Contractor shall provide to the Authority contemporaneously with the execution of this Contract a parent company guarantee duly executed by the Guarantor substantially in the form set out in Schedule 25 (Parent Company Guarantee).

75.2 Where necessary as a matter of law to ensure that the Parent Company Guarantee is not discharged by a Change, the Contractor shall provide, together with any other documentary requirements provided pursuant to the Change Procedure, written confirmation from the Guarantor that it consents to the Change.

76 THE USE OF THE ELECTRONIC BUSINESS DELIVERY FORM

Form Usage

76.1 The Contractor must use the electronic business delivery form for all deliveries of Articles and performance of Services.

76.2 The electronic business delivery form, DEFFORM 129J, must accompany the package or consignment to which it applies. The Contractor must either

(a) Attach the form as a label, directly to the package surface, or

(b) Forward the form in a document envelope as provided in Clauses **{** REF _Ref_ContractCompanion_9kb9Ur246 \w \h \t * MERGEFORMAT **}** and **{** REF _Ref_ContractCompanion_9kb9Ur248 \w \h \t * MERGEFORMAT **}**.

Form Structure

<u>For the provision of Articles</u>

76.3 Where delivery is for a physical Article, the following criteria apply:

(a) The nominal label size is A6 (102 mm x 152 mm) but A5 (148 mm x 210 mm) is acceptable. If required by package size, the Contractor may use other label sizes, but only if no degradation to the text, bar code legibility and quality occurs, see Clause **{** REF _Ref_ContractCompanion_9kb9Ur24A \w \h \t * MERGEFORMAT **}**.

(b) The Contractor must use the bar coded Unique Identifier as defined in Clause **{** REF _Ref16517978 \r \h **}** (Unique Identifiers), unless specified otherwise in the Contract.

(c) The Contractor must attach 2 (two) labels to each package or consignment delivered. One label must be detachable for use in processing the information through the appropriate MOD receipting system.

For the provision of Services

76.4 Where performance is for a Service, the following criteria apply:

(a) Standard size is A4 (210 mm x 297 mm).

(b) The Contractor must use the bar coded Unique Identifier as defined in Clause **{** REF _Ref16517978 \r \h **}** (Unique Identifiers) unless specified otherwise in the Contract.

(c) The Contractor must provide one form either on completion of the Service or on completion of each agreed stage of the Service.

Bar Code Symbology and Print Quality

76.5 The bar code symbology used shall meet the requirements of STANAG 4329, "NATO Standard Bar Code Symbologies", specifically Code 39 (ISO/IEC 16388), unless otherwise specified.

76.6 The barcode print quality shall be as defined in ISO/IEC 16388 (Information technology – Automatic identification and data capture techniques – Code 39 bar code symbology specification). The Overall Grade shall be at least Grade B at point of printing and not less than Grade C at final point of receipt.

Methods of Printing

76.7 For method of printing the DEFFORM 129J, electronic business delivery form, see DefStan 81-041 (Part 6). Laser printing is preferred.

SECTION 13 – TERMINATION

77 CONTRACTOR DEFAULT

77.1 If a Contractor Default has occurred:

(a) the Contractor shall notify the Authority immediately upon becoming aware of the occurrence of the Contractor Default, stating:

(i) the type and nature of Contractor Default that has occurred and giving reasonable available details (which shall be updated by the Contractor as more information becomes available); and

(ii) without prejudice to the generality of the foregoing, either that the Contractor intends to remedy such Contractor Default within 20 (twenty) Business Days in accordance with Clause **{** REF _Ref28002737 \r \h **}** or that the Contractor is preparing a rectification plan in accordance with Clause **{** REF _Ref28002753 \r \h **}**, and/or

(b) the Authority may serve a notice on the Contractor requiring the Contractor to remedy the Contractor Default. Such notice shall state:

(i) that a Contractor Default has occurred; and

(ii) the type and nature of Contractor Default that has occurred, giving reasonable details.

77.2 If a Contractor Default has occurred and is capable of being remedied within 20 (twenty) Business Days of the earlier of (i) the Authority giving notice to the Contractor and (ii) the Contractor becoming aware of the Contractor Default, the Contractor shall remedy such Contractor Default within that 20 (twenty) Business Day period.

77.3 If a Contractor Default has occurred and is not capable of being remedied within 20 (twenty) Business Days of the earlier of (i) the Authority giving notice to the Contractor and (ii) the Contractor becoming aware of the Contractor Default, the Contractor shall, within 10 (ten) Business Days (or such other time period as may be agreed by the Authority) of the earlier of (i) the Authority giving notice to the Contractor and (ii) the Contractor becoming aware of the Contractor Default, submit a rectification plan to the Authority in accordance with Clause **{** REF _Ref28002776 \r \h **}**.

77.4 The rectification plan shall include:

(a) the actions required to remedy the Contractor Default;

(b) the actions required to ensure that reasonable steps are taken to prevent the occurrence of similar future events;

(c) a timetable for the rectification to be achieved or response to be implemented as soon as is reasonably practicable;

(d) a timetable for reporting by the Contractor to the Authority on the progress of implementation of the rectification plan; and

(e) where relevant, consideration of all regulatory and legislative requirements and guidelines, particularly in relation to safety and security and any information from suppliers of the Contractor.

77.5 The Authority shall, within 10 (ten) Business Days (or such other period as may be agreed by the Parties) after receipt of the rectification plan, acting reasonably, either:

(a) accept the rectification plan; or

(b) reject the rectification plan, providing its reasoned justifications for such rejection and, to the extent reasonably practicable, proposing such amendments to the rectification plan as would render it acceptable to the Authority.

77.6 If the Authority rejects the rectification plan pursuant to Clause **{** REF _Ref28002847 \r \h **}**, the Contractor shall within 10 (ten) Business Days of receipt of such rejection either:

(a) accept the Authority's proposed amendments in full;

(b) submit a revised rectification plan to the Authority, addressing the Authority's reasons for rejection (and Clause **{** REF _Ref28002847 \r \h **}** above shall apply to such revised submission); or

(c) escalate the matter in accordance with the Fast-Track Dispute Resolution Procedure.

77.7 Following acceptance of the rectification plan by the Authority or agreement of the rectification plan pursuant to the Fast-Track Dispute Resolution Procedure, the Contractor shall implement the rectification plan in accordance with its terms. Pending acceptance or agreement of the rectification plan the Contractor shall take all reasonable steps to mitigate any adverse consequences of the Contractor Default.

77.8 Without prejudice to any specific notification and reporting requirements detailed in the applicable rectification plan (if any), the Contractor shall promptly notify the Authority once it believes that the Contractor Default has been rectified and shall provide such information and evidence as is reasonably required by the Authority to demonstrate such rectification. Upon receipt of such notice the Authority shall respond within 10 (ten) Business Days to confirm to the Contractor in writing either:

(a) that the Authority agrees that the Contractor Default has been rectified, in which case the Parties shall have no further obligations in relation to that Contractor Default under this Clause **{** REF _Ref_ContractCompanion_9kb9Ur18D \w \h **}** (or Clause **{** REF _Ref28003006 \r \h **}** (Persistent Breach) if applicable), unless it recurs; or

(b) that the Authority does not agree that the Contractor Default has been rectified in which case, for the avoidance of doubt, the Authority shall be entitled to exercise its right to serve an Initial Warning Notice or Final Warning Notice (as applicable) in accordance with Clause **{** REF _Ref28003006 \r \h **}** (Persistent Breach).

77.9 The obligation of the Contractor to remedy a Contractor Default shall not be affected by:

(a) the Authority's acceptance or rejection of a rectification plan;

(b) any comments, expressions of opinion, agreements or endorsements by or on behalf of the Authority on a proposed rectification plan; or

(c) the implementation of a rectification plan.

78 PERSISTENT BREACH

78.1 Where a Persistent Breach has occurred, the Authority may serve an intermediary notice (an "**Initial Warning Notice**") on the Contractor:

(a) specifying that it is a formal warning notice;

(b) giving reasonable details of the Persistent Breach; and

(c) stating that such Persistent Breach may, if it recurs frequently or continues, constitute a Material Breach in accordance with Clause **{** REF _Ref38616705 \w \h **}**. Upon receipt of such intermediary notice the Contractor shall submit a further rectification plan in accordance with Clauses **{** REF _Ref28002753 \r \h **}** to **{** REF _Ref28003449 \r \h **}** (inclusive).

78.2 If, following the Initial Warning Notice the Contractor has failed to:

(a) put forward a rectification plan acceptable to the Authority in accordance with Clauses **{** REF _Ref28002753 \r \h **}** to **{** REF _Ref28003449 \r \h **}** (inclusive); or

(b) comply with an agreed rectification plan in all material respects,

then the Authority may serve another notice (a "**Final Warning Notice**") on the Contractor:

(c) specifying that it is a Final Warning Notice;

(d) stating that the Persistent Breach specified has been the subject of prior warning notices; and

(e) stating that if such Persistent Breach is not rectified within 30 (thirty) calendar days or recurs on 3 (three) or more occasions within the 6 (six) month period after the date of service of that Final Warning Notice, the Persistent Breach will constitute a Material Breach entitling the Authority to terminate this Contract.

78.3 During the 30 (thirty) calendar day period following service of a Final Warning Notice, the Parties shall meet to discuss the relevant Persistent Breach and the options for its rectification. The Authority may (at its sole discretion) agree to extend the period allowed for rectification under Clause **{** REF _Ref38616705 \r \h **}**, provided always that if the Persistent Breach has not been rectified by the Contractor before the expiry of any such

extended period, the Persistent Breach will constitute a Material Breach entitling the Authority to terminate this Contract.

79 VOLUNTARY TERMINATION

79.1 The Authority shall have the right to terminate the Contract at any time by giving the Contractor at least 3 (three) Contract Years' notice.

79.2 Upon expiry of the notice period the Contract, or relevant part thereof, shall terminate without prejudice to the rights of the Parties already accrued up to the date of termination.

79.3 The Contractor shall, in accordance with Clause **{** REF _Ref50022910 \w \h **}** (Sub-Contracting), include in any sub-contract which it may enter into for the purpose of the Contract, the right to terminate the sub-contract on equivalent terms to the terms of this Clause **{** REF _Ref17223210 \r \h * MERGEFORMAT **}**.

80 TERMINATION

80.1 The Authority shall have the right to terminate this Contract:

(a) immediately upon notice if a Material Breach occurs;

(b) in accordance with Clause **{** REF _Ref16517774 \r \h **}** (Import and Export Licences);

(c) in accordance with Clause **{** REF _Ref17279007 \r \h * MERGEFORMAT **}** (Force Majeure Events);

(d) in accordance with Clause **{** REF _Ref17223210 \r \h * MERGEFORMAT **}** (Voluntary Termination);

(e) in accordance with Clause **{** REF _Ref28862052 \r \h * MERGEFORMAT **}** (Change of Control of Contractor); or

(f) in accordance with Paragraph 1.6 of Schedule 21 (Flow-Down Provisions).

80.2 If the Authority intends to terminate this Contract in accordance with this Clause **{** REF _Ref_ContractCompanion_9kb9Ur18H \r \h * MERGEFORMAT **}** it shall serve a Termination Notice on the Contractor giving reasonable details and the provisions of Clause **{** REF _Ref17188083 \r \h * MERGEFORMAT **}** (Consequences of Termination) shall apply in the event of termination for any reason.

81 CONSEQUENCES OF TERMINATION

81.1 If the Authority serves a Termination Notice, the Parties shall work together to produce an updated Exit Plan, in accordance with this Clause **{** REF _Ref17188083 \r \h **}** (Consequences of Termination).

81.2 **REDACTED**

81.3 Within 20 (twenty) Business Days from receipt of the draft Exit Plan from the Contractor (or such other period as may be agreed between the Parties), the Authority shall determine the content of and issue the updated Exit Plan (which shall comply with the requirements of Clause **{** REF _Ref28616020 \r \h **}** (Exit Management)), taking account of the information provided by the Contractor in accordance with Clause **{** REF _Ref14883806 \r \h **}**. Upon the issue of the updated Exit Plan the Parties shall implement the Exit Plan.

81.4 The Authority may amend the Exit Plan at any time prior to the Termination Date provided that:

(a) it provides at least 10 (ten) Business Days' notice of any such proposed change; and

(b) gives due consideration to:

(i) any comments/proposals provided by the Contractor before making such amendment; and

(ii) any obligations of the Authority that are required in order to enable the Contractor to perform its obligations detailed in the Exit Plan.

The Exit Plan can only be amended after the Termination Date if such amendment is agreed by the Parties.

81.5 The Authority shall be entitled to include in the Exit Plan in relation to the Contract any of the following directions to the Contractor to:

(a) not start work on any element of the Contractor Deliverables not yet started;

(b) complete in accordance with the Contract the provision of any element of the Contractor Deliverables;

(c) as soon as may be reasonably practicable take such steps to ensure that the production rate of the Contractor Deliverables is reduced as quickly as possible;

(d) **REDACTED**

(e) provide such reasonable assistance as the Authority may require on termination of this Contract for any reason, including where the Authority is due to perform certain of the obligations under this Contract itself or instruct a third party to do so. Such assistance shall include responding with information and documentation to the Authority's reasonable questions relating to the provision of the Contractor's obligations under this Contract, provided always that the Authority is entitled under this Contract to such information and documentation.

81.6 Following a Termination Notice served for any reason, subject always to the Exit Plan:

(a) the Authority:

(i) in the event of termination pursuant to Clause **{** REF _Ref17223210 \r \h * MERGEFORMAT **}** (Voluntary Termination), subject to the Contractor's compliance with any direction given by the Authority pursuant to Clause **{** REF _Ref43223265 \r \h * MERGEFORMAT **}**, shall take over from the Contractor all; or

(ii) in the event of termination for any other reason, may elect to take over from the Contractor any or all,

unused and undamaged materiel and any Contractor Deliverables in the course of manufacture that are:

(iii) in the possession of the Contractor at the date of termination; and

(iv) provided by or supplied to the Contractor for the performance of the Contract,

at a fair and reasonable price, except such materiel and Contractor Deliverables in the course of manufacture as the Contractor shall, with the agreement of the Authority, choose to retain;

(b) the Contractor shall deliver to the Authority within an agreed period, or in absence of such agreement within a period as the Authority may specify, a list of:

(i) all such unused and undamaged materiel; and

(ii) Contractor Deliverables in the course of manufacture,

that are liable to be taken over by, or previously belonging to the Authority, and shall deliver such materiel and Contractor Deliverables in accordance with the directions of the Authority.

81.7 Subject always to the requirements of the Exit Plan, during the period from the date of the Termination Notice until the Termination Date the Contractor shall continue to perform its obligations in accordance with the Contract. This may include completing all or any of the Contract Deliverables (or any part or component thereof) in the course of manufacture as at the date of the Termination Notice (solely to the extent such Articles (or any part or component thereof) can be completed before the Termination Date), and safe and suitable storage of the materials, Contract Deliverables and Issued Property belonging to the Authority. The costs that the Contractor incurs in respect of performing any such obligations in accordance with the Contract shall, subject to meeting the requirements of Clauses **{** REF _Ref43217609 \r \h **}** and **{** REF _Ref51362392 \r \h **}** (Pricing), be Allowable Costs.

82 COMPENSATION ON TERMINATION

82.1 **REDACTED**:

82.2 **REDACTED**

82.3 **REDACTED**

82.4 **REDACTED**:

83 LIABILITIES ON CONTRACT EXPIRY

Preparation for the Expiry Date

83.1 **REDACTED**

83.2 **REDACTED**

83.3 **REDACTED**

Liabilities on expiry

83.4 **REDACTED**:

83.5 **REDACTED**

83.6 **REDACTED**

83.7 **REDACTED**

SECTION 14 – GENERAL

84 ASSIGNMENT AND TRANSFER

84.1 Neither Party to the Contract shall give, bargain, sell, assign, or otherwise dispose of the Contract or any part thereof, or the benefit or advantage of the Contract or any part

thereof, without the prior consent in writing of the other Party.

84.2 Subject to the Contractor obtaining the prior written consent of the Authority in accordance with Clause **{** REF _Ref16518371 \n \h **}** 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 under any Clause concerning the late payment of debts).

84.3 Any assignment of the right to receive payment of the Contract Price (or any part thereof) under Clause **{** REF _Ref16518378 \n \h **}** above shall be subject to:

(a) reduction of any sums in respect of which the Authority exercises its right of recovery under Clause **{** REF _Ref51362394 \r \h **}** (Payment), or any other Clause concerning recovery of sums due;

(b) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and

(c) the Authority receiving notification under both Clause **{** REF _Ref28873721 \r \h **}** and **{** REF _Ref28873726 \r \h **}**.

84.4 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 **{** REF _Ref16518378 \w \h **}** above, the Contractor shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.

84.5 The Contractor shall ensure that the Assignee:

(a) is made aware of the Authority's continuing rights under Clauses **{** REF _Ref16518440 \w \h **}** and **{** REF _Ref16518451 \n \h **}**; and

(b) 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 with Clauses **{** REF _Ref16518440 \w \h **}** and **{** REF _Ref16518451 \n \h **}** above.

84.6 The provisions of the Contract, including any Clauses concerning payment, shall continue to apply in all other respects after the assignment and shall not be amended without the prior approval of the Authority.

85 CORRUPT GIFTS AND PAYMENT OF COMMISSION

85.1 The Contractor shall not do, and warrants that in entering the Contract it has not done any of the following (hereafter referred to as 'prohibited acts'):

(a) offer, promise or give to any Crown servant any gift or financial or other advantage of any kind as an inducement or reward;

(i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or execution of this or any other contract with the Crown; or

(ii) for showing or not showing favour or disfavour to any person in relation to this or any other Contract with the Crown.

(b) enter into this or any other Contract with the Crown in connection with which commission has been paid or has been agreed to be paid by it or on its behalf, or to its knowledge, unless before the Contract is made 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.

85.2 If the Contractor, its employees, agents or any subcontractor (or anyone acting on its behalf or any of its or their employees) does any of the prohibited acts or commits any offence under the Bribery Act 2010 with or without the knowledge or authority of the Contractor in relation to this Contract or any other contract with the Crown, the Authority shall be entitled:

(a) to terminate the Contract and recover from the Contractor the amount of any loss resulting from the termination;

(b) to recover from the Contractor the amount or value of any such gift, consideration or commission; and

(c) to recover from the Contractor any other loss sustained in consequence of any breach of this Condition, where the Contract has not been terminated.

85.3 In exercising its rights or remedies under this Clause **{** REF _Ref28088811 \r \h * MERGEFORMAT **}**, the Authority shall:

(a) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the prohibited act or committing of any offence under the Bribery Act 2010;

(b) give all due consideration, where appropriate, to action other than termination of the Contract, including:

(i) requiring the Contractor to procure the termination of a subcontract where the prohibited act or committing of any offence under the Bribery Act 2010 is that of a subcontractor or anyone acting on its or their behalf;

(ii) requiring the Contractor to procure the dismissal of an employee (whether its own or that of a subcontractor or anyone acting on its behalf) where the prohibited act or committing of any offence under the Bribery Act 2010 is that of such employee.

85.4 Recovery action taken against any person in Her Majesty's service shall be without prejudice to any recovery action taken against the Contractor pursuant to this Clause **{** REF _Ref28088811 \r \h * MERGEFORMAT **}**.

86 TRANSPARENCY

86.1 Subject to Clause **{** REF _Ref28616729 \r \h **}** and notwithstanding any other term of this Contract, including Clause **{** REF _Ref16518193 \r \h * MERGEFORMAT **}** (Disclosure of Information), the Contractor understands that the Authority may publish the Transparency Information to the general public. The Contractor shall, to the extent that it is reasonably practicable to do so, assist and cooperate with the Authority to enable the Authority to publish the Transparency Information and the Authority shall reimburse the Contractor's reasonable costs incurred in providing such assistance and cooperation.

86.2 Before publishing the Transparency Information to the general public in accordance with Clause **{** REF _Ref17222426 \r \h **}**, the Authority shall redact the following:

(a) the Contractor Commercially Sensitive Information; and

(b) any information that would be exempt from disclosure if it was the subject of a request for information under the Freedom of Information Act 2000 (the "**Act**") or the Environmental Information Regulations 2004 (the "**Regulations**")

86.3 For the avoidance of doubt, nothing in this Clause **{** REF _Ref17222399 \r \h **}** shall affect the Contractor's rights at law.

87 PROTECTION OF PERSONAL DATA (WHERE PERSONAL DATA IS NOT BEING PROCESSED ON BEHALF OF THE AUTHORITY)

87.1 Both Parties acknowledge that there is no processing of Personal Data associated with or intrinsic to the performance of the Contract. The incidental exchange of Personal Data for the purpose of communication to give effect to the Contract or the business relationship is not considered to be processing of Personal Data by either Party on behalf of the other.

87.2 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 **{** REF _Ref38555633 \n \h **}**. 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.

87.3 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 **{** REF _Ref38555682 \n \h **}** or otherwise the Contract will be amended to include DEFCON 532B and DEFFORM 532 in accordance with the Change Procedure. 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 clauses dealing with notification in the event of a Personal Data Breach and requests from Data Subjects for access to their Personal Data.

87.4 Notwithstanding Clause **{** REF _Ref38555633 \n \h **}**, each Party undertakes to comply with its obligations as Controller under the Data Protection Legislation.

88 SURVIVAL

88.1 Save as otherwise provided in this Contract:

(a) expiry or termination of this Contract shall be without prejudice to any accrued rights and obligations under this Contract as at the date of such expiry or termination;

(b) the rights and obligations of the Parties under Clause **{** REF _Ref17187486 \r \h **}** (Definitions, Structure, Interpretation and DEFCONs), Clause **{** REF _Ref17187492 \r \h **}** (Precedence), Clause **{** REF _Ref16517697 \r \h **}** (Accounting for Property of the Authority), Clause **{** REF _Ref51362388 \r \h **}** (Payment), Clause **{** REF _Ref20327703 \r \h **}** (Contractor's Records), Clause **{** REF _Ref46321412 \r \h **}** (Official-Sensitive Security Requirements), Clause **{** REF _Ref16518007 \r \h **}** (Cyber), Clause **{** REF _Ref16517939 \r \h **}** (Dispute Resolution), Clause **{** REF _Ref28615965 \r \h **}** (Exit Management), Clause **{** REF _Ref16518169 \r \h **}** (Co-Operation on Expiry of Contract), Clause **{** REF _Ref17131988 \r \h **}** (Intellectual Property Rights), Clause **{** REF _Ref51593667 \r \h **}** (Disclosure of Information), Clause **{** REF _Ref17133742 \r \h **}** (Counterfeit Materiel), Clause **{** REF _Ref51362396 \r \h **}** (Warranty), Clause **{** REF _Ref17188418 \r \h * MERGEFORMAT **}** (Limitations on Liability), Clause **{** REF _Ref17188083 \r \h **}** (Consequences of Termination), Clause **{** REF _Ref17188905 \r \h **}** (Compensation on Termination), Clause **{** REF _Ref50040064 \w \h **}** (Liabilities on Contract Expiry), Clause **{** REF _Ref28088811 \r \h **}** (Corrupt Gifts and Payments of Commission), Clause **{** REF _Ref16518387 \r \h **}** (Protection of Personal Data), Clause **{** REF _Ref17188950 \r \h **}** (Survival), Clause **{** REF _Ref16866238 \r \h **}** (Entire Agreement), Clause **{** REF _Ref51866010 \r \h **}** (TUPE), Clause **{** REF _Ref17188978 \r \h **}**

(Severability), Clause **{** REF _Ref16518666 \r \h **}** (Notices), Clause **{** REF _Ref17189000 \r \h **}** (Waiver), Clause **{** REF _Ref16518682 \r \h **}** (Rights of Third Parties), and Clause **{** REF _Ref16518703 \r \h **}** (Governing Law and Jurisdiction) shall continue notwithstanding expiry or termination of this Contract; and

(c) expiry or termination of this Contract shall not affect any other provision of this Contract which is expressed or intended to survive termination or which is required to give effect to such termination or the consequences of such termination.

89 ENTIRE AGREEMENT

89.1 This Contract constitutes the entire agreement between the Parties in connection with its subject matter and supersedes and extinguishes all prior agreements, draft agreements, arrangements, undertakings, representations, communications, negotiations and understandings of any nature made by the Parties, whether oral or written, concerning the subject matter of this Contract.

89.2 Each Party acknowledges that in entering this Contract it has not relied upon any oral or written statements, collateral or other warranties, assurances, representations or undertakings which were made by or on behalf of the other Party in relation to the subject matter of this Contract at any time before its signature (together, the "**Pre-Contractual Statements**"), other than those which are set out in this Contract.

89.3 Each Party hereby waives all rights and remedies which might otherwise be available to it in relation to such Pre-Contractual Statements but for Clause **{** REF _Ref20495945 \r \h **}**.

89.4 Nothing in this Clause **{** REF _Ref16866238 \r \h **}** shall exclude or restrict the liability of either Party arising out of its pre-contract fraudulent misrepresentation or fraudulent concealment.

90 EQUALITY

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

90.2 Without prejudice to the generality of the obligation in Clause **{** REF _Ref16518629 \w \h **}** above, 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 the Contract is being performed.

90.3 The Contractor agrees to take reasonable efforts to secure the observance of the provisions of this Clause **{** REF _Ref16518637 \w \h **}** by any of its employees, agents or other persons acting under its direction or control who are engaged in the performance of the Contract.

90.4 The Contractor agrees to take reasonable efforts to reflect this Clause **{** REF _Ref16518641 \w \h **}** in any Sub-Contract that it enters into to satisfy the requirements of the Contract and to require its Sub-Contractors to reflect this Clause **{** REF _Ref16518645 \w \h **}** in their Sub-Contracts that they enter into to satisfy the requirements of the Contract.

91 CHILD LABOUR AND EMPLOYMENT LAW

91.1 The Contractor shall comply in all material respects with Child Labour Legislation and applicable employment legislation of those jurisdiction(s) where the Contract is being performed.

91.2 The Contractor agrees to take reasonable efforts to reflect this Clause **{** REF _Ref16518656 \w \h **}** in any Sub-Contract that it enters into to satisfy the requirements of the Contract and to require its Sub-Contractors to reflect this Clause **{** REF _Ref16518659 \w \h **}** in their Sub-Contracts that they enter into to satisfy the requirements of the Contract.

92 TUPE

The provisions of Schedule 26 (Transfer of Undertakings (Protection of Employment) (TUPE) Regulations – Employee Transfer Arrangements on Exit) shall apply.

93 SEVERABILITY

93.1 If any provision or part thereof of the Contract is held to be invalid, illegal or unenforceable to any extent then:

(a) such provision shall (to the extent it is invalid, illegal or unenforceable) be given no effect and shall be deemed not to be included in the Contract but without invalidating any of the remaining provisions of the Contract; and

(b) the Parties shall use all reasonable endeavours to replace the invalid, illegal or unenforceable provision by a valid, legal and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid, illegal or unenforceable provision.

94 NOTICES

94.1 All notices, orders, or other forms of communication required to be given in writing

("**Notices**") under or in connection with this Contract shall:

(a) be given in writing;

(b) be authenticated by signature or by such other method as agreed between the Parties;

(c) be marked for the attention of the relevant Party's Commercial Lead; and

(d) be marked in a prominent position with the relevant Contract number.

94.2 Notices should be delivered by:

(a) hand;

(b) first-class prepaid post (or airmail, in the case of Notices to or from overseas); or

(c) electronic mail, where such a means of communication has been agreed for the purposes of the Contract

94.3 Notices shall be deemed to have been received:

(a) if delivered by hand, on the day of delivery if it is the recipient's Business Day and otherwise on the first Business Day of the recipient immediately following the day of delivery;

(b) if sent by first-class prepaid post (or airmail, if appropriate), on the third Business Day (or on the 10 tenth Business Day, in the case of airmail) after the day of posting;

(c) if sent by electronic means;

(i) if transmitted between 09.00 and 17:00 hours on a Business Day (recipient's time) on completion of receipt by the sender of verification of the transmission from the receiving instrument; or

(ii) if transmitted at any other time, at 09.00 on the first Business Day (recipient's time) following the completion of receipt by the sender of verification of the transmission from the receiving instrument.

94.4 The addresses (including electronic addresses) of each Party to the Contract to which all Notices shall be sent are those specified in the Contract, or such other address as either Party may by written Notice specify to the other for the purpose of this Clause **{** REF _Ref16518666 \w \h **}**.

94.5 Where either Party requests written confirmation of any communication which does not constitute a Notice such request shall not unreasonably be refused.

95 WAIVER

95.1 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.

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

96 REMEDIES CUMULATIVE

96.1 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

96.2 Notwithstanding any other provisions in this Contract, neither party shall be entitled to recover compensation or make a claim under this Contract in respect of any loss that it has incurred to the extent that it has already been compensated in respect of that loss pursuant to this Contract.

97 RIGHTS OF THIRD PARTIES

97.1 Except as provided in Clause **{** REF _Ref16518676 \w \h **}** and notwithstanding anything to the contrary elsewhere in the Contract, no right is granted to any person who is not a party to the Contract to enforce any term of the Contract in his own right and the Parties to the Contract declare that they have no intention to grant any such right.

97.2 Where, and only where, the Contract expressly states that a third party shall be entitled to enforce a term of the Contract:

(a) the said third party shall be entitled to enforce that term in his own right;

(b) 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 **{** REF _Ref16518682 \w \h **}**) relevant to the exercise of that right; and

(c) the third party's rights shall be subject to any provision in the Contract:

(i) that provides for the submission of disputes under the Contract generally or the said rights in particular to arbitration (such as Clause **{** REF _Ref16518690 \w \h **}** (Dispute Resolution));

(ii) that stipulates the law and jurisdiction that will govern the Contract (such as Clause **{** REF _Ref16518703 \r \h **}** (Governing Law and Jurisdiction));

and

(d) the consent of the third party shall not be required for any variation (including any release or compromise in whole or in part of any liability) or termination of this Contract or any one or more parts of it.

98 CHANGE OF CONTROL OF CONTRACTOR

98.1 The Contractor shall notify the Representative of the Authority at the address given in Clause **{** REF _Ref28008162 \r \h **}**, as soon as practicable, in writing of any intended, planned or actual change in control of the Contractor, including any direct Sub-Contractors. The Contractor shall not be required to submit any notice which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any regulations governing the conduct of the Contractor in the UK or other jurisdictions where the Contractor may be subject to legal sanction arising from issuing such a notice.

98.2 For the purposes of this Clause **{** REF _Ref28862052 \r \h **}** 'control' means the power of a person to secure that the affairs of the Contractor are conducted in accordance with the wishes of that person:

(a) by means of the holding of shares, or the possession of voting powers in, or in relation to, the Contractor; or

(b) by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating the Contractor.

and a change of control occurs if a person who controls the Contractor ceases to do so or if another person acquires control of the Contractor, provided that a change of control will not occur if:

(c) the cessation of control occurs as a part of a corporate restructuring of the Contractor's Group; or

(d) the person acquiring control of the Contractor is a member of the Contractor's Group,

provided in both cases that such change of control does not result in the Contractor ceasing to be a part of the same corporate group as the Guarantor or otherwise prejudice the Authority's ability to exercise its rights under the Parent Company Guarantee.

98.3 Each notice of change of control shall be taken to apply to all contracts with the Authority. Notices shall be submitted to:

Mergers & Acquisitions Section
Strategic Supplier Management Team

Spruce 3b #1301
MOD Abbey Wood
Bristol
BS34 8JH

and emailed to: **{** HYPERLINK "mailto:DefComrclSSM-MergersandAcq@mod.gov.uk" **}**

98.4 The Representative of the Authority shall consider the notice of change of control and advise the Contractor in writing of any concerns the Authority may have. Such concerns may include potential threats to national security, the ability of the Authority to comply with its statutory obligations or matters covered by the declarations made by the Contractor prior to Contract Award. Following receipt by the Contractor of the Authority's response to such notice, the Contractor shall be given a reasonable time period in which to address and resolve the Authority's concerns, during which the Parties shall meet to discuss the relevant change of control and the Authority's intention (if any) to exercise any of its rights under Clause **{** REF _Ref43461187 \w \h **}** below. Such time period shall end:

(a) 2 (two) months from receipt of the Authority's response; or

(b) in the case of a change of control of the Contractor, on the date on which the notified change of control takes effect, if earlier.

98.5 Subject to Clause **{** REF _Ref28008305 \r \h **}**:

(a) where there is a change of control of the Contractor, the Authority may terminate the Contract by giving a Termination Notice to the Contractor within 6 (six) months of the Authority being notified in accordance with Clause **{** REF _Ref38622925 \r \h **}**; or

(b) where there is a change of control of a direct Sub-Contractor of the Contractor:

(i) the Contractor shall within 60 (sixty) Business Days of the Authority being notified in accordance with Clause **{** REF _Ref38622925 \r \h **}** notify the Authority of any alternative suitably competent Sub-Contactor capable of supplying the goods and/or services supplied by the relevant Sub-Contractor and such notification shall include:

(A) identification of any Change required to the Contract to allow the Contractor to enter into the alternative Sub-Contract (a "**Change of Supply**"); and

(B) a fully costed Change Proposal for such Change of Supply, including identification of any validation activities required to be carried out to allow the Contractor to sub-contract with the alternative suitably competent Sub-Contractor;

(ii) where an alternative suitably competent Sub-Contractor is acceptable to the Authority and no Change of Supply is required, the Contractor shall promptly terminate the relevant Sub-Contract and enter into the replacement Sub-Contract;

(iii) where an alternative suitably competent Sub-Contractor is acceptable to the Authority and a Change of Supply is required:

(A) the Authority shall respond within 6 (six) calendar months to confirm whether the Change of Supply is approved;

(B) the Contractor shall co-operate with the Authority and shall use its reasonable endeavours to provide any further information or documentation reasonably requested by the Authority to assist with the Authority's assessment of the proposed Change of Supply;

(C) if the Change of Supply is approved, the Authority shall issue a Task to the Contractor pursuant to Clause **{** REF _Ref28869680 \w \h **}** (Tasking) to instruct the Contractor to undertake any required validation activities for the alternative Approved Sub-Contractor; and

(D) following completion of the validation activity the required Change shall be implemented in accordance with the Change Procedure and the Contractor shall promptly terminate the relevant Sub-Contract enter into the replacement Sub-Contract;

(iv) where:

(A) no alternative suitably competent Sub-Contractor notified to the Authority by the Contractor is acceptable to the Authority;

(B) the Contractor, having complied with its obligations under this Clause **{** REF _Ref50037340 \w \h **}**, is unable to identify and/or enter into a Sub-Contract with an alternative suitably competent Sub-Contractor; or

(C) the Authority does not approve a proposed Change of Supply,

the Contractor shall submit a Change Proposal, which may include a Change to the Statement of Requirements, and, subject to Clause **{** REF _Ref50037757 \w \h **}** below, this shall be a Delay Event in respect of the Article(s) to which the relevant Sub-Contract relates only; and

(v) if the Parties are unable to agree an appropriate Change pursuant to Clause **{** REF _Ref50037619 \w \h **}** by the date falling on the later of 6 (six) calendar months of the Contractor's notification pursuant to Clause **{** REF _Ref38622925 \r \h **}**or 2 (two) calendar months from the start of the discussions pursuant to Clause **{** REF _Ref50037619 \w \h **}** (or such longer time period as may be agreed between the Parties), the Authority may terminate the Contract with immediate effect by giving a Termination Notice to the Contractor.

The Authority shall act reasonably in exercising its right of termination under this Clause **{** REF _Ref28862052 \r \h **}**.

98.6 Notification by the Contractor of any intended, planned or actual change of control or termination by the Authority of the Contract in accordance with Clause **{** REF _Ref28008377 \r \h **}** shall not prejudice the existing rights of the Authority or the Contractor under the Contract nor create or imply any rights of either the Contractor or the Authority additional to the Authority's and Contractor's rights set out in this Clause **{** REF _Ref28862052 \r \h **}**.

99 NO PARTNERSHIP OR AGENCY

99.1 Nothing in this Contract, and no action taken under this Contract:

(a) creates a partnership;

(b) creates a relationship of principal and agent between either of the Parties; or

(c) otherwise authorises either Party to bind the other Party.

100 FURTHER ASSURANCE

Each Party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Contract.

101 COUNTERPARTS

This Contract may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one Contract.

102 GOVERNING LAW AND JURISDICTION

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

102.2 Subject to Clause **{** REF _Ref16518696 \w \h **}** (Dispute Resolution), each Party hereby irrevocably submits and agrees to the exclusive jurisdiction of the Courts of England to resolve, and the laws of England to govern, any actions, proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.

102.3 Other jurisdictions may apply solely for the purpose of giving effect to this Clause **{** REF _Ref16518703 \w \h **}** and for the enforcement of any judgement, order or award given under English jurisdiction.

SIGNED by the Parties of their authorised signatories on the date of this Contract.

The Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland for and on behalf of the Crown and in the exercise of all and any powers attaching to his Office as Secretary of State	)))))	_____(Signature)
SIGNED by duly authorised for and on behalf of **BAE Systems Global Combat Systems Munitions Limited**	))))))	_____(Signature) GLYNN PLANT (Name) MANAGING DIRECTOR (Title)