**XX XXX 2018**

**THE SECRETARY OF STATE FOR DEFENCE**

**and**

**AURORA ENGINEERING PARTNERSHIP**

|  |
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| **THE ENGINEERING DELIVERY PARTNER** |

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**THIS ENGINEERING DELIVERY PARTNER AGREEMENT** is made on xx xx 2018

**BETWEEN:**

1. **THE SECRETARY OF STATE FOR DEFENCE** (the **"Authority"**); and
2. the **"Contractor"**:

**IT IS AGREED:**

1. – CORE CLAUSES

# Definitions and Interpretations

## Definitions

In this Agreement (including the Recitals, Schedules, Appendices and Annexes) the following terms shall, unless the context otherwise requires, have the meanings ascribed below:

**"1 Man Day"** means an 8 hour Business Day in any 24 hour period commenced between 08:00 and 19:00 Monday to Friday;

**"ADT Commercial Lead"** means the Authority Commercial Lead for the Engineering Delivery Partner appointed pursuant to Clause 15.4 (*Authority Commercial Lead*);

1. **"Agreement"** means this agreement, its Schedules and Appendices;
2. **"Agreement Commencement Date"** means the date on which the Agreement is signed in Clause 4.1 (*Agreement Commencement Date*);
3. **"Allowable Costs"** means allowable costs as determined in accordance with the SSCR Principles;
4. **"Applicable Laws"** means all laws, regulations, directives, statutes, subordinate legislation, common law and civil codes in the UK and any other relevant jurisdiction and all judgements, orders, notices, instruments, decisions and awards of any court or competent authority or tribunal and all codes of practice having force of law, statutory guidance and policy notes in the UK and any other relevant jurisdiction;
5. **"Approval"** means prior written approval (such approval not to be unreasonably withheld or delayed, provided that it shall be reasonable for the Authority to withhold its approval for any proposal that would increase the cost to the Authority of any arrangements or that would have an adverse effect on the Contractor Deliverables) and **"Approve"** or **"Approved"** shall be construed accordingly;

**"Approved Innovation Project" or "AIP"** means an Authority Directed Innovation Opportunity or a Contractor Generated Innovation Opportunity that the Innovation Governance Committee has determined should be delivered by the Contractor pursuant to this Agreement through a Part B Task.

**"Approved Sub-contract"** means a Sub-contract in a form approved by the Authority to be entered into between the Contractor and an Approved Sub-contractor;

1. **"Approved Sub-contractor Compliance Agreement"** means a Compliance Agreement entered into by a Sub-contractor approved by the Authority;
2. **"Approved Sub-contractor"** means a Sub-contractor listed as one of the "Approved Sub-contractors" in Appendix 1 (*Contractor Group*) to Schedule B (*Contractor Group Governance*);
3. **"Approved Tasking Order" or "ATO"** has the meaning given to it in Paragraph 4.1 of Schedule D (*Tasking*);
4. **"Articles"** means all goods (excluding services) which the Contractor is required under the Agreement to supply;
5. **"Associated Contract"** means any other contract, agreement or other arrangement (whether in writing or otherwise) which the Parties agree in writing (which for this purpose does not include email) is an **"Associated Contract"**;
6. **"Authority"** means the Secretary of State for Defence, acting on behalf of the Crown;
7. **"Authority Commercially Sensitive Information"** means all Commercially Confidential Information other than (i) Personal Data and sensitive personal data (within the meaning of the DPA) relating to Engaged Personnel; and (ii) information which solely relates to the commercial interests, trade secrets, know-how or other IPR of the Contractor, any COI Associate or any Contractor Related Party;
8. **"Authority Delivery Team"** or **"ADT"** means the delivery team of the Authority responsible for the proactive management of the Authority’s obligations under this Agreement;
9. **"Authority Demander"** means the Engineering Functional Managers of the Authority responsible for the deployment of people across the DE&S Engineering Function;
10. **"Authority Directed Innovation Opportunity"** or **"ADIO"** has the meaning given to it in Paragraph 4 of Part II (*Part B Tasking Process*) to Schedule D (*Tasking Process*);
11. **"Authority Disclosed Data"** means information relating to DE&S, the Competition, the Agreement or the Contractor Deliverables disclosed to the Contractor and its COI Associates and advisers including:
    1. the Contract Notice;
    2. the Pre-Qualification Questionnaire;
    3. the Invitation to Negotiate (ITN);
    4. information, data and documents in the Data Room; and
    5. the Clarification Responses;
12. **"Authority Employee Transfer Allegation"** has the meaning given to it in Clause 51.4;
13. **"Authority Foreground IPR"** has the meaning given to it in Clause 69.3;
14. **"Authority IPR"** means IPR: (i) owned by the Authority; or (ii) licensed to the Authority and in respect of which the Authority has the appropriate right to either or both disclose or grant sub-licences to third parties (including the Contractor and any Contractor Related Party), but only to the extent to which and subject to the terms and conditions on which the Authority is permitted to grant sub-licences; and includes Authority Foreground IPR;
15. **"Authority Part A Lead"** means the person appointed within the Authority Delivery Team who is responsible for the proactive management of the obligations of the Authority obligations under the provisions of this Agreement as they relate to Approved Tasking Orders;
16. **"Authority Payment System"** means the Authority's "Contracting, Purchasing and Finance (CP&F)" electronic procurement tool;

**"Authority Proposal"** means an amendment to the Agreement proposed by the Authority;

1. **"Authority Related Party"** means an officer, employee, representative, agent, adviser or contractor of the Authority or member of the armed forces (in each case acting in such capacity), other than the Contractor and Contractor Related Parties;
2. **"Authority SRO"** means the person appointed to that role at a Senior Leadership Group level and notified to the Contractor from time to time;
3. **"Baseline Profit Rate"** means the baseline profit rate determined in accordance with the SSCR Principles;

**"BLB"** means Base / Bottom Level Budget as a MOD Accounting Code;

1. **"Business Continuity Plan"** means the business continuity plan attached to this Agreement at Schedule M (*Business Continuity Plan*) as amended from time to time in accordance with the terms of this Agreement;

**"Business Day"** means any day excluding:

(1) Saturdays, Sundays and public and statutory holidays in the jurisdiction of either party;

(2) privilege days notified in writing by the Authority to the Contractor at least 10 Business Days in advance; and

1. (3) such periods of holiday closure of the Contractor's premises of which the Authority is given written notice by the Contractor at least 10 Business Days in advance;
2. **"Code"** has the meaning given to it in Clause 84 (*Freedom of Information Act*);
3. **"COI Associate"** means each Approved Sub-contractor and, in relation to the entities in the Contractor Group:
   1. the parent undertakings and subsidiary undertakings of any member of the Contractor Group;
   2. the subsidiary undertakings of any parent undertaking referred to in Paragraph (a) above;
   3. any entity in which a member of the Contractor Group and any parent undertaking or subsidiary undertaking of such member of the Contractor Group referred to in Paragraph (a) or (b) above (taken together): (i) hold, directly or indirectly, at least 20% of the capital or voting rights; or (ii) have appointed (or have the right to appoint), directly or indirectly, a director or manager or similar officer; and
   4. any person: (i) who holds, directly or indirectly, at least 20% of the capital or voting rights in any member of the Contractor Group or any parent undertaking or subsidiary undertaking referred to in Paragraphs (a) or (b) above; or (ii) who has appointed (or has the right to appoint), directly or indirectly, a director or manager or similar officer of any member of the Contractor Group or any parent undertaking or subsidiary undertaking referred to in Paragraphs (a) or (b) above;
4. **"COI Compliance Regime"** means the conflict of interest compliance regime set out in Schedule G (*COI Compliance Regime*) in accordance with which the Contractor shall, and shall procure that the Engaged Personnel, the COI Associates and any Sub-contractors shall, manage actual and potential conflicts of interests;
5. **"COI Management Process"** has the meaning given to it in Paragraph 1.2 of Schedule G *(COI Compliance Regime);*
6. **"Commencement Conditions"** has the meaning given to it in Clause 4.3 (*Commencement Conditions*);
7. **"Commercially Confidential Information"** means information, (including, in respect of the Contractor, Commercially Sensitive Information) which at the time of disclosure to the receiving Party ought to be considered by the receiving Party as commercially confidential (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would, or would be likely to, prejudice the commercial interests, trade secrets, know-how or other IPR of either Party or any other person and all Personal Data and sensitive personal data (within the meaning of the DPA);
8. **"Commercial Lead**" means the person appointed pursuant to Clause 15.4 (*Authority Commercial Lead*);
9. **"Commercially Sensitive Information"** means the subset of Commercially Confidential Information identified as Commercially Sensitive Information in Schedule H (*Contractor’s Commercially Sensitive Information*);
10. **"Competition"** means the competition that led to the appointment of the Contractor under this Agreement (following the issue of the Contract Notice);

**"Compliance Agreement"** means any conflict of interest compliance agreement or equivalent terms included in any Sub-contract or other agreement between:

* 1. the Contractor and a Sub-contractor or COI Associate (which shall include a right under the Contracts (Rights of Third Parties) Act 1999 for the Authority to enforce its rights under that compliance agreement); or
  2. between the Authority and the Contractor,

1. that ensures the compliance of the Sub-contractor, COI Associate or Contractor (as relevant) with the COI Compliance Regime;
2. **"Conflicting Persons"** has the meaning given to it in Paragraph 2.2 of Schedule G (*COI Compliance Regime)*;

**"Conflicting Project"** has the meaning given to it in Paragraph 1.1 of Schedule G (*COI Compliance Regime)*;

1. **"Continuous Improvement Plan"** means the Contractor's plan to continuously improve the services as defined in Part A of Schedule A (*Requirements*) through the implementation of more efficient and effective methods as set out in Appendix 2 *(Continuous Improvement Plan*)to Schedule C (*Contract Management*);
2. **“Contract”** means the agreement concluded between the Authority and the Contractor, including all specifications, plans, drawings, schedules and other documentation, expressly made part of the agreement. In the event of contradiction, precedence shall be given to Clause 4 followed by the conditions of contract and then the Schedules of Requirements;
3. **"Contract Management Meeting"** has the meaning given to it in Clause 43 (*Monthly Contract Reviews*);

**"Contract Notice"** means the OJEU notice in relation to the Competition that was published on 8 December 2017;

**"the Contract Price"** means the price exclusive of Value Added Tax, payable to the Contractor by the Authority under the Agreement for the full and proper performance by the Contractor of his part of the Contract as determined under the provisions of the Agreement;

**"Contract Profit Rate"** means the profit, in percentage terms, which the parties have agreed to add to the price for each Approved Tasking Order;

1. **"Contract Year"** means a period of twelve (12) Months commencing on the Agreement Commencement Date or an anniversary of the Agreement Commencement Date;

**"Contractor"** means the person who, by the Agreement, undertakes to supply the Articles, or perform the Service, or both for the Authority as is provided by the Agreement. Where the Contractor is an individual or a partnership, the expression shall include the personal representatives of the individual or of the partners, as the case may be, and the expression shall also include any person to whom the benefit of the Agreement may be assigned by the Contractor with the consent of the Authority;

1. **"Contractor Background IPR"** means:
   1. IPR that is owned by or licensed to the Contractor or any Contractor Related Party or COI Associate before the Agreement Commencement Date; and

(b) IPR that is or has been created, developed or acquired by or licensed to the Contractor or any Contractor Related Party or any COI Associate for purposes other than: (i) the Contractor fulfilling its obligations under this Agreement; and (ii) the Contractor Related Party or any COI Associate performing the Contractor's obligations under this Agreement;

**"Contractor Deliverables"** means the Articles, works, goods, Products and / or the Services, including packaging (and Certificate(s) of Conformity and supplied in accordance with any QA requirements if specified) which the Contractor is required to provide under the Agreement;

1. **"Contractor Delivery Team"** or **"CDT"** means the delivery team responsible for the proactive management of the Contractor's obligations under this Agreement appointed by the Contractor to the Joint Programme Management Office (JPMO) in accordance with Paragraph 19 (*Part C – EDP Contractor Delivery Team*) of Schedule A (*Requirements*) and Part I (*Contract Management Construct*) of Schedule C (*Contract Management*);
2. **"Contractor Delivery Team Personnel"** means those employees of the Contractor or a member of the Contractor Group appointed to the Contractor Delivery Team;
3. **"Contractor Generated Innovation Opportunity"** or **"CGIO"** has the meaning given to it in Paragraph 2.1 of Part II to Schedule D (*Tasking Process*);
4. **"Contractor Group"** means the consortium of companies comprising of the entities listed in Schedule B (*Contractor Group Governance)* Appendix 1 *(Contractor Group)*;
5. **"Contractor Employee Transfer Allegation"** has the meaning given to it in Clause 51.3;
6. **"Contractor Event of Default"** means each event of default listed in Clause 61.2 (*Termination for Contractor Event of Default*);
7. **"Contractor IPR"** means Contractor Background IPR and Project Specific IPR.
8. **"Contractor Performance Report"** means the record of the overall performance of the Contractor in providing the Services, completed as a consensus score by the senior engineering leadership group of the DE&S Engineering Function and used in the measurement of KPI 3 in such form as the Authority shall provide to the Contractor from time to time;

**"Contractor Proposal"** means an amendment to the Agreement proposed by the Contractor;

1. **"Contractor Related Parties"** means one or more of:
   1. all directors, officers, employees, representatives, agents, contractors, consultants or advisers of the Contractor;
   2. all member of the Contractor Group;
   3. all Sub-contractors and any further Sub-contractor of any tier; and
   4. all officers, employees, representatives, agents or advisers of a Sub-contractor,
2. and shall include any Engaged Personnel who are placed by the Contractor (whether directly or indirectly through a Sub-contractor) with the Authority in accordance with Clause 30.1 (*Obligations of the Contractor*);
3. **"Contractor's Representative"** is the person appointed pursuant to Clause 15.1 (*Contractor's Representative*);
4. **"Contractor SRO"** means the person identified as such in Part I (*Contract Management Construct*) of Schedule C (*Contract Management*) or their replacement, approved in accordance with Clause 49 (*Key Personnel*) from time to time;
5. **"Contractor's Warranted Data"** means the information relating to the Contractor and the COI Associates that is warranted in accordance with Schedule G (*COI Compliance Regime*);
6. **"Controlled Information"** means any information in any written or tangible form which is disclosed to the Contractor or any Contractor Related Party by or on behalf of the Authority under or in connection with this Agreement, and which is identified by the legend 'Controlled Information' or other approved legend notified to the Contractor;

**"Controller"** has the meaning given to it in the GDPR;

1. **"COTS IPR"** means IPR in any commercial off the shelf software and IT products, being software and IT products that are ready-made, readily available for sale or licence and can be used without development;
2. **"Crown"** means one or more of Her Majesty's Secretaries of State, another Minister of the Crown, the Lords Commissioners of Her Majesty's Treasury, the Treasury Solicitor, any body corporate wholly owned by any of the foregoing or any other person acting on behalf of the Crown;
3. **"Crown Use"** means the use of IPR by the Authority for services of the Crown pursuant to its rights under section 12 of the Registered Designs Act 1949, sections 55-59  of the Patents Act 1977 or sections 240-244 of the Copyright, Designs and Patents Act 1988;

**"Data Loss Event"** means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach

**"Data Protection Impact Assessment"** means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

**"Data Protection Legislation"** means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

**"Data Protection Officer"** has the meaning given to it in the GDPR;

1. **"Data Room"** means the documents (including correspondence and information) made available prior to the date of this Agreement by or on behalf of the Authority for inspection by or on behalf of the Contractor in connection with the Competition;

**"Data Subject"** has the meaning given to it in the GDPR;

**"Data Subject Access Request"** means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data

1. **"DE&S"** has the meaning given to it in the Recitals;
2. **"DE&S Contract"** means a contract or a proposal for a contract (however early in development) that is awarded, or potentially to be awarded, by the Authority with procurement support or advice from DE&S;

**"DE&S Engineering Function"** has the meaning given to it in Paragraph 4 of Schedule A (*Requirements*);

1. **"Deduction"** has the meaning given in Paragraph 3 of Part II (*Performance Management*) of Schedule F (*Payment and Performance Management*);
2. **"DEFCONS"** means the defence conditions for use in defence related contracts as published by the Authority from time to time;

## "Defence Reform Act" ("DRA") 2014 means the primary legislation applicable to single source procurement;

1. **"DEFFORMS"** means the defence forms for use in defence related contracts as published by the Authority from time to time;
2. **"Defence Business Services" ("DBS")** means the business service organisation responsible for the delivery of corporate services to the Authority;
3. **"Defence and Security Public Contracts Regulations" ("DSPCR")** means the Defence and Security Public Contracts Regulations 2011 SI 2011/1848;
4. **"Delivery Fee"** has the meaning given to it in Paragraph 3.2.1 of the Payment Mechanism;
5. **"Dispute"** means any dispute, claim, or difference between the Parties (including any question regarding the existence, validity, interpretation or termination of the Agreement) arising in connection with the Services or the Agreement, and any dispute relating to any non-contractual obligations arising out of or in connection therewith;
6. **"Dispute Resolution Procedure"** means the procedure for the resolution of disputes set out in Schedule E (*Dispute Resolution Procedure*);
7. **"Disputed Amount"** means any part of any payment to which the Authority believes the Contractor is not entitled pursuant to this Agreement;
8. **"Domain"** means Land / Fleet / Air/ Joint Enablers / Corporate / Subs across DE&S;
9. **"DPA"** means the Data Protection Act 2018 [subject to Royal Assent];
10. **"EDP"** means Engineering Delivery Partner;
11. **"EDP Lead"** means the Part A Leads and the Part B Lead (Innovation);
12. **"EDP Part A Task Order Form"** means the form set out at Appendix 1 (*Part A Task Order Form*) to Schedule D (*Tasking Process*);
13. **"EDP Part B Task Order Form"** means the form set out at Appendix 2 (*Part B Task Order Form*) to Schedule D (*Tasking Process*);
14. **"EDP Task Order Form"** means the both the EDP Part A Task Order Form and the EDP Part B Task Order Form;
15. **"Employee Liability Information"** has the same meaning as in Regulation 11(2) of the Transfer Regulations;
16. **"Employing Sub-contractor"** means any Sub-contractor or Sub-contractor of any tier of the Contractor providing all or any part of the Services who employs or engages any person in providing the Services;
17. **"Employment Contract"** means the contract of employment or engagement between the Contractor (or, where relevant, a member of the Contractor Group or a Sub-contractor) and a Member of the Engaged Personnel;
18. **"****Encumbrance"** means any claim, option, charge (fixed or floating), mortgage, lien, pledge, equity, encumbrance, right to acquire, right of pre-emption, right of first refusal, title retention or any other Third Party right, or other security interest or any other agreement or arrangement having a similar effect or any agreement to create any of the foregoing;
19. **"Engaged Personnel"** means the Personnel, the Contractor Delivery Team Personnel and any person involved in developing any Contractor Generated Innovation Opportunity or Authority Directed Innovation Opportunity or the delivery of an Approved Innovation Project;
20. **"Engagement"** means (as applicable):
21. (a) the Placement Period for Personnel;
22. (b) the period during which a Contractor Delivery Team Personnel is appointed; or
23. (c) the period during which an employee of the Contractor Group is involved in the delivery of an Approved Innovation Project;
24. **"Engineering Function Role Profile"** means the role profiles described in Appendix 4 (*Engineering Function Role Profiles)* to Schedule A (*Requirements*);
25. **"Engineering Services"** means services as defined in Schedule A (*Requirements*),
26. **"Environmental Information Regulations"** means the Environmental Information Regulations 2004;
27. **"EU"** means the European Union;
28. **"Exit Plan"** has the meaning given to it in Clause 63.1.1 (*Exit Plan*);
29. **"Expiry Date"** means the date which is four (4) years after the Agreement Commencement Date unless and to the extent extended pursuant to Clause 5.2 (*Options*);
30. **"Final Performance Warning Notice"** has the meaning given to it in Clause 61.3 (*Termination for Poor Performance Breach*);

**"Firm Price"** means a price, agreed for the Contractor Deliverable which is not subject to variation;

**"Fixed Price"** means a price, agreed for the Contractor Deliverable that is subject to variation in accordance with the variation of price provisions of the Agreement;

1. **"FOIA"** or **"Freedom of Information Act"** means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the Information Commissioner's Office from time to time in relation to such legislation;

**"GDPR"** means the EU General Data Protection Regulations (**EU**) 2016/679 [which comes into force in the UK on 25 May 2018];

1. **"Good Industry Practice"** means the exercise of that degree of skill, care, diligence, prudence, transparency, co-operation, professionalism and foresight and operating practice, including with respect to safety, security, efficiency and cost-effectiveness, which would reasonably and ordinarily be expected of an appropriately (and where relevant professionally) qualified, skilled and experienced person engaged in the UK (or an appropriate equivalent jurisdiction) in activities of a similar scope and complexity to the Services (where such contractor is seeking to comply with its contractual obligations and all Applicable Laws);
2. **"Government Body"** means any department, office, body or agency of the UK Government or the Crown but excluding the Authority;
3. **"Government Furnished Assets"** or **"GFA"** has the meaning given to it in Clause 46*;*

**"Government Furnished Resource"** or **"GFR"** means MOD personnel loaned to the Contractor in connection with the Agreement by or on behalf of the Authority;

**"Government Furnished Information"** or **"GFI"** means information or data issued or made available to the Contractor in connection with the Agreement by or on behalf of the Authority;

**"Government Furnished Facilities"** or **"GFF"** means buildings, parts of buildings, sites and other infrastructure issued or made available to the Contractor in connection with the Agreement by or on behalf of the Authority;

1. **"HMRC"** means Her Majesty's Revenue and Customs;
2. **"Indexation Date"** has the meaning given in Paragraph 1.2 of Appendix 2 (*Indexation*) to Part I (*Payment*) of Schedule F (*Payment and Performance Management*);
3. **"Indexed"** has the meaning given in Paragraph 1.1 of Appendix 2 (*Indexation*) to Part I (*Payment*) of Schedule F (*Payment and Performance Management*);
4. **"Initial Approved Tasking Order"** means the initial approved tasking order at the Agreement Commencement Date;

## "Innovation Fee" means (as the Context requires) either or both of:

## (a) the Mature Fee; or

(b) the Delivery Fee

1. **"Innovation Fees Report"** means a report to be submitted by the Contractor to the Authority in accordance with Clause 43.4 and Paragraph 5.1 of the Payment Mechanism;
2. **"Innovation Governance Committee**" means the committee that considers Authority Directed Innovation Opportunities and Contractor Generated Innovation Opportunities, as further described in Paragraph 1 (*Innovation Governance Committee*) of Part II (*Part B Tasking Process*) to Schedule D (*Tasking*);
3. **"Infringing Part"** has the meaning given to it in Clause 74.2;
4. **"Insolvency Event"** means, in relation to any person, the occurrence of any of the following (unless, in the case of the events set out in Paragraphs (b), (c) or (d) below, the proceedings to which they relate are frivolous or vexatious and are dismissed, stayed or discharged within fifteen (15) Business Days of their commencement):
   1. the passing of a resolution for a person's winding up or the summoning of a meeting to pass any such resolution (other than for the purpose of and followed by a solvent reconstruction or amalgamation);
   2. the person having a petition for a winding-up order presented against it (other than for the purpose of and followed by a solvent reconstruction or amalgamation);
   3. an application being made to court, or an order being made, for the appointment of an administrator or any step is taken to appoint an administrator;
   4. a receiver, administrative receiver, receiver and manager or similar officer being appointed by any person of all or any part of the person's property, assets or undertaking;
   5. the person making a proposal for a voluntary arrangement as defined in Section 1 of the Insolvency Act 1986;
   6. the person entering into any other arrangement with all of its creditors or any of them;
   7. the person taking or suffering any other action in consequence of debt including giving notice to its creditors or any of them that it has suspended or is about to suspend payment; or
   8. the person being unable to pay its debts for the purposes of Section 123 of the Insolvency Act 1986 or any distress, execution or other process being levied upon the whole or a substantial part of the person's property, assets or undertaking;
5. **"IPR"** or **"Intellectual Property Rights"** means all trademarks, logos, get-up, trade and business names, domain names, patents, copyright (including copyright in computer programs), database rights, design rights, registered designs, utility models, semi-conductor topography rights, inventions (whether patentable or not), know-how, moral rights, commercially confidential information and all other intellectual property and rights of a similar or corresponding nature in any part of the world, whether or not registered or capable of registration, in respect of such rights which are registrable the right to apply for registration and any and all applications for registration and any renewals or extensions of any of the foregoing rights;
6. **"IPR Claim"** has the meaning given to it in Clause 74.1;
7. **"Joint Programme Management Office"** or **"JPMO"** means the Joint Programme Management Office set up in accordance with Part I (*Contract Management Construct*) of Schedule C (*Contract Management*);
8. **"Key Performance Indicator"** or **"KPI"** means the key performance indicators described in Paragraph 1 of the Performance Regime and described in Appendix 1 (*Key Performance Indicators*) to Part II (*Performance Management*) of Schedule F (*Payment and Performance Management*);
9. **"Key Personnel"** means the Contractor SRO, the Part A Lead (Resources), the Part A Lead (Specific Tasks) and the Part B Lead (Innovation);
10. **"KPI Failure"** means the Contractor's performance level being assessed as "red" for a particular KPI in a KPI Period (or KPI Periods) in accordance with the ‘Performance Required’ column of the table set out in Appendix 1 (*Key Performance Indicators*) to the Performance Regime;
11. **"KPI Period"** means the period for the measurement of performance set out in the table in Appendix 1 (*Key Performance Indicators*) of the Performance Regime and which corresponds to each KPI;

**"Late Quality and/or Performance Issues"** means the Quality and/or Performance Issues that have not been resolved to the satisfaction of the Authority in accordance with Paragraph 6.5 of Part II (*Contract Management Mechanics*) of Schedule C (*Contract Management*), which either:

* 1. became overdue and were resolved during the relevant KPI Period (but excluding any Quality and/or Performance Issues which were overdue on the last Business Day of the previous KPI Period and were resolved in the current KPI Period); or
  2. remain unresolved on the last Business Day of the relevant KPI Period;

**"LED"** means the Law Enforcement Directive (Directive (EU) 2016/680);

1. **"Legal Proceedings"** means any suit, litigation, claim, action, proceeding, arbitration, administrative proceeding, mediation, adjudication or investigation before any Relevant Authority (save that for the purposes of Clause 11.1 (*Contractor Warranties and Representations*) or Paragraph 2.5 of Schedule I (*Management and* *Liability for Engaged Personnel*) it shall only include investigations of which the Contractor is aware, having made all due enquiry);
2. **"Letter of Placement"** means a letter of appointment between the Contractor (or, where relevant, a member of the Contractor Group or a Sub-contractor) and a Member of the Engaged Personnel in a form satisfactory to the Authority and based on that form set out in Appendix 1 (*Letter of Placement)* to Schedule I (*Management and Liability for Engaged Personnel)*;
3. **"Loss"** or **"Losses"** means any cost (including reasonable legal and other professional costs, fees and expenses), expense, loss, damage or destruction, compensation, fine or other liability (including any claims, interest, penalty, applicable VAT and similar taxes or liability for deduction of PAYE tax properly incurred) whatsoever or howsoever incurred and whether direct, indirect or consequential;
4. **"Management Issues"** means, in relation to any Engaged Personnel, all those matters under the relevant Employment Contract requiring action, investigation or decisions by the Contractor (or, where relevant, a member of the Contractor Group or a Sub-contractor), including appraisals and performance issues; pay reviews and the award of other payments and benefits under the Employment Contract; periods of annual leave, sick leave or other leave; absence for any other reason; any complaint about the Engaged Personnel (whether or not that would be dealt with under the disciplinary procedure of the Contractor (or, where relevant, of a member of the Contractor Group or a Sub-contractor)); and any complaint or grievance raised by such Engaged Personnel (whether or not that would be dealt with under the grievance procedure of the Contractor (or, where relevant, of a member of the Contractor Group or a Sub-contractor)); termination of employment; and any disciplinary action;
5. **"Man Day Rate Cards"** meansthe Part A Man Day Rate Cards and the Part B Man Day Rate Cards;
6. **"Material Breach Notice"** has the meaning given to it in Clause 61.2.2 (Material Breach Notice);

### "Material Single Source Sub-contract (Non-Qualifying) " means a Sub-contract entered into by the Contractor where:

#### the Sub-contract is entered into at the same time as, or after, the Agreement Commencement Date;

#### the Sub-contract is entered into for the purposes of the Agreement;

#### the award of the Sub-contract is not the result of a “competitive process” as that defined in Regulation 59, or Regulation 60, as appropriate of the Single Source Contract Regulations 2014 (SSCR) for Qualifying Sub-contracts (QSCs);

#### the value of the Sub-contract is of or above £1,000,000; and

#### at least 50% of the Sub-contract (by value) is required either to enable performance of the Agreement, or to enable the combined performance of the Agreement and any other contract, or prospective contract, to which the Contractor or any Group Undertaking of the Contractor is a party, or might become a party.

**"Materiel"** is a generic term meaning equipment (including fixed assets), stores, supplies and spares;

1. **"Mature Fee"** has the meaning given to it in Paragraph 3.1.1 of the Payment Mechanism;
2. **"Member of Engaged Personnel"** means an individual who is part of the Engaged Personnel, including the Contractor Delivery Team and the Personnel;
3. **"Member of the Personnel"** means an individual who is part of the Personnel, including a Resource;
4. **"Milestone"** means the milestone or milestones agreed between the Parties under an Approved Tasking Order;
5. **"Month"** means a calendar month and **"Monthly"** shall be construed accordingly;
6. **"Monthly Part A Resource Fees Report"** means a report to be submitted by the Contractor to the Authority in accordance with Clause 43.4 and Paragraph 4 of the Payment Mechanism;
7. **"New Provider"** means any replacement service provider or providers engaged to provide the Services (or part thereof) or substantially similar services or the Authority itself where the Services or substantially similar services or part thereof continue to be provided by the Authority after, termination or expiry of this Agreement;
8. **"Non-Transferring Employee"** means any person who immediately prior to 23:59 hours on the day prior to the Agreement Commencement Date was employed: (i) by the Authority; or (ii) by any third party retained directly or indirectly by or on behalf of the Authority in relation to the DE&S Engineering Function;

**"OC"** mean Operating Centre as a DE&S area as a subset of Domain;

1. **"OJEU"** means the Official Journal of the European Union;

**"Overdue Resource Placements"** means placements where Resources were not or have not been deployed to the relevant specific assignments within 25 Business Days of the date the relevant Approved Tasking Order, whether such placements:

* 1. became overdue and were resolved during the relevant KPI Period (but excluding any placements which were overdue on the last Business Day of the previous KPI Period and were resolved in the current KPI Period); or
  2. remain overdue on the last Business Day of the relevant KPI Period;

1. **"Part A Fee"** means the total of the Resource Rates and the Specific Task Rates calculated pursuant to Paragraph 2 (*Part A Fees*) of Part I (*Payment*) to Schedule F (*Payment and Performance Management*);

**"Part A Leads"** means both the Part A Lead (Resource) and the Part A Lead (Specific Task);

1. **"Part A Lead (Resource)"** means the person identified as such in Part I (*Contract Management Construct*) of Schedule C (*Contract Management*) or their replacement, approved in accordance with Clause 49 (*Key Personnel*) from time to time;
2. **"Part A Lead (Specific Task)"** means the person identified as such in Part I (*Contract Management Construct*) of Schedule C (*Contract Management*) or their replacement, approved in accordance with Clause 49 (*Key Personnel*) from time to time;
3. **"Part A Man Day Rate Cards"** means the rate cards for 1 Man Day detailed in Appendix 1 (*Rate Cards*) to the Payment Mechanism provided that such rate cards shall be Indexed in accordance with Paragraph 1.3 and Appendix 2 (*Indexation*) of Part I (*Payment*) of Schedule F (*Payment and Performance Management*);
4. **"Part A Tasking Process"** means the process set out in the Part I (*Part A Tasking Process*) of Schedule D (*Tasking Process*);
5. **"Part B Lead (Innovation)"** means the person identified as such in Part I (*Contract Management Construct*) of Schedule C (*Contract Management*) or their replacement, approved in accordance with Clause 49 (*Key Personnel*) from time to time;
6. **"Part B Approved Tasking Order"** means the written record of the terms and conditions applicable to delivery of an Approved Tasking Order for Innovation (including a Mature Fee or Delivery Fee and the terms and conditions of the main body and Schedules to this Agreement) to be agreed by the Parties following the decision of the Innovation Governance Committee made under the Part B Tasking Process that the Contractor should deliver or mature such Approved Tasking Order for Innovation under this Agreement;

**"Part B Man Day Rate Cards"** means the rate cards for 1 Man Day detailed in Appendix 1 (*Rate Cards*) to the Payment Mechanism provided that such rate cards shall be Indexed in accordance with Paragraph 1.4 and Appendix 2 (*Indexation*) of Part I (*Payment*) of Schedule F (*Payment and Performance Management*);

1. **"Part B Tasking Process"** means the process set out in Part II (*Part B Tasking Process*) to Schedule D (*Tasking Process*);

**"Parent Company Guarantee"** means a deed of guarantee and indemnity given by a parent company in respect of a Subsidiary

**"Parent Company Guarantor"** means the company named at Paragraph 1(1) of Schedule Q (*Parent Company Guarantee*);

1. **"Parties"** means the parties to this Agreement and **"Party"** means either of them;
2. **"Payment Longstop Date"** has the meaning given to it in Clause 53.3.3;
3. **"Payment Mechanism"** means the provisions of Part I (*Payment*) of Schedule F (*Payment and Performance Management*);
4. **"Performance Regime"** means the KPI management regime set out in Part II (*Performance Mechanics*) of Schedule F (*Payment and Performance Management*);

**"Performance Report"** has the meaning given to it in Clause 43 (*Monthly Contract Reviews*);

**"Performance Warning Notice"** has the meaning given to it in Clause 61.3 (*Termination for Poor Performance Breach*);

**"Person"** includes any legal or natural person or persons;

**"Personal Data"** has the meaning given to it in the GDPR;

**"Personal Data Breach"** has the meaning given to it in the GDPR;

1. **"Personnel"** means all persons employed or engaged under an Approved Tasking Order in connection with the performance of the Services, whether as a Resource, a Specific Team Member, and, where the context so requires, shall include a Member of the Personnel;
2. **"Personnel Performance Questionnaire"** means the record of the performance of a Member of the Personnel completed by the Authority:
   1. every six (6) Months; and
   2. at the end of the term of each Approved Tasking Order,

and used in the measurement of KPI 1 in such form as the Authority shall provide to the Contractor from time to time;

**"Personnel Services"** means the Services to be performed during a Placement Period by Personnel, as agreed between the Authority and the Contractor pursuant to an Approved Tasking Order and recorded for the benefit of such Personnel in the relevant Letters of Placement;

1. **"Placement"** means, in relation to a Member of the Personnel, the placement by the Contractor, a member of the Contractor Group or a Sub-contractor of such Member of the Personnel with the Authority pursuant to an Approved Tasking Order;
2. **"Placement Period"** means, in relation to each Member of the Personnel, the period of a Placement as defined in the relevant Member of the Personnel's Letter of Placement;
3. **"Prescribed Rate"** means a rate of five (5) per cent per annum above the Bank of England base rate;
4. **"Pre-mobilisation Checklist"** means the check-list as shown in Appendix 3 to Schedule C (*Contract Management*), and which shall align to the requirements set out in Schedule A (*Requirements*) as may be updated from time to time by agreement, albeit that items which require input, information or training to be provided by the Authority to the Contractor shall not be included in the On-boarding Checklist unless and until such input, information or training has been provided by the Authority in full;
5. **"Pre-Qualification Questionnaire"** means the document of that name issued to Tenderers on 8th December 2017;
6. **"Privilege and Confidentiality Agreement"** means a privilege and confidentiality agreement between the Authority and Engaged Personnel which shall be in substantially the agreed form set out in Appendix 2 (*Privilege and Confidentiality Agreement*) to Schedule I (*Management and Liability for Engaged Personnel*), with such amendments as are reasonably necessary so as to give it effect;

**"Processor"** has the meaning given to it in the GDPR;

1. **"Product"** means an item from the Service Catalogue at Appendix 2 (*Part A Engineering Support Services*) of Schedule A (*Requirements*) delivered to the Authority in response to an Approved Tasking Order;
2. **"Prohibited Act"** means:
   1. offering, giving or agreeing to give to any servant of the Crown, or receiving any gift or consideration or financial or other advantage of any kind as an inducement or reward, for the benefit of itself or another person, or which it would be improper to accept:
      1. for doing or not doing (or for having done or not having done), or attempting to do or not do any act in relation to the obtaining, execution or performance of this Agreement or any other contract with the Crown either inside or outside the UK; or
      2. for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Crown;
   2. entering into this Agreement or any other contract with the Crown in connection with which commission has been paid or has been agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to and authorised in writing by the Authority;
   3. committing any offence:
      1. under the Prevention of Corruption Acts 1889-1916;
      2. under Applicable Laws relating to anti-bribery and anti-corruption including the Bribery Act 2010 and the Anti-Terrorism, Crime and Security Act 2001;
      3. which would constitute an offence under Sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
      4. under Applicable Laws creating offences in respect of fraudulent acts; or
      5. at common law in respect of fraudulent acts in relation to this Agreement or any other contract with the Crown;
   4. defrauding or attempting to defraud or conspiring to defraud the Crown; or

(e) failing to promptly report to the Authority any request or demand for any undue financial or other advantage of any kind received by the Contractor or any Contractor Related Party in connection with the performance of this Agreement of which it is or ought reasonably to have been aware;

**"Project Specific IPR"** means the IPR in an Approved Innovation Project that the Part B Tasking Process determines shall not be Authority IPR and is recorded as such in the Part B Approved Tasking Order;

**"Protective Measures"** means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it

**"Qualifying Defence Contract" ("QDC")** means a single source contract which has been assessed, and which meets the criteria for a contract to which the DRA and SSCR must apply;

1. **"Quality and/or Performance Issue**" means any issue in relation to a Member of the Personnel's performance, conduct, competence or fit with their role or any issue in relation to the quality of the Contractor Deliverables delivered or the performance of the Contractor in delivery of the Contractor Deliverables required in relation to a Specific Task;

**"Receipting"** has the meaning given to it in Clause 53.3.5;

1. **"Relevant Authority"** means any court or tribunal or other (local, national or supra-national) agency, inspectorate, minister, ministry, official, public or statutory body with jurisdiction in relation to any suit, litigation, claim, action, proceeding, arbitration, administrative proceeding, mediation, adjudication or investigation in the UK, the EU or any other jurisdiction;
2. **"Relevant Month**" means the Month during which payment of an amount is first claimed by the Contractor pursuant to Clause 52 (*Invoicing and Payment*);
3. **"Remediable Breach"** has the meaning given to it in Clause 61.2.4 (*Remediable Breach*);
4. **"Remediation Programme"** has the meaning given to it in Clause 61.2.4 (*Remediable Breach*);
5. **"Request for Information"** has the meaning given to it in the FOIA;
6. **"Representatives"** means the Contractor's Representative and the ADT Commercial Lead;
7. **"Required Skills"** means the level of skills, knowledge and experience expected from Personnel, identified for such Member of the Personnel as being required to carry out the relevant Approved Tasking Order;
8. **"Requirements"** means the requirements described in Schedule A (*Requirements*);
9. **"Resource"** means an individual appointed to a specific assignment in accordance with paragraph 9.1.1 of Schedule A (*Requirements*);
10. **"Resource Rates"** has the meaning given to it in Paragraph 2.1.1 of the Payment Mechanism;

**"Retention"** has the meaning given to it in Paragraph 2.1 of Part II (*Performance Management*) of Schedule F (*Payment and Performance Management*);

**"Retention Value"** means each amount (expressed as a percentage) identified as a Withheld Amount in column 2 of Table 1 (*Retention Value*) in Part II (*Key Performance Indicators*) of Schedule F (*Payment and Performance*);

1. **"Revised Due Date"** means the date that is thirty (30) Business Days after the end of a Relevant Month;
2. **"Risk Based Fee"** means the element of a Delivery Fee which relates to a success fee, a gainshare fee, a target cost incentive fee, or any other contingent payments based on a risk/reward mechanism identified in the relevant Part B Task;
3. **"SSCR Principles"** means the Defence Reform Act 2014, the Single Source Contract Regulations 2014 and guidance published by the Single Source Regulations Office as amended from time to time;

**"Schedule of Requirements"** means Schedule A (*Requirements*);

1. **"Secret Matter"** means any matter connected with this Agreement or any Associated Contract or DE&S which is designated in writing by the Authority as **"Top Secret"** or **"Secret"** (or with any equivalent classification in use from time to time) and shall include any information concerning the content of such matter and anything which contains or may reveal that matter;
2. **"Security Aspects Letter"** means the letter issued in accordance with Clause 67;
3. **"Security Policy Framework"** means the security policy framework produced by the Government Security Secretariat within the Cabinet Office which sets out the standards, best practice guidelines and approaches that are required to protect UK Government assets, as amended from time to time;
4. **"Self-Support System"** has the meaning given to it in Paragraph 11 of Schedule A (*Requirements*);

**"Senior Leadership Group"** means SLG Engineers (Head of Engineering Management) as defined in Schedule A (*Requirements*);

**"Service Catalogue"** means the list of engineering products at Appendix 2 of Schedule A (*Requirements*) as amended from time to time;

1. **"Services"** means the services to be provided by the Contractor (and the Contractor Related Parties) under an Approved Tasking Order in accordance with Schedule A (*Requirements*);

**"Single Source Contract Regulations ("SSCR") 2014"** means the secondary legislation applicable to single source procurement;

**"Single Source Pricing Investigation"** means a pricing to assess whether claimed Allowable Costs meet the requirements of the Single Source Contract Regulations and Statutory Guidance.

**"Single Source Regulations Office" ("SSRO")** means the Non-Departmental Public Body acting as the independent expert for MOD single source procurement;

1. **"Solicitation Date"** has the meaning given to it in Clause 50.1.1;
2. **“Specific Assignment”** means Resource of an individual or team to undertake a specific piece of work as defined in an approved Tasking Order;

**“Specific Task”** means activity leading to a defined Product as defined in Requirements Schedule A;

**"Specific Task Rates"** has the meaning given to it in Paragraph 2.2.1 of the Payment Mechanism;

1. **"Stage Deliverables Assurance and Approvals Process"** means the process used by the Authority to assess the development of Contractor Generated Innovation Opportunities and Authority Directed Innovation Opportunities as provided by the Authority to the Contractor from time to time;

**"Sub-contractor"** means any Sub-contractor engaged by the Contractor or by any other Sub-contractor of the Contractor at any level of Sub-contracting to provide Contractor Deliverables wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement and ‘Sub-contract’ shall be interpreted accordingly;

**"Sub-contract"** means any contract, agreement or other arrangement (whether in writing or otherwise) between the Contractor and a Third Party under which goods or services (including advisory services) are provided to the Contractor to assist it in performing its obligations under this Agreement;

**"Sub-processor"** means any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement;

1. **"Subsequent Relevant Transfer"** means a transfer of the employment of Subsequent Transferring Employees from the Contractor or any Employing Sub-contractor to a New Provider or the Authority under the Transfer Regulations on termination, partial termination or expiry of this Agreement;
2. **"Subsequent Transfer Date"** means the date on which the transfer of a Subsequent Transferring Employee takes place under the Transfer Regulations;
3. **"Subsequent Transferring Employee"** means an employee wholly or mainly employed or otherwise assigned to the Services whose employment transfers under the Transfer Regulations from the Contractor or any Employing Sub-contractor to a New Provider on termination, partial termination or expiry of this Agreement;

**“Surge”** means a requirement of the Authority to fulfil an operational surge in activity, and designated as such in accordance with Schedule D (*Tasking Process*) Paragraph 5;

1. **"T&S Costs"** means any travel and subsistence costs incurred by any Engaged Personnel that are reclaimable in accordance with Paragraphs 7.2 to 7.7 of Schedule I (*Management and Liability for Engaged Personnel*);
2. **"Task"** means a Specific Task or a task to fulfil a vacancy through the provision of a Resource;
3. **“Tasking Order”** commissioning of Resources or a Specific Task as defined in Requirements Schedule A;
4. **"Task Order ID"** has the meaning given to it in Paragraph 2.1.1 of Part I (Part A Tasking Process) of Schedule D (*Tasking Process*);
5. **"Task Order Lead"** for a ‘Specific Task’ means the Person completing the EDP Part A Task Order Form (or delegate) on behalf of the Authority who will manage the completion and delivery of a Product required for a Specific Task;
6. **"Task Order Manager"** for a ‘Resource’ means the manager (or delegate) of the Authority who undertakes activities identified for that role under this Agreement;
7. **"Tenderer"** means any tenderer or potential tenderer who participated in the Competition in any respect;
8. **"Termination Date"** means the date of early termination of this Agreement;
9. **"Termination Notice"** has the meaning given to it in Clause 61.2.4(B);
10. **"Third Party"** means any person other than the Parties;
11. **"Third Party IPR"** means IPR which is:
    1. owned by a Third Party (other than a Contractor Related Party or a COI Associate); or
    2. licensed to a Third Party (other than a Contractor Related Party or a COI Associate) and in respect of which that Third Party has the right to grant sub-licences;
12. **“Time Recording”** means the recording of time for Resourcing Tasking Orders and will include the use of the DE&S Time Recording and Charging (TRaC) Tool or equivalent Time Recording Tool;

**“Time Recording and Charging (TRaC)”** means use of the DE&S Time Recording and Charging Tool for Resources or equivalent for Time Recording Tool;

1. **"Total Quality and/or Performance"** means the sum of:
   1. all Late Quality and/or Performance Issues; and
   2. any other Quality and/or Performance Issues that have been resolved to the satisfaction of the Authority in accordance with Paragraph 6.5 of Part II (*Contract Management Mechanics*) of Schedule C (Contract Management) during a KPI Period;
2. **"Total Annual Fee"** means, in relation to each Contract Year, the total of all Part A Fees and all Innovation Fees in relation to Services delivered in that Contract Year;
3. **"Total Resource Placements"** means the sum of:
   1. all Overdue Resource Placements; and
   2. any other placements where Resources were deployed to the relevant specific vacancies within 25 Business Days of the date the relevant Approved Tasking Order took effect during a specific KPI Period;
4. **"Transfer Regulations"** means either or both the Transfer of Undertakings (Protection of Employment) Regulations 2006 or the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006, as appropriate;

**"Transparency Information"** shall mean the content of this Agreement in its entirety, including from time to time agreed changes to the Agreement, and details of any payments made by the Authority to the Contractor under the Agreement;

**"Treaties"** means the Treaty on European Union ("**TEU**") and the Treaty on the Functioning of the European Union (**"TFEU"**);

**"UIN"** means Unique Identity Number as a MOD Accounting code;

1. **"UK"** means the United Kingdom of Great Britain and Northern Ireland;
2. **"VAT"** means any value added taxes;
3. **"Wilful Misconduct "** means:
   1. any act or failure to act (whether sole, joint or concurrent) by any person (or its officers, employees, representatives, agents or advisers) in breach of a duty owed to another person which was intended to cause harmful consequences and in relation to which such person knew, or should have known, such act or failure would be a breach of duty and would have such effect on the safety or property of another person; and
   2. any act of fraud by any person (or its officers, employees, representatives, agents or advisers);
4. **"Withheld Amount"** means any part of any payment claimed by the Contractor that the Authority determines is not payable pursuant to this Agreement including:

(a) Paragraph 4.3 and 5.3 of the Payment Mechanism; and

(b) Paragraph 2 of the Performance Regime;

1. **"year"** means the twelve (12) Month period from (but excluding) a day to (and including) the day bearing the same number in the same Month of the following year (or, in the case only of a year commencing on 29 February, to the next following 28 February).

## Where BS/EN/ISO 9000 or documents in the AQAP 100 series form part of the Agreement either by reference in the special conditions or as invoked by such Defence Standards (DEF-STANS) in the 05-090 series as are called up as part of the Agreement, the following provisions shall also have effect:

## a. "the Purchaser" means "the Authority";

b. **"the Purchaser's Representative"** means **"the Representative of the Authority";**

## c. "the Project Management Authority" or "Progress Authority" means the authorities so designated in the Agreement.

## Interpretation

In this Agreement, except where the context otherwise requires:

words and expressions defined in the Companies Act 2006 shall have the same meaning in this Agreement;

a reference to an enactment or statutory provision shall include a reference to any subordinate legislation made under the relevant enactment or statutory provision;

a reference to an enactment, statutory provision or subordinate legislation shall include a reference to that enactment, statutory provision or subordinate legislation as from time to time amended, consolidated, modified, re-enacted or replaced, and references to an enactment or statutory provision include a reference to any repealed statute or statutory provision which it re-enacts (with or without modification), as subsequently re-enacted;

words in the singular shall include the plural and vice versa;

references to one gender include other genders;

a reference to a person shall include a reference to a firm, a body corporate, an unincorporated association, a partnership and to an individual's executors or administrators;

a reference to a Clause, Paragraph, Schedule, Part, Rule, Appendix or Annex shall be a reference to a Clause, Paragraph, Schedule, Part, Rule, Appendix or Annex of or to this Agreement and a reference to a Paragraph or Part within a Schedule, Appendix or Annex shall be to a Paragraph or Part of that particular Schedule, Appendix or Annex unless otherwise stated;

references to this Agreement include this Agreement as amended or supplemented in accordance with its terms;

references in this Agreement to any contract, agreement or other instrument (other than an enactment, statutory provision or subordinate legislation made thereunder) shall be deemed to be references to that contract, agreement or instrument as from time to time amended;

if a period of time is specified as from a given day, or from the day of an act or event, it shall be calculated exclusive of that day;

references to writing shall include any modes of reproducing words in any legible form and (unless expressly stated otherwise) shall include email;

references to the Authority or the Contractor shall include any assignees or successors in title to those persons;

a reference to "includes" or "including" shall mean "includes without limitation" or "including without limitation";

the contents page and headings in this Agreement are for convenience only and shall not affect its interpretation;

a reference to a document "in the agreed terms" or any similar expression shall be to a document agreed between the Parties, annexed or appended to this Agreement and initialled for identification by the Parties;

except to the extent expressly provided, no rates or amounts expressed in this Agreement shall be subject to indexation during the Term;

any decision, act, or thing which the Authority is required or authorised to take or do under the Agreement may be taken or done only by any person authorised, either generally or specifically, by the Authority to take or do that decision, act, or thing on behalf of the Authority;

unless excluded within the terms of the Agreement or where required by law: a. references to submission of documents in writing shall include electronic submission; and

any requirement for a document to be signed or references to signatures shall be construed to include electronic signature, provided that a formal method of authentication as agreed between the parties is employed and the agreed method recorded in the Agreement.

## Precedence of Documentation

Subject to Clause 1.4.2, if there is any inconsistency between the provisions of the body of this Agreement and the Schedules or between any of the Schedules, the conflict shall be resolved according to the following descending order of priority:

Clause 1 (*Definitions and Interpretations*) to Clause 86 (*Liability*) of this Agreement;

all DEFCONs or DEFSTANS referenced in the Agreement;

Schedule A (*Requirements*);

all other Schedules; and

any Part A or Part B Approved Tasking Order.

The terms of any Part A or Part B Approved Tasking Order will take precedence over any other part of this Agreement in so far as such terms relate to the delivery of the Services under that Approved Tasking Order (as the case may be).

If a Party becomes aware of any inconsistency within or between the documents referred to in Clause 1.4.1, such Party shall promptly notify the other and the Parties will seek to resolve such inconsistency, provided that if either Party considers the inconsistency to be material then the matter shall be determined in accordance with Clause 64 (*Dispute Resolution Procedure*).

# 

# QUALIFYING DEFENCE CONTRACT (qdc)

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

# Governing Law

## The Agreement shall be governed by and construed in accordance with the Laws of England and Wales.

## Subject to Clause 64 (*Dispute Resolution Procedure*) and without prejudice to the dispute resolution process set out in that Clause, 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 Agreement or breach thereof.

## Other jurisdictions may apply solely for the purpose of giving effect to this Clause and for the enforcement of any judgement, order or award given under English jurisdiction.

# COMMENCEMENT

## Agreement Commencement Date

## This agreement shall come into effect on the Agreement Commencement Date.

## Within 30 days of the Agreement Commencement Date the Contractor shall deliver to the Authority the Commencement Conditions identified at Clause 4.3. If one or more of the Commencement Conditions remains unsatisfied 30 days after the Agreement Commencement Date, and has not been waived by the Authority on or before that date, the Authority shall be entitled to terminate this Agreement with immediate effect as a Contractor Event of Default.

## Commencement Conditions

## Prior to the Agreement Commencement Date, the Contractor shall deliver to the Authority:

### The Parent Company Guarantee executed by the Parent Guarantor;

### A certified copy of the board minutes of the Parent Guarantor approving the entry by the Parent Guarantor into the Parent Company Guarantee;

### A certified copy of the board minutes of the Contractor approving the entry by the Contractor into this Agreement;

### Signed copies of each Initial Approved Tasking Order;

### Signed copies of a Letter of Placement executed by each of the Key Personnel;

### A copy of the contracts for the Approved Sub-contracts;

### A Compliance Agreement executed by each Approved Sub-contractor (which may be included in the terms of the Approved Sub-contract);

### A Contract Reporting Plan and a Contract Notification Plan in accordance with the SSCR 2014

### Evidence reasonably satisfactory to the Authority that the Contractor has taken out each policy of insurance required under Part XIII (Insurance and Liabilities).

## The Contractor shall use all reasonable endeavours to satisfy or procure the satisfaction of each of the Commencement Conditions not already satisfied or waived on the date of this Agreement as soon as possible.

## The Authority may, by written notice to the Contractor, waive any of the Commencement Conditions in whole or in part.

## Failure to Satisfy Commencement Conditions

If one or more of the Commencement Conditions remains unsatisfied 60 days after the Agreement Commencement Date, and has not been waived by the Authority on or before that date, the Authority shall be entitled to terminate this Agreement with immediate effect as a Contractor Event of Default.

## Authority Commencement Condition

Within 30 days of the Agreement Commencement Date, the Authority shall sign and deliver to the Contractor each Initial Approved Tasking Order.

The Contractor may, by written notice to the Authority, waive the Authority's obligation under Clause 4.7.1 in whole or in part.

# duration of the AGREEMENT

## Duration of Agreement

### Subject to the early termination of this Agreement in accordance with Clause 61 (*Early Termination*) or extension of this Agreement in accordance with Clause 5.2 (*Options*), this Agreement shall be for a period of REDACTED years from the Agreement Commencement Date.

## Options

### In addition to the Duration of the Agreement, the Contractor hereby grants to the Authority the following irrevocable options in accordance with the terms and conditions set out in this Agreement or any such subsequent Agreement or Agreements where such options are taken up, it being agreed that the Authority has no obligation to exercise such options:

#### option period 1: Year REDACTED – DD MM YYYY to DD MM YYYY

#### option period 2: Year REDACTED – DD MM YYYY to DD MM YYYY

### The Man Day Rate Cards for the Option Periods are shown in Appendix 1 and Appendix 2 of the Payment Mechanism.

### Any decision to exercise the option periods is a matter solely for the Authority and the Authority's decision in this matter will be final.

### The Authority shall notify the contractor whether it intends to exercise the option period in accordance with this Clause 5.2.1 (*Options*) by notice to the Contractor in writing and no later than six (6) Months prior to the Expiry Date.

### Within one (1) Month of receiving such notice from the Authority, the Contractor may either:

#### propose alternative Man Day Rate Cards, provided always that no amount in the Man Day Rate Cards may increase from the equivalent amount stated in the previous Man Day Rate Cards; or

#### decline to amend the Man Day Rate Cards from those attached to this Agreement

### Where Clause 5.2.5(A) applies, the Authority:

#### upon receipt of the Contractor’s proposal, will undertake a Single Source Pricing Investigation to determine the acceptability of the Contractor’s proposal;

#### upon conclusion of the pricing review:

##### if the Contractor’s proposal is deemed acceptable, will give notice accepting the revised Man Day Rate Cards; or

##### If the Contractor’s proposal is not deemed acceptable, will give notice declining the revised Man Day Rates and seek to negotiate with the Contractor acceptable Man Day Rates cards;

#### upon the agreement of the revised Man Day Rate Cards by both Parties, will give notice extending the Duration of the Agreement (and this Agreement shall be amended to reflect the revised Man Day Rate Cards);

#### If agreement cannot be reached, within the deadline referred to in Clause 5.2.4, give notice to the Contractor that the Duration of the Agreement will not be extended.

### Where Clause 5.2.5(B) applies, or the Contractor does not respond to the Authority’s notice under Clause 5.2.4, within two (2) weeks of the deadline referred to in Clause 5.2.4, give notice to the Contractor extending the Term without amending the Man Day Rate Cards.

### In the event that the Authority declines the opportunity to take up the option years, the Agreement will terminate on the Expiry Date.

# Appointment and Liability

## Appointment

The Contractor shall perform its obligations in accordance with the terms of this Agreement. The entities comprising the Contractor shall be jointly and severally liable for their obligations under this Agreement.

# Non-exclusive agreement

## The Contractor acknowledges and agrees that this Agreement is non-exclusive, that the Authority may also engage resources and seek innovative solutions from other persons or employ resource and identify innovations itself and that the Authority has no obligation to request the provision or implementation of any Services.

# Standing Offer

## In consideration for the payment of the sum of the initial tasking order by the Authority to the Contractor(s), the Contractor(s) shall not for the duration of the Agreement withdraw from or amend in any way the standing offers contained in the Agreement except by agreement with the Authority. The call-off arrangement is via Approved Tasking Order.

## The terms and conditions of this Agreement will apply to all Approved Tasking Orders unless otherwise agreed with the Authority in the Approved Tasking Order.

# TRANSPARENCY

## Notwithstanding any other term of this Agreement, the Contractor understands that the Authority may publish the Transparency Information to the general public. The Contractor shall assist and cooperate with the Authority to enable the Authority to publish the Transparency Information.

## Before publishing the Transparency Information to the general public in accordance with Clause 9.1 above, the Authority shall redact any information that would be exempt from disclosure if it was the subject of a request for information under the Freedom of Information Act 2000 (“the Act”) or the Environmental Information Regulations 2004 (“the Regulations”), including the Contractor Commercially Sensitive Information.

## The Authority may consult with the Contractor before redacting any information from the Transparency Information in accordance with Clause 9.2 above. The Contractor acknowledges and accepts that its representations on redactions during consultation may not be determinative and that the decision whether to redact information is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Act or the Regulations.

## For the avoidance of doubt, nothing in this Clause shall affect the Contractor’s rights at law.

# 

# Change of Control of the Contractor and Change in COI Associates

The Contractor shall inform the Authority, as soon as practicable, in writing (which for this purpose does not include email) of any change in control of any entity comprised in the Contractor Group or if any person holds or acquires, directly or indirectly, at least 20% of the capital or voting rights in any entity comprised in the Contractor Group.

For the purposes of this Clause 10 (*Change of Control of the Contractor and Change in COI Associates*), "**control**" of an entity means the power of a person, directly or indirectly, to secure that the affairs of that entity are conducted in accordance with the wishes of that person or to exercise a dominant influence over that entity:

by means of the holding of shares, or the possession of voting powers in, or in relation to, the entity; or

by virtue of any powers conferred by the constitutional or corporate documents, or any other contract, agreement or arrangement, regulating the entity,

and a change of control of the entity occurs if a person who controls the entity ceases to do so or if another person acquires control of the entity.

The Contractor shall inform the Authority, as soon as practicable, in writing (which for this purpose does not include email) if any entity that is party to (or is competing for or proposing to enter into) any other contract with the Authority, becomes a COI Associate.

All notices required to be given to the Authority pursuant to this Clause 10 (*Change of Control of the Contractor and Change in COI Associates*) shall be submitted to the ADT Commercial Lead and to:

Mergers & Acquisitions Section

Strategic Supplier Management

Poplar 1 # 2119

MOD Abbey Wood

Bristol, BS34 8JH

# Contractor Warranties and Representations

## Contractor Warranties and Representations

The Contractor warrants and represents to the Authority, and the Authority relies upon such warranties and representations, that on the date of this Agreement:

each of the entities comprised in the Contractor are 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;

in the case of this Agreement, and each Associated Contract (or other document required to be executed in order to satisfy the Commencement Conditions) that is executed before or on the date of this Agreement, all action necessary on the part of each entity comprised in the Contractor to authorise the execution of and the performance of its obligations under this Agreement, and any such Associated Contract has been taken;

in the case of this Agreement, and each Associated Contract (or other document) referred to in Paragraph (B) above, the obligations expressed to be assumed by the Contractor are legal, valid, binding and enforceable to the extent permitted by Applicable Law;

the execution, delivery and performance by it of the Agreement, and the Associated Contracts (and other documents required to be executed in order to satisfy the Commencement Conditions), does not contravene any provision of:

any Applicable Laws (including any Applicable Law which has been enacted but is not yet in force);

the memorandum and articles of association of either entity comprised in the Contractor;

any order or decree of any Relevant Authority which is binding on either entity comprised in the Contractor; or

any obligation which is binding upon either entity comprised in the Contractor or upon any of its assets or revenues;

no claim is presently being assessed and no Legal Proceeding is presently in progress or, to the best of the knowledge of either entity comprised in the Contractor (having made all due enquiry), pending or threatened against it or any of its assets which may have a material adverse effect on the ability of the Contractor to perform its obligations under the Agreement;

no Legal Proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, having made all due enquiries, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues in relation to either entity comprised in the Contractor;

neither entity comprised in the Contractor has committed any Prohibited Act in connection with this Agreement or the Competition;

in so far as it is aware, none of the Contractor Related Parties has committed a Prohibited Act in connection with this Agreement or the Competition;

(to the best of the knowledge of the Contractor, having made all due enquiries) none of the entities comprised in the Contractor, the Contractor Related Parties or any of the COI Associates is or has been the subject of any investigation, inquiry or enforcement proceedings by any Relevant Authority regarding any offence or alleged offence under any legislation relating to anti-bribery and anti-corruption (including the Bribery Act 2010);

(to the best of the knowledge of the Contractor, having made all due enquiries) none of the entities comprised in the Contractor, the Contractor Related Parties or any of the COI Associates is or has been the subject of UK or foreign export control sanctions or investigations; and

the Contractor’s Warranted Data is true, accurate and complete in all material respects.

The Contractor warrants and represents to the Authority, and the Authority relies upon such warranties and representations, that at the time of the execution of any Associated Contract that is executed after the date of this Agreement:

all action necessary on the part of the entities comprised in the Contractor to authorise the execution of and the performance of its obligations under any such Associated Contract will be or has been taken; and

the obligations expressed to be assumed by the Contractor under any such Associated Contract (or other document required to be executed in order to satisfy the Commencement Conditions) shall be or are legal, valid, binding and enforceable to the extent permitted by Applicable Law.

The Contractor warrants and represents to the Authority, and the Authority relies upon such warranties and representations, that throughout the duration of this Agreement it will have in place adequate procedures (as referred to in Section 7(2) of the Bribery Act 2010) designed to prevent persons associated with the Contractor (including Contractor Related Parties) from bribing any person with the intention of obtaining or retaining business for the Contractor, or with the intention of obtaining or retaining an advantage in the conduct of business for the Contractor.

# Contractor's Related Parties

The Contractor shall at all times remain directly liable to the Authority for the due and proper performance of its obligations under this Agreement and shall be responsible and liable for the acts and omissions of the Contractor Related Parties in relation to this Agreement and the Services as if they were the acts and omissions of the Contractor.

Without limitation in respect of its actual knowledge, the Contractor shall for all purposes of this Agreement be deemed to have such knowledge in respect of the Services and other obligations under this Agreement and the Associated Contracts as is held (or ought reasonably to be held) by any Contractor Related Party.

# Authority Related Parties

Subject to the provisions of this Agreement, the Authority shall be responsible and liable for the acts and omissions of the Authority Related Parties as if they were the acts and omissions of the Authority.

# Notices

A notice (including any approval, consent or other communication) in connection with this Agreement:

must be in writing in the English language;

when sent by post or left at an address, must be left at the address of the addressee or sent by pre-paid recorded delivery (airmail if posted to or from a place outside the UK) to the address of the addressee which is specified in this Clause 14 (*Notices*) in relation to the Party to whom the notice is addressed, and marked for the attention of the person so specified, or to such other address or marked for the attention of such other person as the relevant Party may from time to time specify by notice given in accordance with this Clause 14 (*Notices*); or

may be sent by electronic mail to the email address of the addressee which is specified in this Clause 14 (*Notices*) in relation to the Party to whom the notice is addressed, or to such other address as the relevant Party may from time to time specify by notice given in accordance with this Clause 14 (*Notices*); unless a provision of this Agreement expressly provides otherwise.

The relevant details of each Party at the date of this Agreement are:

**The Secretary of State for Defence**

Address: DE&S, MOD Abbey Wood, Bristol, BS34 8JH

Phone number: ●

Email: ●

Attention (ADT Commercial Lead): ●

Save for notices issued by the Contractor to the Authority under Clause 10 (*Change Of Control Of The Contractor And Change In COI Associates*) which must be sent in accordance with Clause 10.

**Contractor**

Address:

Phone number:

Email:

Attention (Contractor's Representative):

In the absence of evidence of earlier receipt, any notice shall take effect from the time that it is deemed to be received in accordance with Clause 14.4.

Subject to Clause 14.5 below, a notice is deemed to be received:

in the case of a notice left at the address of the addressee, upon delivery at that address;

in the case of a posted letter, on the third (3rd) Business Day after posting or, if posted to or from a place outside the UK, the fifth (5th) Business Day after posting; and

in the case of email, when sent (except that an email shall not be deemed to have been sent if the sender receives a delivery failure notification).

A notice received or deemed to be received in accordance with Clause 14.4 on a day which is not a Business Day, or after 1700 on any Business Day, shall be deemed to be received on the next following Business Day.

# Representatives

## Contractor's Representative

The Contractor shall appoint the person whose name, address, email address and telephone number is set out in Clause 14 (*Notices*) to act as the Contractor's Representative in connection with this Agreement.

## Authority of the Contractor's Representative

The Contractor's Representative shall have full authority to act on behalf of the Contractor for all purposes connected with this Agreement. Unless notified by the Contractor in writing before such act or instruction, the Authority shall be entitled to treat any act of the Contractor's Representative which is authorised by the Agreement as being expressly authorised by the Contractor and the Authority shall not be required to determine whether authority has, in fact, been given.

The Contractor shall procure that the Contractor's Representative acts in accordance with the Contractor's Representative's powers and functions in this Agreement.

## Change in Contractor's Representative

The Contractor may propose a change in the identity of the Contractor's Representative and Clause 14 (*Notices*) shall be updated accordingly unless the Authority refuses the change under Clause 15.3.2.

The Authority may refuse any change proposed by the Contractor under Clause 15.3.1 in its sole discretion.

### During any period when the Contractor's Representative is unable through illness, incapacity, holidays or any other reason to carry out or exercise his functions under this Agreement, the Contractor's Representative may temporarily delegate their functions to another person by giving the Authority written notice and seeking the Authority's approval of the identity of such person and the extent of his authority. The Authority shall not unreasonably withhold or delay approval of the delegate under this Clause 15.3.3.

## Authority Commercial Lead

The Authority shall appoint the person whose name, address, email address and telephone number is set out in Clause 14 (*Notices*) as the ADT Commercial Lead in connection with this Agreement.

## Change in ADT Commercial Lead

### The Authority may propose a change in the identity of the ADT Commercial Lead and Clause 14 (*Notices*) shall be updated accordingly.

During any period when the ADT Commercial Lead is unable through illness, incapacity, holidays or any other reason to carry out or exercise their functions under this Agreement, the ADT Commercial Lead may delegate such functions to another person by giving the Contractor written notice of the identity of such person and the extent of his authority.

# Authority's Disclosed Data

## Authority Disclosed Data

Subject to Clause 16.4 (*Fraudulent Statements*):

the Authority does not make any representation or give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any of the Authority Disclosed Data; and

neither the Authority nor any Authority Related Party shall be liable to the Contractor in contract, tort (including the tort of negligence) or for breach of any statutory duty or otherwise as a result of:

any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the Authority Disclosed Data; or

any failure to make available to the Contractor any materials, documents, drawings, plans or other information relating to the Agreement or the Competition.

## Contractor's Due Diligence

Subject to Clause 16.4 (*Fraudulent Statements*) and Clause 16.5 (*Contractor’s Standard of Care*), on entering into this Agreement, the Contractor agrees it has been given an opportunity to carry out a review and investigation of the documents contained in the Data Room and the Clarification Responses, and shall not in any way be relieved from any obligation under this Agreement nor shall it be entitled to make any claim against the Authority (or an Authority Related Party) as a consequence of:

any information not being provided in the Data Room or the Clarification Responses where such information is not material;

any fact or circumstance that has been fairly disclosed in the Data Room or the Clarification Responses;

any fact or circumstance which the Contractor, or its agents or advisers were, or ought reasonably to have been, aware of as a result of the contents of the Data Room or the Clarification Responses; or

any fact or circumstance which a Tenderer, acting in accordance with Good Industry Practice, would have been aware of having made reasonable due diligence enquiries.

## No Relief

Subject to Clause 16.4 (*Fraudulent Statements*) and Clause 16.5 (*Contractor’s Standard of Care*), the Contractor shall not in any way be relieved from any obligation under this Agreement nor shall it be entitled to make any claim against the Authority (or an Authority Related Party) on grounds that any information, whether obtained from the Authority or otherwise (including information made available by the Authority), is incorrect or insufficient.

## Fraudulent Statements

Nothing in this Clause 16 (*Authority's Disclosed Data*) shall exclude any liability which the Authority would otherwise have to the Contractor, for statements made fraudulently or fraudulent omissions to make statements prior to the date of this Agreement.

## Contractor’s Standard of Care

Where:

the Authority or an Authority Related Party has provided or made available information to the Contractor which is incorrect or insufficient for its stated purpose; and

the Contractor has exercised Good Industry Practice in assessing the accuracy and sufficiency of that information;

the Contractor shall not be liable for, nor suffer any Deduction or Withheld Amount in respect of, any acts or omissions undertaken in the provision of the Services in reliance upon that information.

# Assignment and Novation

## Assignment or Novation by the Contractor

Except where expressly permitted under this Agreement, the Contractor shall not (whether absolutely or by way of security and whether in whole or in part) assign, transfer, declare itself a trustee for a Third Party of, create an Encumbrance over, novate or otherwise dispose in any manner whatsoever of the benefit or burden of this Agreement (each of the above a **"Contractor dealing"**) without the prior written consent of the Authority to be given or withheld in its sole discretion and any purported Contractor dealing in contravention of this Clause 17.1 (*Assignment or Novation by the Contractor*) shall be ineffective.

## Assignment or Novation by the Authority

Except where expressly permitted under this Agreement, the Authority shall not without the prior written consent of the Contractor (not to be unreasonably withheld) assign, transfer, novate or otherwise dispose of the benefit or burden of this Agreement (each of the above an **"Authority dealing"**), unless such transfer takes place under statute or is to the Crown or another manifestation or agency of the Crown, or unless the obligations of the person to whom and in whose favour any such interest is assigned, transferred, novated or otherwise disposed of are fully and unconditionally guaranteed by the Crown, and any purported Authority dealing in contravention of this Clause 17.2 (*Assignment or Novation by the Authority*) shall be ineffective.

## Notices

Any notice given under this Clause 17 (*Assignment and Novation*) shall comply with Clause 14.1.2 and shall not be given by email.

# Severability

If any provision of the Agreement is held to be invalid, illegal or unenforceable to any extent then:

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 Agreement (but without invalidating any of the remaining provisions of the Agreement or any such provision to the extent that it is not invalid, illegal or unenforceable); and

the Parties shall use all reasonable endeavours to replace the invalid, illegal or unenforceable provision (or the invalid, illegal or unenforceable part thereof) 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 (or the invalid, illegal or unenforceable part thereof).

# Variation

No variation of this Agreement (or any document referred to in it) shall be effective unless it is in writing (which for this purpose does not include email) signed by or on behalf of each of the Parties and is accompanied by DEFFORM 10B signed by or on behalf of each of the Parties. The expression **"variation"** includes any variation, supplement, deletion or replacement, however effected.

# FORMAL AMENDMENTS TO THE AGREEMENT

## The Authority shall be entitled, acting reasonably, to require changes to the Agreement in accordance with this Clause. The Agreement shall only be amended by the written agreement of the duly authorised representatives of the parties.

## The written agreement shall consist of the:

### Authority Proposal;

### issue of a serially numbered amendment letter, by the Authority; and

### unqualified acceptance of the offer from the Contractor.

# The amendment shall come into force only when the Contractor has returned the DEFFORM 10B as an unqualified acceptance of the Authority's offer.

## No amendment to the Agreement shall come into effect unless it satisfies Clause 20.1 and Clause 20.2.

## Where necessary the Contractor shall either confirm the existing Parent Company Guarantee is relevant or provide a revised Parent Company Guarantee, with the DEFFORM 10B.

## In the event that the Contractor proposes an amendment to the Agreement (“Contractor Proposal”) then the following process shall apply:

### The Contractor shall issue its Contractor Proposal in writing to the ADT Commercial Lead; and

### The Authority shall consider the Contractor Proposal and shall acknowledge receipt to the Contractor within 5 Business Days. The acknowledgment shall also provide an indication of likely time scale of the Authority’s definitive response.

### The Authority’s response through the ADT Commercial Lead shall either:

#### Formally notify the Contractor of its decision to progress the Contractor Proposal by instigating the commercial process as set out under Clause 19.2 with the issue of an Authority Proposal; or

#### Formally notify the Contractor of its decision not to progress with the Contractor Proposal.

## For the avoidance of doubt an amendment to the Agreement shall not come into effect until the Contractor has signed and returned DEFFORM 10B to the ADT Commercial Lead.

# AMENDMENTS TO the agreement – CONSOLIDATED VERSIONS

## For the purposes of this Clause:

### “consolidated version” means a version of the Agreement which incorporates into the body of the Agreement all amendments made to the Agreement;

### “consolidated version date” means:

#### where one or more consolidated versions have been issued, the date on which the latest consolidated version was issued, or

#### where a consolidated version has not been issued, the date on which the Agreement was entered into.

## Where the Agreement is amended in accordance with Clause 19:

### on five (5) occasions since the consolidated version date; or

### otherwise in a way which the Authority considers to be a significant change the Agreement,

## the Authority shall issue to the Contractor, within 25 Business Days of agreeing the relevant amendment, a consolidated version of the Agreement.

## The consolidated version issued in accordance with Clause 21.2 shall incorporate only amendments previously agreed between the parties in accordance with Clause 19 and shall be signed on behalf of the Authority.

## The Contractor shall, within 10 Business Days of receiving it sign and return to the Authority a copy of the consolidated version issued in accordance with to Clause 21.2, to confirm that it properly incorporates all amendments made to the Agreement.

# Waiver

The rights and remedies of the Parties shall not be affected by any failure to exercise or delay in exercising any right or remedy or by the giving of any indulgence by any other Party or by anything whatsoever except a specific waiver or release in writing (which for this purpose does not include email) and any such waiver or release shall not prejudice or affect any other rights or remedies of the Parties. No single or partial exercise of any right or remedy shall prevent any further or other exercise thereof or the exercise of any other right or remedy.

# No Partnership, AGENCY OR EMPLOYMENT RELATIONSHIP

The Authority and the Contractor have entered into this Agreement as independent parties. Nothing in this Agreement or in any document referred to in it or any arrangement contemplated by it shall constitute either Party a partner or agent or principal or employee or employer of the other nor shall the execution, completion and implementation of this Agreement confer on either Party any power to bind or impose any obligations to any Third Parties on the other Party or to pledge the credit of the other Party.

# Counterparts

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

# Contracts (Rights of Third Parties) Act 1999

## Subject to Clause 51 (*Transfer Regulations*), Clause 86.15.1 (*Sole Recourse*) andParagraph 1.5 of Schedule N (*Transfer Regulations*), and notwithstanding anything to the contrary elsewhere in this Agreement, no right is granted to any person who is not a party to the Agreement in his own right and the parties to this Agreement declare that they have no intention to grant any such right.

## Where, and only where, either by a Clause which has been expressly included in the Agreement or by another term which specifically refers to this Clause, the Agreement expressly states that a third party shall be entitled to enforce a term of the Agreement:

### the said third party shall be entitled to enforce that term in his own right;

### 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) relevant to the exercise of that right; and

### the third party's rights shall be subject to any provision in the Agreement:

#### that provides for the submission of disputes under the Agreement generally or the said rights in particular to arbitration Clause 64 (*Dispute Resolution*); and

#### that stipulates the law and jurisdiction that will govern the Agreement Clause 3 (*Governing Law*).

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# Entire Agreement

The Parties to this Agreement confirm that this Agreement, together with the Associated Contracts, represents the entire understanding, and constitutes the Parties' whole agreement, in relation to its subject matter and supersedes any previous agreement between the Parties with respect thereto and, without prejudice to the generality of the foregoing, excludes any warranty, condition or other undertaking implied at law or by custom, usage or course of dealing.

The Parties confirm that:

in entering into this Agreement and the Associated Contracts they have not relied on any representation, warranty, assurance, covenant, indemnity, undertaking or commitment which is not expressly set out in this Agreement or the Associated Contracts; and

in any event, without prejudice to any liability for fraudulent misrepresentation or fraudulent misstatement, the only rights or remedies in relation to any representation, warranty, assurance, covenant, indemnity, undertaking or commitment given or action taken in connection with this Agreement or the Associated Contracts are pursuant to this Agreement or such Associated Contracts, and without limitation, neither Party has any other right or remedy (whether by way of a claim for contribution or otherwise) in tort (including negligence) or for misrepresentation (whether negligent or otherwise, and whether made prior to, or in, this Agreement) in relation to any such representation, warranty, assurance, covenant, indemnity, undertaking or commitment.

# Conflicts of Interest

The Authority and the Contractor agree that it is a fundamental principle of this Agreement that the Contractor and the Contractor Related Parties and COI Associates shall avoid or manage conflicts of interest in the manner set out in Schedule G (*COI Compliance Regime*).

The Contractor agrees that it shall, and it shall procure that the Contractor Related Parties and COI Associates shall, adopt and comply with the COI Compliance Regime and, without in any way derogating from the obligations set out elsewhere in this Agreement (including Clause 78 (*Confidentiality*)), deal with all Commercially Confidential Information in accordance with the terms of such COI Compliance Regime.

During the Term (and for a further six (6) Months after the Expiry Date or Termination Date (as applicable)) the Contractor shall promptly give notice to the Authority of any intention of the Contractor or a COI Associate to bid for or enter into an MOD Contract and Paragraph 1.8 of Schedule G (*COI Compliance Regime*) shall apply.

Without prejudice to Clause 27.2, the Contractor shall ensure that prior to entering into a Sub-contract:

the COI Compliance Regime shall be amended to reflect any requirements of the Authority to manage conflicts of interest that may exist in relation to the Sub-contractor and its associates in a manner satisfactory to the Authority (acting reasonably); and

the Sub-contractor shall enter into a Compliance Agreement either as a separate agreement or within the terms of the relevant Sub-contract.

The Authority may impose conditions, including, if appropriate, a prohibition from bidding, in relation to any bid, or proposed bid, by the Contractor or any COI Associate for a contract with the Authority which is a DE&S Contract, where the Authority (acting reasonably) considers that there could be a conflict of interest which the Authority does not consider the arrangements in Schedule G (*COI Compliance Regime*) are sufficient to manage.

# Prohibited Acts

The Contractor shall not commit a Prohibited Act and shall procure that the Contractor Related Parties shall not commit a Prohibited Act.

If a Prohibited Act is committed by the Contractor or a Contractor Related Party (with or without the knowledge or authority of the Contractor) in relation to this Agreement or any other contract with the Crown, the Authority shall be entitled (in its discretion) to do any one or more of the following:

terminate the Agreement under Clause 61 (Early Termination) as a Contractor Event of Default;

recover from the Contractor the amount or value of any such gift, consideration or commission;

recover from the Contractor:

#### the amount of any Loss resulting from a termination under Clause 61 (Early Termination) as a Contractor Event of Default; or

#### any other Loss sustained in consequence of any breach of this Clause 28 (*Prohibited Acts*), where the Agreement has not been terminated, or

#### if a Prohibited Act is committed by a Contractor Related Party, to require the Contractor to terminate its relationship with that Contractor Related Party (save as in respect of an employee, where (without prejudice to the Authority's right to remove the employee pursuant to Paragraph 2.2 of Schedule I (*Management and Liability for Engaged Personnel*)) such action shall be at the discretion of the Contractor (or the employee's employer, if different) and shall be carried out in accordance with the Contractor's (or the employer's) normal disciplinary procedures) and procure the performance of any affected part of the Agreement by another person.

In exercising its rights or remedies under this Clause 28 (*Prohibited Acts*), the Authority shall:

act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the Prohibited Act; and

give all due consideration, where appropriate, to action other than termination of the Agreement, including requesting that the Contractor consider (or procures that the relevant employer considers) taking disciplinary action against an employee where the Prohibited Act is that of such employee.

Promptly, upon becoming aware of any Prohibited Act having been committed (or of a reasonable suspicion that a Prohibited Act has been or will be committed) by the Contractor or by a Contractor Related Party, the Contractor shall notify the Authority of such act or suspicion.

1. – Parties' Rights and Obligations

# Obligations of the Authority

## Compliance with Law

The Authority shall comply with all Applicable Laws in the performance of its obligations under this Agreement

## Obligations of the Authority in relation to Engaged Personnel

The Authority shall comply with its obligations in relation to Engaged Personnel as set out in Schedule I (*Management and Liability for Engaged Personnel*).

# Obligations of the Contractor

## Obligations of the Contractor

The Contractor shall provide Engaged Personnel to the Authority in accordance with Schedule A (*Requirements*), Schedule C (*Contract Management),* Schedule D *(Tasking Process*) and Schedule I (*Management and Liability for Engaged Personnel*).

The Contractor shall put forward Contractor Generated Innovation Opportunities in accordance with Part B (*Innovation*) of Schedule A (*Requirements*) and the Part B Tasking Process in Part II of Schedule D (*Tasking Process*).

## Standards of Performance

The Contractor shall (and shall procure that the Contractor Related Parties) perform the Services:

in compliance with all Applicable Laws;

in compliance with Good Industry Practice;

in compliance with the Authority's health and safety policies (as updated from time to time);

in a manner designed to ensure that all arrangements meet all standards, specifications and requirements as may be set out in the Authority’s current Departmental policy (as updated from time to time);

without limiting Clause 30.2.3, in a manner that is consistent with the Authority discharging its functions and statutory duties and that would reasonably be expected not to lower the reputation of the Authority in the eyes of any Third Party, including (without limiting Clause 59 (*Tax Non-Compliance*)) in relation to any taxation matter;

in compliance with the relevant Approved Tasking Order or relevant Part B Task;

exhibiting the values and standards set out in "Civil Service values and standards of behaviour", available online first published 30 November 2010 last updated 16 March 2015, and as further updated from time to time;

in compliance with the "DE&S Professional 2016/2017 Guidance Booklet", as updated from time to time;

in compliance with the "DE&S way 2016/2017", available on the internet and as updated from time to time;

in compliance with the COI Compliance Regime;

in compliance with the Cyber Security measures (Clause 68);

in compliance with the Security requirements (Part XI); and

so that the DE&S Engineering Leadership Group can award a rating of **“satisfactory”** in the Contractor Performance Report.

# Acceptance of Contractor Deliverables

## Subject to Clause 31.2, acceptance of a Contractor Deliverable occurs at the time and in accordance with the procedure specified in the Approved Tasking Order or, if none is so specified:

### where the Approved Tasking Order specifies a time limit within which to reject, that time has elapsed, or;

### where the Approved Tasking Order specifies no time limit within which to reject, and a reasonable time has elapsed since delivery has occurred in accordance with Clause 33.

## The Authority shall not have accepted a Contractor Deliverable:

### merely because the Authority asks for, or agrees to, rework of a Contractor Deliverable under an arrangement with the Contractor; or

### unless otherwise specified in the Approved Tasking Order, merely because the Contractor Deliverable has been delivered to a third party.

## Unless otherwise specified in the Approved Tasking Order, the Authority shall not be deemed to have accepted a Contractor Deliverable unless it has had a reasonable opportunity to examine the Contractor Deliverable after delivery for the purpose of ascertaining whether it is in conformity with the Approved Tasking Order.

## Where software is to be supplied as a requirement of the Approved Tasking Order it will be subject to the provisions of this Clause as if it were a Contractor Deliverable.

# REJECTION of Contractor Deliverables

## Prior to acceptance by the Authority in accordance with Clause 31, the Authority may reject any Contractor Deliverable (whether or not after inspection) which does not conform with the requirements of the Approved Tasking Order.

## Subject to Clause 32.5, the Contractor shall at their own expense and within ten (10) Business Days of being notified of the rejection remove any Contractor Deliverable which the Authority has rejected.

## If the Contractor fails to remove the rejected Contractor Deliverable in accordance with Clause 32.2, the Authority may return it to the Contractor at the Contractor's risk and expense.

## The Contractor shall at their own expense and within the contractual period for delivery, or within such further reasonable period as the Authority may allow, supply Contractor Deliverables that conform with the requirements of the Agreement.

## The Contractor may object in writing to a notification of rejection by the Authority within the period specified at Clause 32.2. If the objection is not resolved within a reasonable time, it shall be treated as a dispute within the meaning of Clause 64 (*Dispute Resolution Procedure*), as applicable. Unless otherwise agreed the Contractor shall not remove the Contractor Deliverables which are the subject of the rejection notice unless and until the objection or dispute has been resolved in favour of the Authority.

# Delivery of Contractor Deliverables

## The Contractor shall deliver the Contractor Deliverables to the Authority in accordance with the terms of the Approved Tasking Order.

## Unless otherwise agreed, delivery of Contractor Deliverables shall occur upon the Contractor Deliverables being handed over by the Contractor to the Task Order Lead (or their delegate).

## Unless otherwise agreed, the property in the Contractor Deliverables shall pass from the Contractor to the Authority upon delivery in accordance with this Clause.

## Until delivery, the risk of loss or damage to the Contractor Deliverables shall remain with the Contractor.

## Where, after delivery, a Contractor Deliverable is rejected by the Authority in accordance with Clause 32 that Contractor Deliverable shall, for the purposes of the Agreement, be considered as not having been delivered under the Agreement and the property in that Contractor Deliverable shall return to the Contractor unless a notice has been issued to the Authority in accordance with Clause 64 (*Dispute Resolution Procedure*).

# quality assurance (with deliverable quality plan)

## The Contractor shall submit the Deliverable Quality Plan as defined in REDACTED to the Authority in accordance with the Agreement.

## When agreed by the Authority, the Deliverable Quality Plan shall be incorporated into the Agreement. 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.

# UK Import and Export Licences

## If, in the performance of the Agreement, 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

## 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 Agreement, 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:

### 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 shall also include information, technical data and software), the Contractor, unless otherwise agreed with the Authority, shall identify in the application:

#### the end user as: Her Britannic Majesty’s Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter “HM Government”); and

#### the end use as: For the Purposes of HM Government; and

### 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".

## If the Contractor or any Sub-contractor in the performance of the Agreement 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.

## Where the Agreement 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 Agreement risk register and in the risk management plan for the Agreement, with appropriate review points. Where there is no requirement under the Agreement for a risk management plan the Contractor shall submit this information to the Authority’s representative.

## During the term of the Agreement and for a period of up to 2 years from completion of the Agreement, 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:

### 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 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

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

## 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.

## Where the Authority invokes Clause 35.5 or 35.6 the Authority will pay the Contractor a fair and reasonable charge for this service based on the cost of providing it.

## Where the Contractor subcontracts work under the Agreement, which is likely to be subject to foreign export control, import control or both the Contractor shall use reasonable endeavours to incorporate in each subcontract equivalent obligations to those set out in this Clause. Where it is not possible to include equivalent terms to those set out in this Clause, the Contractor shall report that fact and the circumstances to the Authority.

## Obtaining a Licence or authorisation from a foreign government – Authority obligations

## 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 Agreement.

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

# Sub-contracts

## Approval of Sub-contracts

Other than in relation to an Approved Sub-contract, the Contractor shall not enter into a Sub-contract without the prior written approval of the Authority.

Where the Authority consents to entry into a Sub-contract, the Contractor shall:

for each Sub-contract ensure such Sub-contract contains:

a term which requires payment to be made to the Sub-contractor within a specified period not exceeding thirty (30) days from receipt of a valid invoice as defined by the Sub-contract requirements;

a provision requiring compliance with a Compliance Agreement drawn up in accordance with Clause 27.4 (either as a separate agreement or within the terms of the relevant Sub-contract);

provisions equivalent to those set out in Part XI (*Security*);

provisions equivalent to those set out in Clause 65.7;

a requirement that where any GFA is used under a Sub-contract, reasonable access shall be provided to the Authority for inspection of the GFA;

a Clause requiring the Sub-contractor to comply with Schedule B (*Contractor Group Governance*) unless the Authority agrees otherwise;

a restriction on further Sub-contracting to any tier without the prior written consent of the Authority (such consent to be given, withheld or made subject to any conditions the Authority may require);

a provision requiring information equivalent to that provided under Clause 36.1.6 to be provided to the Authority where requested;

in the case of a Sub-contract with a member of the Contractor Group, a Clause entitling the Contractor to terminate the Sub-contract with immediate effect by written notice to the Sub-contractor (such notice to take effect on the date of receipt by the Sub-contractor) if there is a change of control of the Sub-contractor that is required to be notified to the Authority pursuant to Clause 10 (*Change of Control of the Contractor and Change in COI Associates*)*;*

a right under the Contracts (Rights of Third Parties) Act 1999 for the Authority to enforce its rights under that further Sub-contract; and

ensure that the COI Management Process is updated and agreed with the Authority to deal with any matters that the Authority considers are required as a result of the Contractor's entry into the Sub-contract.

In addition to those terms detailed Clause 36.1.2, where the Authority consents to entry into a Material Single Source Sub-contract (Non-Qualifying), the Contractor shall include provisions equivalent to those set out in Clause 38.11, Clause 39.4, Clause 44.7 and Clause 52.16.

In addition to those terms detailed Clause 36.1.2, where the Authority consents to entry into a Qualifying Sub-contract, the Contractor shall include provisions equivalent to those set out in Clause 40.2 and Clause 45.10.

Any Sub-contracting by the Contractor shall be without prejudice to its obligations to the Authority under this Agreement.

Where the Contractor proposes to enter into a Sub-contract or the Sub-contract is proposed to be further Sub-contracted, it shall submit to the Authority:

the name of the proposed Sub-contractor;

a statement of the services to be provided;

the material terms of the proposed Sub-contract; and

any other details known to the Contractor which the Authority shall reasonably require.

The Parties agree and acknowledge that the Authority may withhold its approval in relation to any proposed Sub-contract and any further Sub-contracting of any tier (or make any such approval subject to any conditions it may require) in its absolute discretion.

## Termination or amendment of Sub-contracts

The Contractor shall keep the Authority informed of any circumstance relating to a Sub-contract (or any further Sub-contract of any tier to that Sub-contract) which may cause the Contractor to contravene its obligations under this Agreement and, without prejudice to its rights under Schedule G (*COI Compliance Regime*), the Authority may require that the relevant Sub-contract is terminated or amended in such circumstances (but the Authority shall have no liability to the Contractor or Sub-contractor for any payment required in connection with any such termination or amendment).

The Contractor shall notify the Authority as soon as reasonably practicable after:

a Sub-contract is terminated or otherwise determined;

the material terms of a Sub-contract are amended; or

it becomes aware that it is reasonably likely that a Sub-contract will be terminated or otherwise determined or amended,

and following such notification, the Contractor shall, as soon as reasonably practicable, provide details of its proposals to maintain its capability to perform its obligations under this Agreement.

1. – Financial Inspection and Review

# Financial Management Information

The Contractor shall maintain the financial management information (which for the purposes of this Agreement shall mean the value of work completed at a given point in time), and shall report it to the Authority in accordance with Clause 44 (Single Source Contract Reports and Notifications) and Appendix 3 (*Financial Management Reporting Requirements*) to Schedule C (*Contract Management*). The obligation to report under Appendix 3 (*Financial Management Reporting Requirements*) to Schedule C (*Contract Management*) shall be without prejudice to any additional or alternative reporting obligation under this Agreement.

# SINGLE SOURCE OPEN BOOK

## In this Clause, the following words and expressions shall have the following meaning given to them, except where the context requires a different meaning:

### "Agreement Completion Date" means:

#### the date described in the Agreement as being the Expiry Date; or

#### if no such date is described in the Agreement, the date on which the Contractor completes all obligations which entitle it to final payment under the Agreement; or

#### if the Agreement is terminated before either of the dates described in (1) or (2) above, the date the Agreement is terminated.

### "Group Undertaking" has the meaning given by Section 1161 of the Companies Act 2006.

### "Relevant Records" means accounting and other records:

#### which the Contractor may reasonably be expected to keep; and

#### which are sufficiently up-to-date and accurate for use by the Authority, or its Representatives, for any of the purposes listed in Clause 38.2 below.

### "Representatives" means employees, agents, officers, advisers and other representatives of the Authority.

### The Contractor shall maintain Relevant Records from the Agreement Commencement Date for the period ending:

#### on the sixth anniversary of the financial year of the Contractor in which the obligation to keep those Relevant Records first arose; or

#### two (2) years after the Expiry Date of the Agreement, whichever is the sooner.

## The Authority, or its Representatives, may examine Relevant Records maintained by the Contractor where reasonably required for one or more of the following purposes:

### auditing reports provided by the Contractor in accordance with Clause 44 (*Single Source Contract Reports and Notifications*), or equivalent reports, where the Contractor has agreed to provide such reports;

### verifying whether a cost of the Contractor is an allowable cost;

### verifying the reason for any difference between an estimated and actual allowable cost;

### verifying any other matter relating to the price payable under the Agreement; and

### monitoring the Contractor’s performance of its obligations under the Agreement.

## The Authority must give the Contractor at least 20 Business Days written notice of its intention to examine the Relevant Records.

## The Authority may only examine the Relevant Records on a Business Day between the hours of 09:00 and 17:00.

## Where required by the Authority, the Contractor shall make copies available (in hard or electronic form) for the purposes of enabling those records to be examined.

## Where required by the Authority, the Contractor shall provide further information or explanation relating to the Relevant Records, whether after the examination of the Relevant Records or otherwise.

## The Authority agrees that, where exercise of the rights granted at Clauses 38.3 and 38.7 would cause significant time and effort to be incurred by the Contractor and / or other significant disruption to the Contractor, the Authority’s exercise of that right shall be proportionate. When determining what is proportionate for that purpose, the Authority shall consider the benefit which may be achieved through the exercise of the rights and the disruption caused to the Contractor. This includes but is not limited to the impact on the Contractor’s provision of the Contractor Deliverables.

## Except where the Authority notifies the Contractor in writing that it is not required, the Contractor shall use reasonable endeavours to include in any Material Single Source Sub-contract (Non-Qualifying) the terms specified in Clause 38.11 (inserting relevant party names where appropriate).

## Where the terms specified in Clause 38.11 are included in a Material Single Source Sub-contract (Non-Qualifying), the Contractor shall take reasonable steps to secure the performance by the Sub-contractor of the obligations contained in those terms.

## Before entering into a Material Single Source Sub-contract (Non-Qualifying) the Contractor shall promptly notify the Authority where it is unable to include in the Contract the terms specified in Clause 38.11, or where it believes that the inclusion of those terms will prevent the achievement of a fair and reasonable price for the Material Single Source Sub-contract (Non-Qualifying).

## Single Source Open Book - Provisions To Be Included In Material Single Source Sub-contracts (Non-Qualifying)

### In this Clause, the following words and expressions shall have the following meaning given to them, except where the context requires a different meaning:

#### “Group Undertaking” has the meaning given by Section 1161 of the Companies Act 2006.

#### “Material Single Source Sub-contract (Non-Qualifying)” means a Sub-contract entered into by the Sub-contractor where:

##### the Sub-contract is entered into at the same time as, or after, the date on which this Sub-contract was entered into;

##### the Sub-contract is entered into for the purposes of the Sub-contract;

##### the award of the Sub-contract is not the result of a “competitive process” as defined in Regulation 59, or Regulation 60, as appropriate, of the Single Source Contract Regulations 2014 (SSCR) for Qualifying Sub-contracts (QSCs);

##### the value of the Sub-contract is of or above £1,000,000; and

##### at least 50% of the Sub-contract (by value) is required either to enable performance of this Sub-contract, or to enable the combined performance of this Sub-contract and any other contract, or prospective contract, to which the Sub-contractor or any Group Undertaking of the Sub-contractor is a party, or might become a party.

#### “Relevant Records” means accounting and other records:

##### which the Sub-contractor may reasonably be expected to keep; and

##### which are sufficiently up-to-date and accurate for use by the Authority for any of the purposes listed in Clause 38.11.3 below.

#### “Representatives” means employees, agents, officers, advisers and other representatives of the Authority.

#### “Sub-contract Completion Date” means:

##### the date described in the Sub-contract as being the Sub-contract Completion Date; or

##### if no such date is described in the Sub-contract, the date on which the Sub-contractor completes all obligations which entitle it to final payment under the Sub-contract; or

##### if the Sub-contract is terminated before either of the dates described in (1) or (2) above, the date the Sub-contract is terminated.

### The Sub-contractor shall maintain Relevant Records from the date on which the Sub-contract was entered into for the period ending:

#### on the sixth anniversary of the financial year of the Contractor in which the obligation to keep those Relevant Records first arose; or

#### two (2) years after the Sub-contract Completion Date, whichever is the sooner.

### The Authority, or its Representatives, may examine Relevant Records maintained by the Sub-contractor where reasonably required for one or more of the following purposes:

#### auditing reports provided by the Sub-contractor in accordance with terms included in the Sub-contract in line with Clause 44 (*Single Source Contract Reports and Notifications*) or equivalent reports, where the Sub-contractor is obliged to provide such reports;

#### verifying whether a cost of the Sub-contractor is an allowable cost;

#### verifying the reason for any difference between an estimated and actual allowable cost;

#### verifying any other matter relating to the price payable under the Sub-contract; and

#### monitoring the Sub-contractor’s performance of its obligations under the Sub-contract.

### The Authority must give the Sub-contractor at least 20 Business Days written notice of its intention to examine the Relevant Records and the purposes for which the examination is required.

### The Authority may only examine the Relevant Records on a Business Day between the hours of 09:00 and 17:00.

### Where required by the Authority, the Sub-contractor shall make copies available (in hard or electronic form) for the purposes of enabling those records to be examined.

### Where required by the Authority, the Sub-contractor shall provide further information or explanation relating to the Relevant Records, whether after the examination of the Relevant Records or otherwise.

### The Authority agrees that, where exercise of the rights granted at Clauses 38.11.3 and 38.11.7 would cause significant time and effort to be incurred by the Sub-contractor and / or other significant disruption to the Sub-contractor, the Authority’s exercise of that right shall be proportionate. When determining what is proportionate for that purpose, the Authority shall consider the benefit which may be achieved through the exercise of the rights and the disruption caused to the Sub-contractor. This shall include but not be limited to the impact on the Sub-contractor’s provision of the subject-matter of the Sub-contract.

### Except where the Authority notifies the Sub-contractor in writing that it is not required, the Sub-contractor shall use reasonable endeavours to include in any Material Single Source Sub-contract (Non-Qualifying) equivalent terms to those specified in this Clause (inserting relevant party names where appropriate).

### Where equivalent terms to those specified in this Clause are included in a Material Single Source Sub-contract (Non-Qualifying), the Sub-contractor shall take all reasonable steps to secure the performance by the Sub-contractor of the obligations contained in those terms.

### Before entering into a Material Single Source Sub-contract (Non-Qualifying) the Sub-contractor shall promptly notify the Authority where it is unable to include equivalent terms to those specified in this Clause, or where it believes that the inclusion of those terms will prevent the achievement of a fair and reasonable price for the Material Single Source Sub-contract (Non-Qualifying).

### The Contractor and Sub-contractor agree that terms have been included in this Clause which are for the benefit of the Authority. Notwithstanding any contrary provisions in this Sub-contract, the Contractor and Sub-contractor agree that the Authority shall be able to enforce those terms which confer a benefit on the Authority in accordance with the terms of the Sub-contract.

# OPEN BOOK ACCOUNTING ON SUB-CONTRACTS WHICH ARE NOT QUALIFYING SUB-CONTRACTS

## In this Clause, the following words and expressions shall have the following meaning given to them, except where the context requires a different meaning:

### "Group Undertaking" has the meaning given by section 1161 of the Companies Act 2006.

## 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 Clause 39.4 (inserting relevant party names and / or definitions where appropriate).

## 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 Clause 39.4, or where it believes that the inclusion of those terms will prevent the achievement of a fair and reasonable price for that Sub-contract.

## Provisions To Be Included In Material Single Source Sub-contracts (Non-Qualifying)

### The following words and expressions shall have the following meaning given to them, except where the context requires a different meaning:

#### “Group Undertaking” has the meaning given by section 1161 of the Companies Act 2006.

#### “Material Single Source Sub-contract (Non-Qualifying)” means a Sub-contract entered into by the Sub-contractor where:

##### the Sub-contract is entered into at the same time as, or after, the date on which this Sub-contract was entered into;

##### the Sub-contract is entered into for the purposes of the Sub-contract;

##### the award of the Sub-contract is not the result of a “competitive process” as defined in the Single Source Contract Regulations 2014 (SSCR) for Qualifying Sub-contracts (QSC);

##### at least 50% of the Sub-contract (by value) is required either to enable performance of the Sub-contract or to enable the combined performance of the Sub-contract and any other Qualifying Defence Contract (QDC) or QSC, or prospective QDC or QSC, to which the Sub-contractor or any Group Undertaking of the Sub-contractor is a party, or might become a party;

##### the value of the Sub-contract is of or above £1,000,000; and

##### the Sub-contract is not a QSC.

#### “Relevant Records” means accounting and other records:

##### which the Sub-contractor may reasonably be expected to keep; and

##### which are sufficiently up-to-date and accurate for use by the Authority for any of the purposes listed in Clause 39.4.3 below.

#### “Representatives” means employees, agents, officers, advisers and other representatives of the Authority.

#### “Sub-contract Completion Date” means:

##### the date described in the Sub-contract as the Agreement Completion Date; or

##### if no such date is described in the Sub-contract, the date on which the Sub-contractor completes all obligations which entitle it to final payment under the contract;

##### if the Sub-contract is terminated before the date described in Clause 39.4.1.(E).(1) and (2) above, the date on which the Sub-contract is terminated.

### The Sub-contractor shall maintain Relevant Records from the date on which the Sub-contract was entered into for the period ending on the sixth anniversary of the end of the accounting period to which those Relevant Records relate or two (2) years after the Sub-contract Completion Date, whichever is the sooner.

### The Authority, or its Representatives, may examine Relevant Records maintained by the Sub-contractor where reasonably required for one or more of the following purposes:

#### verifying whether a cost of the Sub-contractor is an Allowable Cost;

#### verifying the reason for any difference between an estimated and actual Allowable Cost;

#### verifying any other matter relating to the price payable under the Sub-contract; and

#### monitoring the Sub-contractor’s performance of its obligations under the Sub-contract.

### The Authority must give to the Sub-contractor at least twenty (20) Business Days written notice of its intention to examine the Relevant Records and the purposes for which the examination is required.

### The Authority may only examine the records on any Business Day between the hours of 09:00 and 17:00.

### Where required by the Authority, the Sub-contractor shall make copies available (in hard or electronic form) for the purposes of enabling those records to be examined.

### Where required by the Authority, the Sub-contractor shall provide further information or explanation relating to the Relevant Records, whether after the examination of the Relevant Records or otherwise.

### The Authority agrees that, where exercise of the rights granted at Clauses 39.4.3 and 39.4.7 would cause significant time and effort to be incurred by the Sub-contractor, and / or other significant disruption to the Sub-contractor, the Authority’s exercise of that right shall be proportionate. When determining what is proportionate for that purpose, the Authority shall consider the benefit which may be achieved through the exercise of the rights and the disruption caused to the Sub-contractor. This shall include but not be limited to the impact on the Sub-contractor’s provision of the subject-matter of the Sub-contract.

### Except where the Authority notifies the Sub-contractor in writing that it is not required, the Sub-contractor shall use reasonable endeavours to include in any Material Single Source Sub-contract equivalent terms to those specified in this Clause (inserting relevant party names where appropriate).

### Before entering into a Material Single Source Sub-contract (Non-Qualifying) the Sub-contractor shall promptly notify the Authority where it is unable to include equivalent terms to those specified in this Clause, or where it believes that the inclusion of those terms will prevent the achievement of a fair and reasonable price for that Sub-contract

### The Contractor and Sub-contractor agree that terms have been included in this Clause which are for the benefit of the Authority. Notwithstanding any contrary provisions in this Sub-contract, the Contractor and Sub-contractor agree that the Authority shall be able to enforce those terms which confer a benefit on the Authority in accordance with the terms of the Sub-contract.

# SINGLE SOURCE CONFIDENTIALITY OF OPEN BOOK AND REPORTING INFORMATION

## In this Clause, the following words and expressions shall have the following meaning given to them, except where the context requires a different meaning:

### “Open Book and Reporting Information (OBR Information)” means all confidential information provided to the Authority under this Agreement in accordance with Clauses 38 to 40 of this Agreement. It shall not include information that:

#### is or becomes generally available to the public other than as a result of its disclosure by the Authority or a Central Government Body, or the professional advisers or consultants of the Authority, in breach of the provisions of this Clause or of any other obligation of confidence addressed to the party to whom the information relates;

#### was, is or becomes available to the Authority on a non-confidential basis from a person who, to the Authority's knowledge, is not bound by a confidentiality agreement with the Contractor or otherwise prohibited from disclosing the information to the Authority;

#### was lawfully in the possession of the Authority before the information was disclosed to it by the Contractor; or

#### the parties agree in writing is not confidential or may be disclosed.

### The Authority shall keep OBR Information confidential and, except with the prior written consent of the Contractor, shall not disclose or make available the OBR Information in whole or in part to any person, except as expressly permitted by this Clause.

### The Authority may disclose the OBR Information in all circumstances which would be permitted disclosures under Section 5 (1) of Schedule 5 of the Defence Reform Act 2014 (DRA) had Schedule 5 of the DRA applied to that information.

### Where the Authority discloses OBR Information to any Central Government Body under Clause 40.3 of this Clause, the Authority shall ensure that the recipient of the OBR Information is made aware of and asked to respect its confidentiality.

### Where the Authority discloses OBR Information to its professional advisors or consultants under Clause 40.3 of this Clause, the Authority shall inform them of the confidential nature of the OBR Information before disclosure and shall obtain from them enforceable obligations to keep the OBR Information confidential in terms at least as extensive and binding on them as terms of this Clause are on the Authority.

### To the extent permitted by the time for compliance under the Freedom Of Information Act (FOIA), the Authority shall consult the Contractor where the Authority is considering the disclosure of OBR Information under the FOIA and, in any event, shall provide prior notification to the Contractor of any decision to disclose the OBR Information. The Contractor acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose OBR Information in order to comply with the FOIA is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the FOIA. For the avoidance of doubt, nothing in this Clause shall affect the Contractor’s rights at law.

### If, for the purposes of this Agreement, the Contractor enters into a Sub-contract in which it has been required to include the provisions set out in Clause 40.1, it shall include in that Sub-contract the terms set out in Clause 40.2 to this Clause (inserting relevant party names where appropriate).

### The obligations set out in this Clause shall be the Authority’s sole contractual obligations of confidentiality regarding the OBR Information. Any other provision of the Agreement relating to the confidentiality of information provided under or in connection with the Agreement, shall be construed in such a way as to exclude the OBR Information from their application.

## Single Source Confidentiality Of Open Book And Reporting Information - Provisions To Be Included In Qualifying Sub-contracts

### In this Clause the following words and expressions shall have the following meaning given to them, except where the context requires a different meaning:

#### “Open Book and Reporting Information (OBR Information)” means all confidential information provided to the Authority in accordance with provisions of this Sub-contract incorporated as a requirement of Clauses 38 to 40 in the Contractor’s Agreement with the Authority. It shall not include information that:

##### is or becomes generally available to the public other than as a result of its disclosure by the Authority or a Central Government Body, or the professional advisors or consultants of the Authority, in breach of the provisions of this Clause or of any other obligation of confidence addressed to the party to whom the information relates;

##### was, is or becomes available to the Authority on a non-confidential basis from a person who, to the Authority's knowledge, is not bound by a confidentiality agreement with the Sub-contractor or otherwise prohibited from disclosing the information to the Authority;

##### was lawfully in the possession of the Authority before the information was disclosed to it by the Sub-contractor; or

##### the parties agree in writing is not confidential or may be disclosed.

### The Authority shall keep OBR Information confidential and, except with the prior written consent of the Sub-contractor, shall not disclose or make available the OBR Information in whole or part to any person, except as expressly permitted by this Clause.

### The Authority may disclose the OBR Information in all circumstances which would be permitted disclosures under Section 5(1) of Schedule 5 of the Defence Reform Act 2014 (DRA) had Schedule 5 of the DRA applied to that information.

### Where the Authority discloses the OBR Information to any Central Government Body under Clause 40.2.3, the Authority shall ensure that the recipient of the OBR Information is made aware of and asked to respect its confidentiality.

### Where the Authority discloses OBR Information to its professional advisors or consultants under Clause 40.2.3, the Authority shall inform them of the confidential nature of the OBR Information before disclosure and shall obtain from them enforceable obligations to keep the OBR Information confidential in terms at least as extensive as the terms of this Clause are on the Authority.

### To the extent permitted by the time for compliance under the Freedom Of Information Act (FOIA), the Authority shall consult the Sub-contractor where the Authority is considering the disclosure of OBR Information under the FOIA and, in any event, shall provide prior notification to the Sub-contractor of any decision to disclose the OBR Information. The Sub-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 FOIA is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the FOIA. For the avoidance of doubt, nothing in this Clause shall affect the Sub-contractor’s rights at law.

### Save where the Authority notifies the Sub-contractor in writing that it is not required, the Sub-contractor shall use reasonable endeavours to include equivalent terms to those specified in this Clause in any Sub-contract which it in which it has been required to include equivalent provisions to those of Clauses 38 to 40 of this Agreement.

1. – Contract Management

# Contractor related party governance

The Contractor shall and shall procure that each member of the Contractor Group shall comply with Schedule B (*Contractor Group Governance*).

# contract management and tasking

The Parties shall comply with the provisions of Schedule C (*Contract Management*) and Schedule D (*Tasking*).

# Monthly Contract Reviews

The ADT Commercial Lead and the Contractor's Representative shall hold a meeting on a Monthly basis (**"Contract Management Meetings"**). If requested by the ADT Commercial Lead from time to time, the Contractor's Representative shall ensure that the other Contractor Delivery Team Personnel are in attendance at Contract Management Meetings.

The ADT Commercial Lead shall have the right, in its sole discretion, to demand more frequent Contract Management Meetings, provided only that it gives the Contractor's Representative reasonable notice.

All Contract Management Meetings will be held at a location to be agreed between the ADT Commercial Lead and the Contractor's Representative, acting reasonably.

The Contractor's Representative shall (unless the Authority agrees otherwise) five (5) Business Days prior to each Contract Management Meeting, provide to the ADT Commercial Lead:

a report summarising its performance over the previous Month (including the performance of the Contractor in meeting KPIs) in the format set out in Appendix 2 (*Performance Reports)* to the Performance Regime (which format may be amended from time to time by agreement between the Parties) (a "**Performance Report**");

the Monthly Part A Fees Report when required in accordance with Paragraph 4 of the Payment Mechanism;

Part B Innovation Fees Reports when required in accordance with Paragraph 5 of the Payment Mechanism;

an update on the development of any Authority Directed Innovation Opportunity or Contractor Generated Innovation Opportunity in accordance with the Stage Deliverables Assurance and Approvals Process; and

an update on the delivery of any Approved Innovation Project in accordance with its Part B Task.

The Contractor's Representative and the ADT Commercial Lead shall each update the other on any issues in relation to which they may reasonably wish to be informed, including:

details of any EDP Part A Task Order Forms for Resource and Specific Tasks received and progress made in meeting the requirement under the EDP Part A Task Order Form;

details of any EDP Part B Task Order Forms for Innovation received and progress made in meeting the requirement under the EDP Part B Task Order Form;

progress made in meeting relevant Milestones;

any Quality and/or Performance Issues; and

progress made in meeting KPIs.

The Contract Management Meetings shall be chaired by the ADT Commercial Lead (or any other person nominated by the Authority) and secretarial support shall be provided by the Contractor.

Unless otherwise stated the Contractor shall be responsible for taking the minutes of the meeting. These minutes will be forwarded in draft form to the ADT Commercial Lead for his review and comments prior to the final version being issued.

# SINGLE SOURCE CONTRACT REPORTS AND NOTIFICATIONS

## In this Clause, the following words and expressions shall have the following meaning given to them, except where the context requires a different meaning:

### "Group Undertaking" has the meaning given by Section 1161 of the Companies Act 2006.

### "Qualifying Defence Contract Notifications" means any notification which the Contractor is required, by Section 26 of the Defence Reform Act 2014 (DRA), to provide to the Authority.

### "Qualifying Defence Contract Reports" means the reports which the Contractor is required, by Part 5 of the SSCR, to provide to the Authority.

## Except where otherwise provided in the Agreement, and subject to Clause 44.3, the Contractor shall provide to the Authority:

### Qualifying Defence Contract Notifications; and

### all Qualifying Defence Contract Reports,

### by the dates on which they are required for the purpose of the DRA and SSCR.

## Where a Qualifying Defence Contract Report requires information regarding the calculation of the Contract Profit Rate under Regulation 11, 12 and 13 of the SSCR, the Contractor will have to provide such information.

## 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) equivalent terms to those specified in this Clause (inserting relevant party names where appropriate).

## Where the terms specified in Paragraph 44.7 are included in a Material Single Source Sub-contract (Non-Qualifying), the Contractor shall take all reasonable steps to secure the performance by the Sub-contractor of the obligations contained in those terms.

## The Contractor shall promptly notify the Authority where it is unable to include in any Material Single Source Sub-contract (Non-Qualifying) the terms specified in Paragraph 44.7, or where it believes that the inclusion of those terms will prevent the achievement of a fair and reasonable price for the Material Single Source Sub-contract (Non-Qualifying).

## Single Source Contract Reports and Notifications - Provisions to be included in Material Single Source Sub-contracts (Non-Qualifying)

### The following words and expressions shall have the meaning given to them, except where the context requires a different meaning:

#### "Material Single Source Sub-contract (Non-Qualifying) " means a Sub-contract entered into by the Sub-contractor where:

##### the Sub-contract is entered into at the same time as, or after, the date on which this Sub-contract was entered into;

##### the Sub-contract is entered into in connection with or for the purposes of the Sub-contract;

##### the award of the Sub-contract is not the result of a “competitive process” as defined in Regulation 59, or Regulation 60, as appropriate, of the Single Source Contract Regulations 2014 (SSCR) for Qualifying Sub-contracts (QSCs);

##### the value of the Sub-contract is of or above £25,000,000; and

##### at least 50% of the Sub-contract (by value) is required either to enable performance of this Sub-contract or to enable the combined performance of the Sub-contract and any other contract, or prospective contract, to which the Sub-contractor or any Group Undertaking of the Sub-contractor is a party, or might become a party.

### "Qualifying Sub-contract Notifications" means any notification which the Sub-contractor would be required, by Section 26 of the DRA, to provide to the Authority if the Sub-contract had been a QSC for the purpose of the DRA.

### "Qualifying Sub-contract Reports" means the reports which the Sub-contractor would be required, by Part 5 of the SSCR, to provide to the Authority if the Sub-contract had been a QSC for the purpose of the SSCR.

### Except where otherwise provided in the Sub-contract, and subject to Clause 44.7.3 the Sub-contractor shall provide to the Authority:

#### Qualifying Sub-contract Notifications; and

#### all Qualifying Sub-contract Reports,

#### by the dates on which they would have been required had the Sub-contract been a QSC for the purpose of the DRA and SSCR.

### Where a Qualifying Sub-contract Report requires information regarding the calculation of the Contract Profit Rate under Regulation 11, 12 and 13, the Sub-contractor shall not have to provide such information.

### Except where the Authority expressly agrees otherwise in writing, the Sub-contractor shall use reasonable endeavours to include in any Material Single Source Sub-contract (Non-Qualifying) equivalent terms to those specified in this Clause (inserting relevant party names where appropriate).

### Where equivalent terms to those specified in this Clause are included in a Material Single Source Sub-contract (Non-Qualifying), the Sub-contractor shall take all reasonable steps to secure the performance by the Sub-contractor of the obligations contained in those terms.

### The Sub-contractor shall promptly notify the Authority where it is unable to include in any Material Single Source Sub-contract (Non-Qualifying) equivalent terms to those specified in this Clause, or where it believes that the inclusion of those terms will prevent the achievement of a fair and reasonable price for the Material Single Source Sub-contract (Non-Qualifying).

### The Contractor and Sub-contractor agree that terms have been included in this Clause which are for the benefit of the Authority. Notwithstanding any contrary provisions in this Sub-contract, the Contractor and Sub-contractor agree that the Authority shall be able to enforce those terms which confer a benefit on the Authority.

# QDC: Confidentiality of single source contract regulations information

## In this Clause, the following words and expressions shall have the meaning given to them, except where the context requires a different meaning:

### "Single Source Contract Regulations Information" and "SSCR Information" means any confidential information in any written or other tangible form, which relates to the Agreement disclosed by the Contractor to the Authority or obtained by the Authority, and being of a type specified in Regulation 56 (1) (but not including information described in Regulation 56 (3)(h) to (n)) of the Single Source Contract Regulations 2014 (SSCR), relating to the Agreement. It shall not include information that:

#### is or becomes generally available to the public other than as a result of its disclosure by the Authority or a Central Government Body, or the professional advisors or consultants of the Authority, in breach of the provisions of the Agreement, the Defence Reform Act 2014 (DRA), the SSCR or of any other obligation of confidence owed to the party to whom the information relates;

#### was, is or becomes available to the Authority on a non-confidential basis from a person who, to the Authority's knowledge, is not bound by a confidentiality agreement with the Contractor or otherwise prohibited from disclosing the information to the Authority;

#### was lawfully in the possession of the Authority before the information was disclosed to it by the Contractor; or

#### the parties agree in writing is not confidential or may be disclosed.

## The Authority shall keep SSCR Information confidential and, except with the prior written consent of the Contractor, shall not disclose or make available the SSCR Information in whole or in part to any person, except as expressly permitted by this Clause.

## The Authority may disclose the SSCR Information in all circumstances which would be permitted disclosures under section 5 (1) of Schedule 5 of the DRA.

## Where the Authority discloses SSCR Information to any Central Government Body under Clause 45.3, the Authority shall ensure that the recipient of the SSCR Information is made aware of and asked to respect its confidentiality.

## Where the Authority discloses SSCR Information to its professional advisors or consultants under Clause 45.3, the Authority shall inform them of the confidential nature of the SSCR Information before disclosure and shall obtain from them enforceable obligations to keep the SSCR Information confidential in terms at least as extensive and binding on them as the terms of Clause 45 are on the Authority.

## To the extent permitted by the time for compliance under the Freedom Of Information Act (FOIA), the Authority shall consult the Contractor where the Authority is considering the disclosure of SSCR Information under the FOIA, and, in any event, shall provide prior notification to the Contractor of any decision to disclose the SSCR Information. The Contractor acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose SSCR Information in order to comply with the FOIA is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the FOIA. For the avoidance of doubt, nothing in this Clause 45 shall affect the Contractor’s rights at law.

## If, for the purposes of this Agreement, the Contractor enters into a Sub-contract which it has assessed to be a Qualifying Sub-contract for the purpose of the DRA and SSCR, it shall include in that Sub-contract the terms set out in Clause 45.10 (inserting relevant party names and / or definitions where appropriate).

## The obligations set out in this Clause shall be the Authority’s sole contractual obligations of confidentiality regarding the SSCR Information. Any other provision of the Agreement relating to the confidentiality of information provided under or in connection with the Agreement, including but not limited to Clause 81 (*Disclosure*), shall be construed in such a way as to exclude the SSCR Information from their application.

## Nothing in this Clause 45 shall affect the Authority’s obligations of confidentiality where information is disclosed orally in confidence.

## QDC: Confidentiality of Single Source Contract Regulations Information - Provisions To Be Included In Qualifying Sub-contracts

### In this Clause, the following words and expressions shall have the meaning given to them, except where the context requires a different meaning:

#### “Single Source Contract Regulations Information” and “SSCR Information” means any confidential information in any written or other tangible form which relates to the Sub-contract disclosed by the Sub-contractor to the Authority or obtained by the Authority, and being of a type specified in Regulation 56 (1) (but not including information described in Regulation 56 (3)(h) to (n)) of the Single Source Contract Regulations 2014 (SSCR). It shall not include information that:

##### is or becomes generally available to the public other than as a result of its disclosure by the Authority or a Central Government Body, or the professional advisors or consultants of the Authority, in breach of the provisions of the Agreement, the Defence Reform Act 2014 (DRA), the SSCR or of any other obligation of confidence owed to the party to whom the information relates;

##### was, is or becomes available to the Authority on a non-confidential basis from a person who, to the Authority's knowledge, is not bound by a confidentiality agreement with the Sub-contractor or otherwise prohibited from disclosing the information to the Authority;

##### was lawfully in the possession of the Authority before the information was disclosed to it by the Sub-contractor; or

##### the parties agree in writing is not confidential or may be disclosed.

### The Authority shall keep SSCR Information confidential and, except with the prior written consent of the Sub-contractor, shall not disclose or make available the SSCR Information in whole or in part to any person, except as expressly permitted by this Clause.

### The Authority may disclose the SSCR Information in all circumstances which would be permitted disclosures under section 5 (1) of Schedule 5 of the DRA.

### Where the Authority discloses SSCR Information to any Central Government Body under Clause 45.10.3, the Authority shall ensure that the recipient of the SSCR Information is made aware of and asked to respect its confidentiality.

### Where the Authority discloses SSCR Information to its professional advisors or consultants under Clause 45.10.3, the Authority shall inform them of the confidential nature of the SSCR Information before disclosure and shall obtain from them enforceable obligations to keep the SSCR Information confidential in terms at least as extensive and binding on them as the terms of this Clause are on the Authority.

### To the extent permitted by the time for compliance under the Freedom Of Information Act (FOIA), the Authority shall consult the Sub-contractor where the Authority is considering the disclosure of SSCR Information under the FOIA, and, in any event, shall provide prior notification to the Sub-contractor of any decision to disclose the SSCR Information. The Sub-contractor’s representations on disclosure during consultation may not be determinative and the decision whether to disclose SSCR Information in order to comply with the FOIA is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the FOIA. For the avoidance of doubt, nothing in this Clause shall affect the Sub-contractor’s rights at law.

### Except where the Authority notifies the Sub-contractor in writing that it is not required, the Sub-contractor shall include in any Sub-contract which it enters into for the purposes of this Sub-contract and which it has assessed to be a Qualifying Sub-contract for the purpose of the DRA and the SSCR, equivalent terms to those specified in this Clause.

### Nothing in this Clause shall affect the Authority’s obligations of confidentiality where information is disclosed orally in confidence.

1. – Asset Management

# Government Furnished Assets and contractor assets

**Government Furnished Assets – Personnel**

The Authority shall use reasonable endeavours, on and from the Agreement Commencement Date, to provide Government Furnished Resources (**"GFR"**), Government Furnished Facilities (**"GFF"**), Government Furnished Equipment (**"GFE"**), and Government Furnished Information (**"GFI"**), together the **"Government Furnished Assets"** or **"GFA"** in accordance with the listing at Appendix 1 (*Government Furnished Assets*) to Schedule O (*Accommodation and IT*).

**Government Furnished Assets – Outputs**

### GFA may need to be made available to the Contractor to assist it in delivering the Contractor Deliverables. The scope and scale of each GFA issued shall be agreed with the Task Order Lead and will be called up in the Approved Tasking Order, as appropriate, for the periods indicated at the time of issue.

All such GFA will be issued by (or through) the Task Order Lead who will advise the Contractor of the terms of issue and period of loan at the time of each such issue. The GFA issued to the Contractor shall be recorded on the Approved Tasking Order Statement of Requirement.

The Contractor shall observe the instructions of the Task Order Lead concerning any GFA which the Contractor is authorised to demand from Government sources to assist it in delivering the Contractor Deliverables.

**Government Furnished Assets – Management**

Where the Contractor requires that the Authority provide any further GFA, it shall give the Authority a minimum of twelve (12) weeks' notice with full details of the request. The Authority shall use reasonable endeavours to meet the additional requirements, but will be under no obligation to do so. If the requirement can be satisfied from the Authority's existing resources the appropriate terms shall be negotiated (including the type of loan, dates, rate cards and cost). The register of GFA set out at Appendix 1 (*Government Furnished Assets*) to Schedule O (*Accommodation and IT*) will accordingly be updated from time to time to reflect the revised GFA requirements. All requests for GFA must be directed to the ADT Commercial Lead unless advised otherwise.

The Authority shall have no liability to the Contractor if, when the GFAs are made available or offered to be made available on the agreed date, the Contractor fails to make use of them.

If the Authority incurs nugatory expense which can be shown to be a direct result of actions at Clause 46.3.2 the Authority reserves the right to make appropriate recovery from the Contractor with such recovery based on the appropriate reduction negotiated and agreed when providing the further GFA under Clause 46.1 and Clause 46.2.

The Contractor shall comply with the instructions of the Authority regarding any GFA issued to it for the purpose of the Agreement and shall be responsible for the safe custody of the GFA while in its possession or the possession of a Contractor Related Party. The Contractor shall observe any accounting instructions issued to it by the Authority (see also DEF STAN 05-099).

The Contractor shall not modify any GFA without the prior written agreement of the Authority. If the Contractor has any doubt about the suitability of any item, or has proposals for design changes, the Contractor shall promptly advise the Authority accordingly. The Contractor shall ensure that the design of the installation using GFA is in accordance with the specific requirements of such GFA.

Acceptance of all GFA shall take place through usage of the property and the Contractor shall notify the Authority of any defects or deficiencies that are discovered during usage.

If either Party identifies that delivery of GFA may be delayed, the Parties shall work together to identify alternative solutions to mitigate the impact of any delay. If agreement is not reached and the GFA are subsequently delivered late, and such late delivery impacts upon the delivery of any Approved Tasking Order or Approved Innovation Project against agreed Milestones or Personnel being able to perform the Services under a Tasking Order:

the timeframes required for the delivery of such Approved Tasking Order or Approved Innovation Project shall be extended by the number of Business Days of the delay;

the timeframes required for the delivery of such Approved Tasking Order or Approved Innovation Project shall be extended by the number of Business Days of the delay;

the Contractor shall be entitled to payment on the basis of the Part A Rate Cards applicable for an Approved Tasking Order for the number of Business Days of the delay; and

no additional amount shall be payable by way of compensation for any costs or expenses or losses suffered or incurred by the Contractor in respect of the delay.

The Contractor shall use reasonable endeavours to minimise any impact on its performance and minimise additional costs payable under Clause 46.3.7.

The Contractor shall take such steps as may be reasonably necessary to ensure that it has brought to the attention of all Sub-contractors and any other persons dealing with any GFA that the Authority is the owner of the GFA. The Contractor shall notify the Authority of any attempts by a Third Party to secure a lien or rights of a similar kind on any GFA. The Contractor shall concurrently notify the Third Party that the Authority is the owner of the GFA.

The cost of maintenance and calibration of all GFAs shall be included within the Part A Fee or Innovation Fees (as applicable). The Contractor shall not be responsible for periodic servicing required or for repairs which are not due to the acts or omissions of the Contractor or the Contractor Related Parties.

The Contractor shall provide reasonable access to any GFA issued under the Agreement for inspection by the Authority.

The Contractor shall return any GFA in accordance with the dates and requirements set out in Appendix 1 (*Government Furnished Assets*) to Schedule O (*Accommodation and IT*) or as set out in the Approved Tasking Order or Part B Task (as applicable). If the Contractor fails to return any GFA within two (2) Business Days of the required date, the Authority may withhold a sum from the final payment due under the Approved Tasking Order or Part B Task equivalent to the value of such GFA.

This Clause 46 (*Government Furnished Assets*) is without prejudice to the Contractor's obligations under Clause 73 (*Protection of Information*).

The Contractor shall:

observe the terms and conditions required by the Authority from time to time regarding any GFA made available to the Contractor; and

without limiting Clause 46.3.12, be responsible for the safe custody and due return of the GFA and shall be responsible for all loss or damage thereto until re-delivered to the Authority or disposed of in accordance with the Authority's instructions.

## Contractor Assets

The Contractor shall provide the accommodation and facilities including IT facilities set out in Schedule O (*Accommodation and IT*) unless an Approved Tasking Order or Part B Task provides that the Authority will provide such accommodation and facilities.

1. – engaged Personnel Matters

# Non-Discrimination and Equality

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

Without prejudice to the generality of the obligation in Clause 47.1, in connection with the Agreement and the Services, the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or any other relevant or equivalent legislation in any country where the Agreement or Services are performed.

# Engaged Personnel

The Contractor shall comply with its obligations in relation to Engaged Personnel in Schedule I (*Management and Liability for Engaged Personnel*).

The Contractor shall:

### mobilise the Personnel under the Initial Approved Tasking Order in accordance with the time frames identified in the Initial Approved Tasking Order;

### identify Personnel in response to each Approved Tasking Order for Resource in accordance with the Part A Tasking Process;

### mobilise all other Personnel under an Approved Tasking Order in accordance with the timescale identified in the relevant Approved Tasking Order, which shall be no longer than the period identified in Paragraph 12.3 of Schedule A (*Requirements*);

### demobilise the Personnel in accordance with the timeframes agreed in the relevant Approved Tasking Order; and

### fulfil its obligations under the Continuous Improvement Plan.

# Key personnel

The Contractor shall appoint the people identified as Key Personnel to those roles.

The Contractor acknowledges that the Key Personnel are essential to the proper performance of this Agreement to the Authority. The Contractor may propose a change in the identity of the Key Personnel and may suggest a replacement that is as, or more, qualified, experienced and competent as the previous incumbent of such role and fully competent to carry out the tasks assigned to the role of the member of Key Personnel whom he or she has replaced. The Contractor shall ensure that a suitably detailed handover is performed.

The Authority may refuse any change to the Key Personnel in its sole discretion.

On and from the Agreement Commencement Date, the Key Personnel shall hold SC security clearance unless otherwise agreed.

The Contractor shall ensure that prior to being appointed each member of the Key Personnel has:

### successfully completed all Contractor-required mandatory training;

### successfully completed all Authority-required mandatory training as follows: Display Screen Equipment, Health & Safety, Basic Fire Awareness, Equality and Diversity Essentials, Unconscious Bias, Business Continuity, Site & DE&S Induction, General Security Threat Briefings, Office Safety, IT/IS Induction, Defence Information Management Passport, Introduction to the Engineering Function, Counter Fraud Bribery and Corruption, Protecting Information Induction and that the Key Personnel completes any additional training required by the Authority from time to time; and

### signed and returned to the ADT Commercial Lead a Letter of Placement.

The Contractor shall ensure that:

### each Key Personnel (including their approved replacements) remains in that role for a period of 12 Months, on a semi-permanent basis (3 or 4 days per week);

### there is a two (2) week handover period to the replacement Key Personnel;

### any replacement of Key Personnel is staggered and ensures that there is continuity of, and no detrimental effect on, the Services, or otherwise on the performance of this Agreement.

# NON SOLICITATION

Between the Agreement Commencement Date and the Expiry Date or termination (howsoever caused) of this Agreement (the date of such expiry or termination being the **"Relevant Date"**), the Contractor covenants with the Authority that it shall not, and shall procure that no member of the Contractor Group nor any Sub-contractor shall, unless it has obtained the prior written consent of the Authority, directly or indirectly solicit or entice away or endeavour to solicit or entice away or cause to be solicited or enticed away from the Authority any person:

who is, and was, on the first date on which the attempt to solicit or entice away occurs (the **"Solicitation Date"**):

directly or indirectly employed or engaged by the Authority in a commercial, finance, procurement, programme and project management, or engineering capacity at **REDACTED** or above; or

whose departure from the Authority would be reasonably likely to have a material adverse effect on the Authority’s operations; and

with whom at any time during the twelve (12) Months prior to the Solicitation Date the Contractor or the applicable member of the Contractor Group or any Sub-contractor had a material amount of contact; or

in respect of whom the Contractor or the applicable member of the Contractor Group or any Sub-contractor possessed a material amount of Commercially Confidential Information as at the Solicitation Date,

with a view to inducing that person to leave such employment or engagement (whether or not such person would commit a breach of his or her contract of employment or engagement by reason of leaving).

Between the Relevant Date and the expiration of two (2) years from the Relevant Date, the Contractor covenants with the Authority that it shall not, and shall procure that no member of the Contractor Group nor Sub-contractor shall, unless it has obtained the prior written consent of the Authority, directly or indirectly solicit or entice away or endeavour to solicit or entice away or cause to be solicited or enticed away from the Authority any person:

who is, and was, immediately prior to the Relevant Date:

directly or indirectly employed or engaged by the Authority in a commercial, finance, procurement, programme and project management, or engineering capacity at **REDACTED** or

whose departure from the Authority would be reasonably likely to have a material adverse effect on the Authority’s operations; and

with whom at any time during the twelve (12) Months prior to the Relevant Date the Contractor or applicable member of the Contractor Group or any Sub-contractor had a material amount of contact; or

in respect of whom the Contractor or the applicable member of the Contractor Group or any Sub-contractor possessed a material amount of Commercially Confidential Information as at the Relevant Date,

with a view to inducing that person to leave such employment or engagement (whether or not such person would commit a breach of his or her contract of employment or engagement by reason of leaving).

Notwithstanding Clauses 50.1 and 50.2, any recruitment of any person by the Contractor or a member of the Contractor Group or any Sub-contractor as a result of that person independently responding to any general recruitment advertisement by the Contractor or a member of the Contractor Group or any Sub-contractor in general or specialist publications shall not constitute a breach of this Agreement.

In the event that any person directly or indirectly employed or engaged by the Authority and subject to the restriction in Clause 50.1 is recruited in accordance with Clause 50.3, the Contractor shall not be permitted to employ such person as a Member of Engaged Personnel without the Authority's prior written consent.

The Authority shall not until after the cessation of the involvement of a Relevant Personnel in the performance of the Services, directly or indirectly solicit or entice away or endeavour to solicit or entice away or cause to be solicited or enticed away from the Contractor or any Contractor Related Party or Sub-contractor, any Relevant Personnel for Relevant Employment. In this Clause:

### “Relevant Personnel” means individual Personnel who were introduced to the Authority in the course of or in connection with the Services; and,

### “Relevant Employment” means employment for Relevant Personnel to discharge the type of role or function for the Authority as they performed in relation to the Services.

Notwithstanding Clause 50.5, any recruitment of any person by the Authority as a result of that person independently responding to any general recruitment advertisement by the Authority in general or specialist publications shall not constitute a breach of this Agreement.

# TRANSFER REGULATIONS

The Parties agree that it is the intention of the Parties on and from the Agreement Commencement Date, and at all times during the provision of the Services, that the Transfer Regulations shall not apply in such a way so as to transfer the employment (or any associated or related liabilities) of any:

### employee of the Authority or of any contractor or Sub-contractor of the Authority (other than any member of the Contractor Group or any Sub-contractor) to any member of the Contractor Group; or

### employee of any member of the Contractor Group or any Sub-contractor to the Authority, in connection with the commencement or provision of the Services.

If the contract of employment (or any associated or related liabilities) of any Non-Transferring Employee, is by reason of the Transfer Regulations, found or alleged to have effect as if originally made with any member of the Contractor Group or any Sub-contractor (a "**Commencement** **Transfer Allegation**"), then:

### promptly upon becoming aware of any Commencement Transfer Allegation (including the threat of any Commencement Transfer Allegation) (and in any event within five (5) Business Days of becoming so aware) the applicable Party shall notify the other in writing (and, in the case of the Contractor, any such awareness of any member of the Contractor Group or of any Sub-contractor shall be imputed to the Contractor);

### the Contractor shall, and shall procure that the relevant other member of the Contractor Group or Sub-contractor, shall keep the Authority informed of all material developments in relation to the relevant Commencement Transfer Allegation and relevant Non-Transferring Employee;

### the Authority may (or may procure that a third party may), within five (5) Business Days of the notification made pursuant to Clause 51.2.1, offer employment to such Non-Transferring Employee;

### if such offer is accepted (or if the situation has otherwise been resolved by the Authority to the satisfaction of the Contractor or Sub-contractor), the Contractor shall, and shall procure that the relevant member of the Contractor Group or Sub-contractor shall, immediately release the Non-Transferring Employee from their employment;

### if after the five (5) Business Day period described at Clause 51.2.3 has elapsed, no such offer of employment has been made, or such offer has been made but not accepted, or the situation has not otherwise been resolved, the Contractor, the relevant member of the Contractor Group or the Sub-contractor (as applicable) may within ten (10) Business Days give notice to terminate the employment of such Non-Transferring Employee;

### other than where Clauses 51.2.3, 51.2.4 and 51.2.5 apply, the Contractor shall, and shall procure that the relevant other member of the Contractor Group or Sub-contractor, shall consult with and follow the reasonable instructions of the Authority in relation to all matters connected with the Commencement Transfer Allegation and the Non-Transferring Employee and take any and all such action as the Authority may reasonably direct in relation to the Commencement Transfer Allegation and the Non-Transferring Employee, including commencing, conducting, defending, resisting, settling, compromising or appealing against any proceedings or terminating the employment of the Non-Transferring Employee,

and subject to the applicable member of Contractor Group and any Sub-contractors complying with Clauses 51.2.1 to 51.2.6 above, the Authority shall indemnify the Contractor fully (for itself and on behalf of each other member of the Contractor Group and any Sub-contractor) against any and all Loss incurred by any member of the Contractor Group or any Sub-contractor arising out of or in connection with the Commencement Transfer Allegation (including any costs associated with employing or terminating the employment of any Non-Transferring Employee), save that such indemnity shall not apply:

### to any and all Loss directly or indirectly attributable to any act or omission of any member of the Contractor Group or any Sub-contractor that contravenes Clause 51.2.6;

### to any final determination by an employment tribunal or Court of discrimination including sex, race, disability, gender reassignment, pregnancy and maternity, sexual orientation, religion or belief or age discrimination in relation to any alleged act or omission of any member of the Contractor Group or any Sub-contractor;

### to any and all Loss that arises by reason of any improvement in the terms and conditions of employment of the relevant Non-Transferring Employee, where such improvement is authorised or implemented by any member of the Contractor Group or any Sub-contractor without the prior written approval of the Authority;

### in relation to Clause 51.2.5, in the event that the Contractor elects not to give notice to terminate the employment of such Non-Transferring Employee as described in that Clause; or

### in circumstances where any member of the Contractor Group or any Sub-contractor wishes to retain the relevant Non-Transferring Employee.

Subject to Clause 51.2 and Schedule N (*Transfer Regulations*), if, during and as a result of, the provision of the Services under this Agreement, the contract of employment (or any associated or related liabilities) of any person employed by any member of the Contractor Group or any Sub-contractor is, by reason of the Transfer Regulations, found or alleged to have effect as if originally made with the Authority (a "**Contractor Employee Transfer Allegation**"), then:

### promptly upon becoming aware of any Contractor Employee Transfer Allegation (including the threat of any Contractor Employee Transfer Allegation) (and in any event within five (5) Business Days of becoming so aware), the applicable Party shall notify the other Party in writing (and any such awareness of any other member of the Contractor Group or of any Sub-contractor shall, for the purposes of this Clause 51.3, be imputed to the Contractor);

### the Contractor shall (or shall procure that the relevant other member of the Contractor Group or applicable Sub-contractor shall), as soon as reasonably practicable, either or both offer or confirm continued employment to such employee or take such other steps so as to effect a written withdrawal of the Contractor Employee Transfer Allegation;

### if the Contractor Employee Transfer Allegation is not withdrawn or resolved, the Contractor shall notify the Authority, and the Authority may as soon as reasonably practicable and subject to compliance with its obligations at Clause 51.3.4(C), serve notice to terminate the employee's employment in accordance with his or her contract of employment; and

### the Contractor shall indemnify the Authority fully against any and all Loss arising out of or in connection with any of the following liabilities incurred by the Authority in dealing with or disposing of the Contractor Employee Transfer Allegation:

#### any costs of employing the employee up to the date of dismissal where such employee has been dismissed in accordance with Clause 51.3.3;

#### any liabilities acquired by virtue of the Transfer Regulations in relation to the employee;

#### any liabilities relating to the termination of the employee's employment but excluding such proportion or amount of any liability for unfair dismissal, breach of contract or discrimination attributable:

##### to a failure by the Authority to act reasonably to mitigate the costs of dismissing such person;

##### directly or indirectly to the procedure followed by the Authority in dismissing the employee; or

##### to the acts or omissions of the Authority not wholly connected to the dismissal of that person;

any liabilities incurred under a settlement of the employee's claim which was reached with the express permission of the Contractor (not to be unreasonably withheld or delayed);

reasonable administrative costs incurred by the Authority in dealing with the employee's claim or allegation, subject to a cap per employee of **REDACTED** ; and

legal and other professional costs reasonably incurred.

The Authority shall be deemed to have waived its right to an indemnity under Clause 51.3.4 if it fails without reasonable cause to take any action in accordance with any of the timescales referred to in Clause 51.3 or in circumstances where the Authority agrees to retain the employee.

Subject to Clause 51.2 and Schedule N (*Transfer Regulations*), if, during and as a result of, the provision of the Services under this Agreement, the contract of employment (or any associated or related liabilities) of any person employed by the Authority is, by reason of the Transfer Regulations, found or alleged to have effect as if originally made with the Contractor, any other member of the Contractor Group or any Sub-contractor (an "**Authority Employee Transfer Allegation**"), then:

### promptly upon becoming aware of any Authority Employee Transfer Allegation (including the threat of any Authority Employee Transfer Allegation) (and in any event within five (5) Business Days of becoming so aware), the applicable Party shall notify the other Party in writing (and any such awareness of any other member of the Contractor Group or of any Sub-contractor shall, for the purposes of this Clause 51.5, be imputed to the Contractor);

### as soon as reasonably practicable, the Authority shall offer or confirm continued employment to such employee or take such other steps so as to effect a written withdrawal of the Authority Employee Transfer Allegation;

### if the Authority Employee Transfer Allegation is not withdrawn or resolved, the Authority shall notify the Contractor, and the Contractor (or the applicable member of the Contractor Group or the applicable Sub-contractor) may as soon as reasonably practicable and subject to compliance with its obligations at Clause 51.5.4(C), serve notice to terminate the employee's employment in accordance with his or her contract of employment; and

### the Authority shall indemnify the Contractor (for itself and on behalf of the applicable other member of the Contractor Group or the applicable Sub-contractor) fully against any and all Loss arising out of or in connection with any of the following liabilities incurred by the applicable member of the Contractor Group or the applicable Sub-contractor in dealing with or disposing of the Authority Employee Transfer Allegation:

any costs of employing the employee up to the date of dismissal where such employee has been dismissed in accordance with Clause 51.5.3;

any liabilities acquired by virtue of the Transfer Regulations in relation to the employee;

any liabilities relating to the termination of the employee's employment but excluding such proportion or amount of any liability for unfair dismissal, breach of contract or discrimination attributable:

##### to a failure by the applicable member of the Contractor Group or the applicable Sub-contractor to act reasonably to mitigate the costs of dismissing such person;

##### directly or indirectly to the procedure followed by the applicable member of the Contractor Group or the applicable Sub-contractor in dismissing the employee; or

##### to the acts or omissions of the applicable member of the Contractor Group or the applicable Sub-contractor not wholly connected to the dismissal of that person;

any liabilities incurred under a settlement of the employee's claim which was reached with the express permission of the Authority (not to be unreasonably withheld or delayed);

reasonable administrative costs incurred by the applicable member of the Contractor Group or the applicable Sub-contractor in dealing with the employee's claim or allegation, subject to a cap per employee of £5,000; and

legal and other professional costs reasonably incurred.

## Each member of the Contractor Group and any Sub-contractor shall be deemed to have waived their respective rights to an indemnity under Clause 51.5.4 if the relevant person fails without reasonable cause to take any action in accordance with any of the timescales referred to in Clause 51.5 or in circumstances where the applicable member of the Contractor Group or the applicable Sub-contractor agrees to retain the employee.

The Dispute Resolution Procedure shall only apply to the provisions of Clause 51 (*Transfer Regulations*) and Schedule N (*Transfer Regulations*)to the extent that there is any Dispute between the Parties regarding the scope or operation of any of those provisions.

The Parties agree that there may be a transfer under the Transfer Regulations on termination or expiry of this Agreement and nothing in this Clause 51 (*Transfer Regulations*) is intended to prevent or avoid the proper application of the TUPE Regulations.

The arrangements for the provision of employee-related information in the period prior to expiry or termination of this Agreement and in the event of the application of the Transfer Regulations are set out in Schedule N (*Transfer Regulations*).

1. – PRICING, Payment, PERFORMANCE and Incentivisation mechanism

# SINGLE SOURCE: PROFIT AND LOSS SHARING ON FIRM/FIXED PRICE CONTRACTS

## In this Clause, the following words and expressions shall have the meanings given to them, except where the context requires a different meaning:

### “Agreement” means, for the purpose of this Clause only and notwithstanding the definitions in Paragraph 1.1 of this Agreement:

#### where the agreement between the parties uses only one or more Firm Prices or Fixed Prices, as defined in Paragraph 1.1 of this Agreement; or

#### where the agreement between the parties uses one or more Firm Prices or Fixed Prices together with one or more elements which are not priced on a Firm Price or Fixed Price basis, only those elements of the agreement which are priced on a Firm Price or Fixed Price basis.

### “Contract Price” means as defined in Paragraph 1.1 of this Agreement except that the meaning of Agreement defined in this Clause shall be used.

### “Contract Profit Rate” means the profit, in percentage terms, which the parties have agreed to add to the estimated Agreement costs to arrive at the Contract Price.

### “Excess Level 1” means the contract profit which the Contractor would have achieved under the Agreement (before any payment under this Clause) if a rate of p REDACTED greater than the Contract Profit Rate was applied to the Outturn Costs.

### “Excess Level 2” means the contract profit which the Contractor would have achieved under the Agreement (before any payment under this Cluse) if a rate of profit REDACTED than the Contract Profit Rate was applied to the Outturn Costs.

### “Excess Level 3” means the contract profit which the Contractor would have achieved under the Agreement (before any payment under this Clause) if a rate of profit REDACTED greater than the Contract Profit Rate was applied to the Outturn Costs.

### “Group Undertaking” has the meaning given by Section 1161 of the Companies Act 2006.

### “Loss Level” means the loss which the Contractor would have made under the Agreement (before any payment under this Clause) had the Outturn Costs been five (5) percentage points greater than the Contract Price.

### “Outturn Costs” means the amount of the Contractor’s actual Allowable Costs under the Agreement.

### “Outturn Profit” means the difference between the Contract Price and the Outturn Costs, where the former exceeds the latter.

### “Outturn Profit Rate” means the Outturn Profit, expressed as a percentage of the Outturn Costs.

## This Clause shall only apply where the Contract Price is equal to or greater than £ REDACTED

## Subject to Clause 52.9, REDACTED.

## Subject to Clause 52.9, where the Outturn Profit Rate exceeds the Contract Profit Rate REDACTED to:

### REDACTED Outturn Profit made which exceeds Excess Level 2, plus

### REDACTED per cent of the Outturn Profit made which exceeds Excess Level 1 (excluding any Outturn Profit made which exceeds Excess Level 2).

## Subject to Clause 52.9, where the Outturn Profit Rate exceeds the Contract Profit Rate by REDACTED, the Contractor shall pay to the Authority an amount equal to:

### REDACTED per cent of the Outturn Profit made which exceeds Excess Level 3, plus

### REDACTED per cent of the Outturn Profit made which exceeds Excess Level 2 (excluding any Outturn Profit made which exceeds Excess Level 3), plus

### REDACTED per cent of the Outturn Profit made which exceeds Excess Level 1 (but excluding any Outturn Profit made which exceeds Excess Level 2).

## Subject to Clause 52.9, where the Outturn Costs exceed the Contract Price by an amount up to the Loss Level, the Authority shall pay to the Contractor an amount equal to REDACTED per cent of that excess.

## Subject to Clause 52.9, where the Outturn Costs exceed the Contract Price by an amount equal to or greater than the Loss Level, the Authority shall pay to the Contractor:

### an amount equal to REDACTED of the excess which is less than the Loss Level; plus

### an amount equal to REDACTED per cent of the excess which is equal to or greater than the Loss Level.

## The calculation of any Outturn Profit or Loss Level shall not include:

### any effect on the Outturn Costs arising from any incentive arrangement under the Agreement that involves a payment or deduction of costs; and

### any interest on overdue payments payable under the terms of the Agreement.

## Payments shall only be due under this Clause where those payments are equal to or greater than REDACTED.

## The Authority’s entitlement to payment under this Clause shall be conditional on it providing a notification to the Contractor of its intention to seek payment within:

### three (3) months of receiving a Contract Costs Statement from the Contractor in accordance with Clause 44 (*Single Source Contract Reports and Notifications*); or

### where the Contractor is not obliged to provide a Contract Costs Statement under Clause 44, three (3) months of receiving a report or other notification from the Contractor confirming the Outturn Costs, or the Authority otherwise verifying the Outturn Costs through alternative means within 15 months of the completion of the Agreement.

## The Contractor’s entitlement to payment under this Clause shall be conditional on it:

### providing to the Authority:

#### a Contract Costs Statement in line with Clause 44 where it is obliged to do so; or

#### where the Contractor is not obliged to provide a Contract Costs Statement under Clause 44, an alternative report or notification confirming the Outturn Costs; and

### notifying the Authority of its intention to seek payment under this Clause within three (3) months of providing the relevant report or notification required.

## 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 Clause 52.16 (inserting relevant party names where appropriate).

## Where the terms specified in Clause 52.16 are included in a Material Single Source Sub-contract (Non-Qualifying), the Contractor shall take reasonable steps to secure the performance by the Sub-contractor of the obligations contained in those terms.

## Before entering into a Material Single Source Sub-contract (Non-Qualifying) the Contractor shall promptly notify the Authority where it is unable to include in the Agreement the terms specified in Clause 52.16, or where it believes that the inclusion of those terms will prevent the achievement of a fair and reasonable price for the Material Single Source Sub-contract (Non-Qualifying).

## Except where it is necessary for proper compliance with the requirements of any person acting in the capacity of an arbitrator under any provision of the Agreement, the Authority shall not disclose to any person outside any Government Central Body any information obtained by it in consequence of the application of any of the provisions of this Clause.

## Provisions To Be Included In Material Single Source Sub-contracts (Non-Qualifying)

### In this Clause, the following words and expressions shall have the following meanings given to them, except where the context requires a different meaning:

#### “Excess Level 1” means the contract profit which the Sub-contractor would have achieved under the Sub-contract (before any payment under this Clause) if a rate of REDACTED greater than the Sub-contract Profit Rate was applied to the Outturn Costs.

#### “Excess Level 2” means the contract profit which the Sub-contractor would have achieved under the Sub-contract (before any payment under this Clause) if a rate of profit REDACTED greater than the Sub-contract Profit Rate was applied to the Outturn Costs.

#### “Excess Level 3” means the contract profit which the Sub-contractor would have achieved under the Sub-contract (before payment under this Clause) if a rate of profit REDACTED points greater than the Sub-contract Profit Rate was applied to the Outturn Costs.

#### “Loss Level” means the loss which the Sub-contractor would have made under the Sub-contract (before any payment under this Clause) had the Outturn Costs been REDACTED than the Sub-contract Price.

#### “Group Undertaking” has the meaning given by Section 1161 of the Companies Act 2006.

#### “Material Single Source Sub-contract (Non-Qualifying)” means a Sub-contract entered into by the Sub-contractor where:

##### the Sub-contract is entered into at the same time as, or after, this Sub-contract was entered into;

##### the Sub-contract is entered into in connection with or for the purposes of the Sub-contract;

##### the award of the Sub-contract is not the result of a “competitive process” as that is defined in Regulation 59, or Regulation 60, as appropriate, of the Single Source Contract Regulations (SSCR) for Qualifying Sub-contracts (QSCs);

##### the Sub-contract uses one or more Firm Prices or Fixed Prices, the total value of which is equal to or greater than REDACTED; and

##### at least REDACTED of the Sub-contract (by value) is required either to enable the performance of the Sub-contract, or to enable the combined performance of the Sub-contract and any other contract, or prospective contract, to which the Sub-contractor or any Group Undertaking of the Sub-contractor is a party, or might become a party.

#### “Outturn Costs” means the amount of the Sub-contractor’s actual Allowable Costs under the Sub-contract.

#### “Outturn Profit” means the difference between the Sub-contract Price and the Outturn Costs, where the former exceeds the latter.

#### “Outturn Profit Rate” means the Outturn Profit, expressed as a percentage of the Outturn Costs.

#### “Sub-contract” means:

##### where the agreement between the Contractor and Sub-contractor uses only one or more Firm Prices or Fixed Prices, that agreement; or

##### where the agreement between the Contractor and Sub-contractor uses one or more Firm Prices or Fixed Prices together with one or more elements which are not priced on a Firm Price or Fixed Price basis, only those elements of the agreement which are priced on a Firm Price or Fixed Price basis.

#### “Sub-contract Price” means the price exclusive of Value Added Tax, payable to the Sub-contractor by the Contractor under the Sub-contract for the full and proper performance by the Sub-contractor of the Sub-contract as determined under the provisions of the Sub-contract.

#### “Sub-contract Profit Rate” means the profit, in percentage terms, which the Contractor and Sub-contractor have agreed to add to the estimated Sub-contract costs to arrive at the Sub-contract Price.

### Subject to Clause 52.16.8, where the Outturn Profit Rate exceeds the Sub-contract Profit Rate by five (5) percentage points or more but less than REDACTED, the Sub-contractor shall pay to the Authority an amount equal to REDACTED of the Outturn Profit made which exceeds Excess Level 1.

### Subject to Clause 52.16.8, where the Outturn Profit Rate exceeds the Sub-contract Profit Rate by REDACTED or more but less than REDACTED, the Sub-contractor shall pay to the Authority an amount equal to:

#### REDACTED Outturn Profit made which exceeds Excess Level 2, plus

#### REDACTED of the Outturn Profit made which exceeds Excess Level 1 (excluding any Outturn Profit made which exceeds Excess Level 2).

### Subject to Clause 52.16.8, where the Outturn Profit Rate exceeds the Sub-contract Profit Rate by REDACTED, the Sub-contractor shall pay to the Authority an amount equal to:

#### REDACTED of the Outturn Profit made which exceeds Excess Level 3; plus

#### REDACTED of the Outturn Profit made which exceeds Excess Level 2 (excluding any Outturn Profit made which exceeds Excess Level 3); plus

#### REDACTED of the Outturn Profit made which exceeds Excess Level 1 (excluding any Outturn Profit made which exceeds Excess Level 2).

### Subject to Clause 52.16.8, where the Outturn Costs exceed the Sub-contract Price by an amount up to the Loss Level, the Authority shall pay to the Sub-contractor an amount equal to of that excess.

### Subject to Clause 52.16.8, where the Outturn Costs exceed the Sub-contract Price by an amount equal to or greater than the Loss Level, the Authority shall pay to the Sub-contractor:

#### an amount equal to REDACTED of the excess which is less than the Loss Level, plus

#### an amount equal to REDACTED of the excess which is equal to or greater than the Loss Level.

### The calculation of any Outturn Profit or Loss Level shall not include:

#### any effect on the Outturn Costs arising from any incentive arrangement under the Sub-contract that involves a payment or deduction of costs; and

#### any interest on overdue payments payable under the terms of the Sub-contract.

### Payments shall only be due under this Clause where those payments are equal to or greater than REDACTED.

### The Authority’s entitlement to payment under this Clause shall be conditional on it providing a notification to the Sub-contractor of its intention to seek payment within:

#### REDACTED of receiving a Contract Costs Statement from the Sub-contractor in accordance with terms included in the Sub-contract in line with Clause 44; or

#### where the Sub-contractor is not obliged to provide such a Contract Costs Statement, REDACTED of receiving a report or other notification from the Sub-contractor confirming the Outturn Costs, or the Authority otherwise verifying the Outturn Costs through alternative means within 15 months of the completion of the Sub-contract.

### The Sub-contractor’s entitlement to payment under this Clause shall be conditional on it:

#### providing to the Authority:

##### a Contract Costs Statement in accordance with terms included in the Sub-contract in line with Clause 44 where such terms have been included; or

##### where the Sub-contractor is not obliged to provide such a Contract Costs Statement, an alternative report or notification confirming the Outturn Costs; and

#### notifying the Authority of its intention to seek payment under this Clause within three (3) months of providing the relevant report or notification required.

### Except where the Authority notifies the Sub-contractor in writing that it is not required, the Sub-contractor shall use reasonable endeavours to include in any Material Single Source Sub-contract (Non-Qualifying) equivalent terms to those specified in this Clause (inserting relevant party names where appropriate).

### Where equivalent terms to those specified in this Clause are included in a Material Single Source Sub-contract (Non-Qualifying), the Sub-contractor shall take reasonable steps to secure the performance by its Sub-contractor of those obligations.

### Before entering into a Material Single Source Sub-contract (Non-Qualifying) the Sub-contractor shall promptly notify the Authority where it is unable to include in the Agreement equivalent terms to those specified in this Clause, or where it believes that the inclusion of those terms will prevent the achievement of a fair and reasonable price for the Material Single Source Sub-contract (Non-Qualifying).

### The Contractor and Sub-contractor agree that terms have been included in this Clause which are for the benefit of the Authority. Notwithstanding any contrary provisions in this Sub-contract, the Contractor and Sub-contractor agree that the Authority shall be able to enforce those terms which confer a benefit on the Authority.

# Invoicing and Payment

**Performance Management**

The Contractor's performance under this Agreement shall be monitored in accordance with the Performance Regime*.*

**Claims for Payment**

Where the Contractor is entitled to seek payment from the Authority in accordance with the Payment Mechanism or is otherwise due to be paid a sum by the Authority pursuant to this Agreement, the Contractor shall claim payment of the relevant amount in accordance with this Clause 53 (*Invoicing and Payment*).

**Authority Payment System**

### The Parties acknowledge and agree that at the Agreement Commencement Date the Contractor has put in place the necessary arrangements to be able to use the Authority Payment System.

### The Authority shall within thirty (30) days after the Agreement Commencement Date provide Defence Business Services with a completed DEFFORM 57 and other relevant information to allow this Agreement to be set up on the Authority Payment System.

Where the Contractor is entitled to seek payment of a sum from the Authority in accordance with the Payment Mechanism or is otherwise due to be paid a sum by the Authority pursuant to this Agreement, the Contractor shall submit an invoice using a properly prepared message structure and format in accordance with the Authority Payment System, no later than sixty (60) Business Days after the date on which such right to seek payment of or to be paid such sum arises (**"Payment Longstop Date"**). The Contractor shall be deemed to have waived its right to seek or receive payment for the relevant sum if it fails to submit an invoice before the Payment Longstop Date.

Claims for payment shall be accompanied by a statement certified by the Contractor's Representative that the amount specified in the invoice is due to the Contractor pursuant to this Agreement together with each of the reports required to be issued under Clause 44.

Upon receipt of the invoice the Authority shall within thirty (30) days either:

enter the relevant details in the Authority Payment System, indicating confirmation of the relevant amount and notify the Contractor of the relevant purchase order number for the relevant amount; or

notify the Contractor that:

the Authority is withholding all or any part of the amount claimed by the Contractor pursuant to Clause 54 (*Disputed Amounts*), giving reasons for withholding such Disputed Amounts; and

any amount claimed by the Contractor that is not a Disputed Amount shall constitute a valid, properly completed return for payment (and the Authority shall enter the relevant details in the Authority Payment System in respect of such amount).

Subject to Clause 54 (*Disputed Amounts*), the Authority shall no later than thirty (30) days after receipt of an invoice, pay the Contractor the relevant amount stated in such invoice.

The approval for payment of a valid and undisputed invoice by the Authority shall not be construed as acceptance by the Authority of the performance of the Contractor's obligations nor as a waiver of its rights and remedies either under this Agreement or otherwise.

# Disputed Amounts

The Authority may withhold any Disputed Amount pending agreement or determination of the Contractor's entitlement in relation to the Disputed Amount, but shall pay any undisputed amounts on or before the due date for payment.

Within five (5) Business Days following receipt by the Contractor of any notice served by the Authority pursuant to Clause 53.3.5(B) the Contractor shall respond by notifying the Authority as to whether or not it agrees with the reasons stated in that notice and the grounds for such agreement or disagreement. If the Contractor indicates:

### that it does not agree, the Authority shall be entitled to retain on a temporary basis, pending resolution of the Dispute regarding the Disputed Amount or agreement by the Contractor, any amounts withheld pursuant to Clause 53.3.5(B); or

### that it does agree, or if the Contractor fails to make such a response within that time limit, the Authority shall be entitled:

#### to retain on a permanent basis any amounts withheld pursuant to Clause 53.3.5(B); or

#### to reclaim from the Contractor the amount of any over-payment which may have been made to the Contractor together with interest on any such amount calculated in accordance with Clause 55 (*Interest on Late Payment*).

If the Contractor responds pursuant to Clause 54.2 that it does not agree with all or any of the reasons stated in any notice served by the Authority pursuant to Clause 53.3.5(B), the matter or matters in question shall be determined pursuant to Clause 64 (*Dispute Resolution Procedure*).

If it is agreed or otherwise determined pursuant to Clause 64 (*Dispute Resolution Procedure*) that:

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

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

the Contractor has been paid any amount which the Contractor was not entitled to be paid;

the Authority shall:

#### subject to Clause 54.5, where Clause 54.4.2 applies, promptly carry out Receipting of such amount so that it is paid to the Contractor as soon as reasonably practicable; or

#### where Clause 54.4.3 applies, be entitled to deduct such amount from the next payment due to the Contractor or, if no further amounts are due under the Agreement, the Authority shall be entitled to recover such amount from the Contractor as a debt due,

in each case with interest on the relevant amount calculated in accordance with Clause 55 (*Interest on Late Payment*).

For the purposes of Clause 55 (*Interest on Late Payment*), the due date for payment of any amount to be paid to the Contractor pursuant to Clause 54.4.3(A), shall be deemed to be the Revised Due Date if as a consequence of a Dispute commenced by the Contractor pursuant to Clause 54.3, the due date for payment of such amount in accordance with Clause 53 (*Invoicing and Payment*) would otherwise be later than the Revised Due Date.

# Interest on Late Payment

Except if otherwise specifically provided, where any payment or sum of money due from the Contractor to the Authority or from the Authority to the Contractor under any provision of this Agreement is not paid within thirty (30) Business Days of the due date, it shall bear interest thereon at the Prescribed Rate from the due date (whether before or after any judgment) until actual payment and it is agreed between the Parties that the Prescribed Rate provides the Contractor with a substantial remedy pursuant to sections 8 and 9 of the Late Payment of Commercial Debts (Interest) Act 1998.

# Recovery of Sums Due

Subject to Clause 86 (*Liability*), if at any time during the Term any sum of money is recoverable from or payable by the Contractor to the Authority under this Agreement or otherwise, the Authority, upon notice to the Contractor specifying the grounds for deduction and the amount of the deduction in relation to each ground, may deduct (or procure the deduction of) the same from any sum due to the Contractor (or which at any time thereafter may become due to the Contractor) under this Agreement or any other Agreement with the Authority or any other Government Body, or, if no further amounts are due under the Agreement, the Authority shall be entitled to recover such amount from the Contractor as a debt due. Any exercise by the Authority of its rights under this Clause 56 (*Recovery of Sums Due*) shall not limit or affect any other rights or remedies available to it under this Agreement or otherwise.

# Exclusion of Contractor Set Off

Every payment payable by the Contractor to the Authority in connection with this Agreement shall be made in full without any set-off or counterclaim howsoever arising and shall be free and clear of, and without deduction of, or withholding for or on account of, any amount (other than any deduction or withholding of tax as required by Applicable Law).

# VAT on Payments

The amounts due under this Agreement (other than as identified expressly in Paragraph 7 of Schedule I (*Management and Liability for Engaged Personnel*) exclude any UK VAT and any similar EU (or non-EU) taxes chargeable on the Services.

If the Contractor is required by Applicable Law to be registered for UK VAT (or has registered voluntarily) in respect of its business activities at the time of any supply of Services, and the circumstances of any such supply are such that the Contractor is liable to pay the VAT due to HMRC, the Authority shall pay to the Contractor in addition to any other sum due to the Contractor under this Agreement a sum equal to the output VAT chargeable on the tax value of the supplies on provision of a valid VAT invoice. If there is any doubt about the applicability of UK VAT in such cases, the Authority may require the Contractor to obtain and pass to the Authority a formal ruling from HMRC.

Where the Services are deemed to be supplied to the Authority outside the UK, the Contractor may be required by the laws of the country where the supply takes place to register there for EU (or non-EU) output, turnover or similar tax. In that event, the Authority shall pay to the Contractor, in addition to any other sum due to the Contractor under this Agreement a sum equal to the output, turnover or similar tax chargeable on the tax value of the relevant output, turnover or similar which is payable by the Contractor to the tax authorities of the country in question, on provision of a valid output, turnover or similar tax invoice.

The Authority shall not be required to pay any sum in respect of the Contractor's input VAT (or any similar EU and non-EU input taxes).

# Tax Non-Compliance

## In this Clause, unless the context otherwise requires, the following words and expressions have the following meanings:

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

#### tell HM Revenue & Customs of any specified notifiable arrangements or proposals; and

#### provide prescribed information on those arrangements or proposals within set time limits as:

##### contained in Part 7 of the Finance Act 2004 and in secondary legislation made under powers contained in Part 7 of the Finance Act 2004; and as

##### extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992.

### "General Anti-Abuse Rule" means:

#### the legislation in Part 5 of the Finance Act 2013; and

#### any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions.

### "Halifax Abuse Principle" means the principle explained in the CJEU Case C-255/02 Halifax and others.

### "Relevant Tax Authority" means HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the Contractor is established.

### "Occasion Of Tax Non-Compliance (OOTNC)" means:

#### any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:

##### a Relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;

##### the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; or

#### any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the date this Agreement came into effect or to a civil penalty for fraud or evasion.

## Warranty

### The Contractor represents and warrants that at the date this Agreement 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

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

### notify the Authority in writing of such fact within 20 Business Days of its occurrence; and

### promptly provide to the Authority:

#### 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

#### such other information in relation to the OOTNC as the Authority may reasonably require.

## For the avoidance of doubt, the obligation at Clause 59.3 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.

## The duty to notify does not substitute the Contractor’s obligations under Clause 37 (*Financial Management Information*) when used.

## Default

### The Authority shall be entitled to terminate the Agreement in the event that:

### the warranty given by the Contractor pursuant to Clause 59.2 is materially untrue; or

### the Contractor commits a material breach of its obligation to notify the Authority of any OOTNC as required by Clause 59.3; or

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

## In the event that the Authority terminates the Agreement under Clause 59.6, the Authority shall be entitled to recover from the Contractor:

### the amount of any loss resulting from the termination; and

### any other loss sustained in consequence of any breach of this Clause, where the Agreement has not been terminated.

## Duties of the Authority

### In exercising its rights or remedies under this Clause, the Authority shall:

### act in a reasonable and proportionate manner taking into account, among other things:

#### the gravity and duration of the OOTNC and any sanctions imposed by a court or tribunal; and

#### any remedial action taken by the Contractor to prevent reoccurrence of the OOTNC.

### Without prejudice to Clause 59.7, seriously consider, where appropriate, action other than termination of the Agreement to deal with the failure by the Contractor to comply with this Clause.

1. – Supervening Events

# BUSINESS CONTINUITY

## The Contractor's draft Business Continuity Plan is included as Appendix 1 to Schedule M (*Business Continuity Plan*).

## Within three (3) Months of the Agreement Commencement Date, the Contractor shall submit to the Authority a revised Business Continuity Plan, updated using the principles set out in Schedule M (*Business Continuity Plan*).

## Within one (1) Month of receiving the updated Business Continuity Plan the Authority may, acting reasonably:

accept the updated Business Continuity Plan; or

request amendments to the updated Business Continuity Plan on the basis that the plan submitted by the Contractor does not align with the principles set out in Schedule M (*Business Continuity Plan*).

## If amendments are required to the updated Business Continuity Plan in accordance with Clause 60.3.2, the Contractor shall make such amendments within two weeks of the Authority's request, following which if the Authority does not accept the further updated Business Continuity Plan, either Party may give notice of a Dispute.

## The Contractor shall ensure that it is able to implement the Business Continuity Plan prepared in accordance with Clauses 60.2 and 60.3 throughout the Term in accordance with its terms.

1. – Termination

# Early Termination

## Termination Events

Where there is a Contractor Event of Default, this Agreement may be terminated in accordance with this Clause 61(*Early Termination*).

## Termination for Contractor Event of Default

### Contractor Events of Default

Each of the following constitutes a **"Contractor Event of Default"**.

#### Contractor Breach of its Obligations

A breach by the Contractor of its obligations under this Agreement which, in the reasonable opinion of the Authority materially and adversely affects the performance of the Services.

#### Failure to Remedy

A failure by the Contractor to remedy a breach specified in a Final Performance Warning Notice issued in accordance with Clause 61.3.2.

#### Insolvency

The occurrence of an Insolvency Event in respect of the Contractor.

#### Failure to satisfy Commencement Conditions

A failure to satisfy the Commencement Conditions in circumstances that constitute a Contractor Event of Default in accordance with Clause 4.6 (*Failure to Satisfy Commencement Conditions*).

#### Breach of Warranties or Representations

Any warranty or representation given to the Authority in or pursuant to this Agreement is, or proves to have been in any material respect, untrue, incorrect or misleading when made.

#### Breach of Assignment

A breach by the Contractor of Clause 17.1 (*Assignment or Novation by the Contractor*).

#### COI Compliance Regime

The Contractor is in breach of Clause 10 (*Change of Control of the Contractor and Change in COI Associates*) or Clause 27 (*Conflicts of Interest*) or there is a material breach of the COI Compliance Regime (and the COI Compliance Regime provides a right of termination) in respect of which the Authority determines:

is not capable of remedy in accordance with the terms of the COI Compliance Regime; or

the Contractor has failed to remedy to the Authority's satisfaction in accordance with the terms of the COI Compliance Regime.

#### Prohibited Act

The Contractor is in breach of Clause 28 (*Prohibited Acts*).

#### Breach of Part XI (Security)

The Contractor is in breach of Part XI (*Security*).

#### Breach of certain IPR

Any breach or infringement by the Contractor of any Third Party IPR which will or may damage or be detrimental to the reputation of the Authority.

Any breach or infringement by the Contractor of any Third Party IPR which will or may prevent or deter the government of any other country from entering into any future agreement or arrangement with the Authority relating to research, development, production, supply or operations.

#### Breach of Sub-contracts

A breach by the Contractor of Clause 36 (*Sub-contracts*).

#### Non-payment

The failure by the Contractor to pay to the Authority any amount which is due and payable under this Agreement where the Authority has given sixty (60) days’ notice requiring such amount to be paid, unless such amount is the subject of a bona fide Dispute.

#### Tax Non-compliance

An Occasion of Tax Non-compliance, in the circumstances set out in Clause 59 (*Tax Non-Compliance*).

#### Breach of Non-Solicitation

A breach by the Contractor of the non-solicitation provisions in Clause 50 (*Non Solicitation*).

#### Breach of Data Protection and Confidentiality

A breach by the Contractor of Clause 77 (*Data Protection*) or Clause 78 (*Confidentiality*).

#### Persistent Red KPI Failures

Any KPI Failure arises because the performance of the KPI has been assessed as "red" in accordance with the Performance Regime and continues for the shorter of:

**REDACTED** consecutive KPI Periods; or

**REDACTED** .

### 

### Material Breach Notice

Subject to Clause 61.2.4 (*Remediable Breach*), if a Contractor Event of Default has occurred, the Authority may terminate this Agreement by serving notice on the Contractor (a **"Material Breach Notice"**) stating:

that the Authority is terminating this Agreement for Contractor Event of Default;

the type and nature of Contractor Event of Default that has occurred, giving reasonable details; and

that this Agreement shall terminate on the date specified in the Material Breach Notice, provided such date shall be a minimum of one (1) Month from the date of receipt by the Contractor of the Material Breach Notice.

### Irremediable Breach

If there has been a Material Breach Notice in relation to a Contractor Event of Default that is not a Remediable Breach (provided that the Authority must act reasonably if it decides that a Contractor Event of Default under limb (A), (F), (H), (I), (J), (L), (M), (N) or (O) of Clause 61.2.1 is not a Remediable Breach), this Agreement shall terminate on the date determined in accordance with Clause 61.2.2(C).

### Remediable Breach

If there has been a Contractor Event of Default under limb (A), (E), (H), (K), (L) or (M) of Clause 61.2.1 and the Authority decides that such breach is capable of remedy (a **"Remediable Breach"**), the Material Breach Notice shall require the Contractor (at the Authority's discretion) either to:

remedy the breach within twenty (20) Business Days of the date of the Material Breach Notice (or such longer period as may be agreed by the Authority in its absolute discretion); or

propose within twenty (20) Business Days of the date of the Material Breach Notice a programme to remedy the breach (the **"Remediation Programme"**), such programme to be agreed in accordance with Clause 61.2.5 (*Remediation Programme*).

If:

a Remediable Breach is not remedied within the period specified in the Material Breach Notice; or

the Contractor fails to achieve any element of the Remediation Programme in respect of a Remediable Breach (including any milestones not being met by dates specified therein) or fails to remedy the Remediable Breach within the date specified in the Remediation Programme, or the Remediation Programme is rejected by the Authority as not being reasonable pursuant to Clause 61.2.5 (*Remediation Programme*) and the Dispute Resolution Procedure does not find against that rejection,

then the Authority may serve a further notice on the Contractor (a **"Termination Notice"**) terminating this Agreement on the date specified in the Termination Notice, provided such date shall be a minimum of one (1) Month from the date of receipt by the Contractor of the Termination Notice.

### Remediation Programme

The Remediation Programme shall specify in detail how the Contractor proposes to remedy a Remediable Breach, the steps required to remedy the Remediable Breach (including milestones to be met by specific dates), the anticipated costs and other consequences associated with the remediation and the latest date by which the Contractor anticipates that the Remediable Breach will be remedied.

Where the Contractor proposes a Remediation Programme in accordance with Clause 61.2.5(A), the Authority shall within twenty (20) Business Days from the date of receipt of the proposed Remediation Programme notify the Contractor whether the Authority accepts the proposed Remediation Programme (such acceptance not to be unreasonably withheld).

Where the Authority notifies the Contractor that it does not accept the Remediation Programme, the Authority and the Contractor shall endeavour within the following twenty (20) Business Days to agree any necessary amendments to the Remediation Programme. In the absence of agreement within such twenty (20) Business Day period, the question of whether or not the Authority's withholding of acceptance is reasonable may be referred by either Party to be resolved in accordance with Clause 64 (*Dispute Resolution Procedure*).

## Termination for Poor Performance Breach

Where there is a breach of this Agreement by the Contractor which does not otherwise give rise to a Contractor Event of Default then the Authority may serve a notice on the Contractor (the **"Performance Warning Notice"**):

specifying that it is a formal warning notice;

giving reasonable details of the breach and specifying the Authority's concerns;

stating that such breach may become a Contractor Event of Default pursuant to limb (B) of Clause 61.2.1 if it recurs and may result in a termination of this Agreement; and

specifying what steps, if any, the Authority requires the Contractor to take to remedy the breach including any specific deadline(s) (not being less than twenty (20) Business Days after the date of receipt by the Contractor of the Performance Warning Notice).

Following service of a Performance Warning Notice, if the breach specified or a substantially similar breach has continued beyond any specific deadline set out in the Performance Warning Notice or has recurred one or more times within six (6) Months after the date of receipt by the Contractor of the Performance Warning Notice, then the Authority may serve another notice on the Contractor (the **"Final Performance Warning Notice"**):

specifying that it is the final warning notice;

stating that the breach specified or a substantially similar breach has been the subject of a Performance Warning Notice; and

stating that if such breach continues beyond any specific deadline (not being less than twenty (20) Business Days after the date of receipt by the Contractor of the Final Warning Notice) or recurs one (1) or more times within three (3) Months after the date of receipt by the Contractor of the Final Performance Warning Notice, the same shall constitute a Contractor Event of Default under limb (B) of Clause 61.2.1.

## Requirement to Notify

The Contractor shall notify the Authority in writing (which for this purpose does not include email) promptly on becoming aware of the occurrence of any event or circumstance which may give the Authority the right to terminate this Agreement under this Clause 61 (*Early Termination*) and shall provide to the Authority all information about the relevant event or circumstance which the Authority (acting reasonably) requires.

## Termination for Change of Control of Contractor

The Authority may terminate this Agreement with immediate effect by written notice to the Contractor (such notice to take effect on the date of receipt by the Contractor) if there is a change of control of the Contractor that is required to be notified to the Authority pursuant to Clause 10 (Change of Control of the Contractor and Change in COI Associates).

# Consequences of Termination or Expiry

## Accrued Rights and Obligations and Survivorship

The termination or expiry of this Agreement for any reason:

shall be without prejudice to any rights or obligations which shall have accrued or become due prior to the Expiry Date or Termination Date (as applicable);

shall not prejudice the rights or remedies which either Party may have in respect of any breach of the terms of this Agreement prior to the Expiry Date or Termination Date (as applicable);

shall not affect:

Clause 1 (*Definitions and Interpretations*)

Clause 18 (*Severability*);

Clause 19 (*Variation*);

Clause 23 (*No Partnership*);

Clause 24 (*Counterparts*);

Clause 3 (Governing Law)

Clause 25 (*Contracts (Rights of Third Parties) Act 1999*);

Clause 26 (*Entire Agreement*);

Clause 27.3;

Clause 27.5;

Clause 50 (*Non-solicitation*)

Clause 523 (*Invoicing and Payment*);

Clause 54 (*Disputed Amounts*);

Clause 58 (VAT on Payments);

Clause 68.8.1 (*Cyber Security*);

Clause 55 (*Interest on Late Payment*);

Clause 56 (*Recovery* of Sums Due);

Clause 57 (*Exclusion of Contractor Set Off*);

Clause 62 (*Consequences of Termination or Expiry*);

Clause 63 (*Post Termination or Expiry Obligations to Assist*);

Clause 64 (*Dispute Resolution Procedure*);

Clause 69 (*Ownership of Intellectual Property*);

Clause 70.2;

Clause 71 (*Licence of Contractor IPR*);

Clause 72 (*Licence and sub-licence of Third Party IPR provided by the Contractor*)

Clause 78 (*Confidentiality*);

Clause 79.2.2;

Clause 79.2.4;

Clause 81 (*Disclosure*);

Clause 82 (*Contractor Right to Request Confidentiality*);

Clause 83 (*Publication*);

Clause 84 (*Freedom of Information Act*);

Clause 85 (Insurance)

Schedule E (*Dispute Resolution Procedure*);

Schedule F (*Payment and Performance Management*);

Paragraph 1.12 of Schedule G (*COI Compliance Regime*);

Paragraph 1.13 of Schedule G (*COI Compliance Regime*);

Paragraph 1.14 of Schedule G (*COI Compliance Regime*);

Paragraph 2.1 of Schedule G (*COI Compliance Regime*);

Paragraph 2.3.2 of Schedule G (*COI Compliance Regime*);

Paragraph 4.3 of Schedule G (*COI Compliance Regime*);

Paragraph 5.3 of Schedule G (*COI Compliance Regime*);,

Paragraph 5.4 of Schedule G (*COI Compliance Regime*);

Paragraph 6.1 of Schedule G (*COI Compliance Regime*);

without limiting Clause 62.1.3(JJ)) to Clause 62.1.3(RR) (inclusive), Paragraphs 4.1 and 4.2 of Schedule G (*COI Compliance Regime*) shall survive the termination or expiry of this Agreement for a period of eighteen (18) Months;

Schedule H (*Commercially Sensitive Information*);

Paragraphs 2.6, 2.11 and 8 of Schedule I (*Management and Liability for Engaged Personnel*);

Schedule J (*Termination Payments*);;

Schedule L (*Insurances*); and

Schedule P (*Exit Plan*);

shall not affect any indemnity given under the terms of this Agreement; and

shall not affect any provision of this Agreement (including any provision in Schedule G (*COI Compliance Regime*), Schedule I (*Management and Liability for Engaged Personnel*) and Schedule N (*Transfer Regulations*)) that expressly states that it will continue to have effect after the expiry or termination of this Agreement.

## Termination Payment

In the event of termination of this Agreement, the Authority shall pay the Contractor such sum (if any) as is due in accordance with Schedule J (*Termination Payments*) after the receipt by the Authority of a duly issued invoice in respect of the relevant payment.

Any payment required by the Authority, in accordance with this Clause 62.2 (*Termination Payment*), to the Contractor under Schedule J (*Termination Payments*) shall be in full and final satisfaction of any claim by the Contractor for Losses arising as a result of termination of the Agreement and the Contractor shall have no right (whether in contract, tort (including negligence), statute, for deliberate repudiatory breach or otherwise) to make any further claim against the Authority as a result of such termination.

# Post Termination or Expiry Obligations to Assist

## Exit Plan

The Contractor shall develop an exit plan in accordance with the principles set out in Schedule P (*Exit Strategy*) and the Parties shall use their reasonable endeavours to agree the form of such exit plan within six months of the date of this Agreement. Once agreed, such exit plan shall be the "**Exit Plan**" for the purposes of this Agreement.

The Contractor shall comply with the Contractor's Exit Plan agreed in accordance with Clause 63.1.1 (*Exit Plan*)to ensure that the Contractor can at all times satisfy its obligations under Clause 63.2 (*Obligation to Assist*) following the termination or expiry of the Agreement.

The Contractor shall update the Exit Plan twelve (12) Months prior to the end of the Term in accordance with the provisions of the Exit Plan and shall ensure that it is able to implement the Exit Plan throughout the Term in accordance with its terms. All such updates must be approved by the Authority.

All costs incurred in developing, updating and implementing the Exit Plan shall be payable by the Contractor.

## Obligation to Assist

Following termination or expiry of this Agreement, the Contractor shall continue to implement the Exit Plan to ensure the orderly and efficient transition of all activities undertaken or to be undertaken by the Contractor and Contractor Related Parties under this Agreement to the Authority and Authority Related Parties and, for a period of one (1) Month following the Expiry Date or Termination Date (as applicable), the Contractor and Contractor Related Parties shall co-operate with all reasonable instructions of the Authority in connection with this transition. The Contractor shall not be entitled to charge a fee for its costs in complying with this Clause 63.2 (*Obligation to Assist*).

1. – Dispute Resolution

# Dispute Resolution Procedure

Disputes arising out of or in connection with this Agreement, whether or not expressly stated to be subject to this Clause 64 (*Dispute Resolution Procedure*) shall be resolved in accordance with the Dispute Resolution Procedure.

Neither Party shall commence any Legal Proceedings until it has followed the Dispute Resolution Procedure, provided that nothing in the Dispute Resolution Procedure shall prevent a Party from seeking interim or interlocutory relief in any court.

Notices given in respect of a Dispute shall comply with Clause 13.1 and shall not be given by email.

1. – Security

# Security MEASURES

## Definition

### In this Clause:-

#### “Secret Matter” means any matter connected with the Agreement, or its performance which is designated by the Authority in the Security Aspects Letter annexed to the Agreement or otherwise in writing as "Top Secret" or "Secret", and shall include any information concerning the content of such matter and anything which contains or may reveal that matter;

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

#### “Security Policy Framework” means the HMG Security Policy Framework relating to the Government Security Classification policy as published by the Cabinet Office.

## The Official Secrets Acts

### The Contractor shall:

#### take all reasonable steps to ensure that all Engaged Personnel engaged on any work in connection with the Agreement have notice that the Official Secrets Acts 1911-1989 apply to them and will continue so to apply after the completion or termination of the Agreement; and

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

## Security Measures

### Unless he has the written authorisation of the Authority to do otherwise, neither the Contractor nor any Engaged Personnel, either before or after the completion or termination of the Agreement, do or permit to be done anything which they know or ought reasonably to know may result in Secret Matter being disclosed to or acquired by a person in any of the following categories:

#### who is not a British citizen;

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

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

#### who is not a member of Engaged Personnel;

#### who is a member of Engaged Personnel and has no need to know the information for the proper performance of the Agreement.

## Unless he has the written authorisation of the Authority to do otherwise, the Contractor and all Engaged Personnel shall, both before and after the completion or termination of the Agreement, take all reasonable steps to ensure that:

### no photograph of, or pertaining to, any Secret Matter shall be taken and no copy of or extract from any Secret Matter shall be made except to the extent necessary for the proper performance of the Agreement;

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

### A decision of the Authority on the question of whether the Contractor has taken or is taking reasonable steps as required by this Clause, shall be final and conclusive.

## The Contractor shall:

### provide to the Authority:

#### upon request, such records giving particulars of those Engaged Personnel who have had at any time, access to any Secret Matter that is required to be kept in accordance with Clause 67.4.2.;

#### upon request, such information as the Authority may from time to time require so as to be satisfied that the Contractor and his Employee are complying with his obligations under this Clause, including the measures taken or proposed by the Contractor so as to comply with his obligations and to prevent any breach of them;

#### full particulars of any failure by the Contractor and his Employee to comply with any obligations relating to Secret Matter arising under this Clause immediately upon such failure becoming apparent;

### ensure that, for the purpose of checking the Contractor's compliance with the obligation in Clause 67.4.2, a representative of the Authority shall be entitled, at any time, to enter and inspect any premises used by the Contractor, which are in any way connected with the Agreement, and inspect any document or thing in any such premises which is being used, or made for the purposes of the Agreement. Such representative shall be entitled to all such information as he may reasonably require.

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

## Subcontracts

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

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

### incorporate into the Sub-contract the terms detailed at Clause 67.9 and such secrecy and security obligations as the Authority shall direct. In Clause 67.9 "Agreement" shall mean the "Sub-contract", "First Party" shall mean the "Contractor" and "Second Party" shall mean the "Sub- Contractor";

### inform the Authority immediately he becomes aware of any breach by the Sub-contractor of any secrecy or security obligation and, if requested to do so by the Authority, terminate the Sub-contract.

## Termination

## The Authority shall be entitled to terminate the Agreement immediately if:

### the Contractor is in breach of any obligation under this Clause; or

### the Contractor is in breach of any secrecy or security obligation imposed by any other agreement with the Crown;

the Authority consider the circumstances of the breach jeopardise the secrecy or security of the Secret Matter and claim such damages as may have been sustained as a result of the Contractor’s breach of this Clause.

## Provisions to Be Included In Relevant Sub-contracts

### In this Clause:-

#### "Secret Matter" means any matter connected with the Agreement, or its performance which the First Party informs the Second Party in writing has been designated by the Authority as "TOP SECRET" or "SECRET" and shall include any information concerning the content of such matter and anything which contains or may reveal that matter;

#### "Employee" shall include any person who is an employee or director of the Second Party or who occupies the position of a director of the Second Party, by whatever title given.

#### The "Authority" means the Secretary of State for Defence.

#### "Security Policy Framework" means the HMG Security Policy Framework relating to the Government Security Classification policy as published by the Cabinet Office.

### The Official Secrets Acts

### The Second Party shall:

#### Take all reasonable steps to ensure that all Employees engaged on any work in connection with the Agreement have notice that the Official Secrets Acts 1911-1989 apply to them and will continue so to apply after the completion or termination of the Agreement; and

#### If directed by the First Party or the Authority, ensure that any Employee shall sign a statement acknowledging that, both during the term of the Agreement and after its completion or termination, he is bound by the Official Secrets Acts 1911-1989 (and where applicable any other legislation).

### Security Measures

### Unless he has the written authorisation of the Authority to do otherwise, neither the Second Party nor any of his Employees shall, either before or after the completion or termination of the Agreement, do or permit to be done anything which they know or ought reasonably to know may result in Secret Matter being disclosed to or acquired by a person in any of the following categories:

#### who is not a British citizen;

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

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

#### who is not an Employee of the Second Party;

#### who is an Employee of the Second Party and has no need to know the information for the proper performance of the Agreement.

### Unless he has the written permission of the Authority to do otherwise, the Second Party and his Employees shall, both before and after the completion or termination of the Agreement, take all reasonable steps to ensure that:

#### no photograph of, or pertaining to, any Secret Matter shall be taken and no copy of or extract from any Secret Matter shall be made except to the extent necessary for the proper performance of the Agreement;

#### any Secret Matter is at all times strictly safeguarded in accordance with the Security Policy Framework (as amended from time to time) and upon request is delivered up to the Authority who shall be entitled to retain it.

#### A decision of the Authority on the question of whether the Second Party has taken or is taking reasonable steps as required by this Clause, shall be final and conclusive.

### The Second Party shall:

#### provide to the Authority:

##### upon request, such records giving particulars of those Employees who have had at any time, access to any Secret Matter that is required to be kept in accordance with Clause 67.9.4.(B).;

##### upon request, such information as the Authority may from time to time require so as to be satisfied that the Second Party and his Employees are complying with his obligations under this Clause, including the measures taken or proposed by the Second Party so as to comply with his obligations and to prevent any breach of them;

##### full particulars of any failure by the Second Party and his Employees to comply with any obligations relating to Secret Matter arising under this Clause immediately upon such failure becoming apparent;

#### ensure that, for the purpose of checking the Second Party's compliance with the obligation in Clause 67.9.4 (B), a representative of the First Party or the Authority shall be entitled at any time to enter and inspect any premises used by the Second Party which are in any way connected with the Agreement and inspect any document or thing in any such premises, which is being used or made for the purposes of the Agreement. Such representative shall be entitled to all such information as he may reasonably require.

### If at any time either before or after the completion or termination of the Agreement, the Second Party or any of his Employees discovers or suspects that an unauthorised person is seeking or has sought to obtain information directly or indirectly concerning any Secret Matter, the Second Party shall forthwith inform the Authority of the matter with full particulars thereof.

### Sub-contracts

### If the Second Party proposes to make a Sub-contract which will involve the disclosure of Secret Matter to the Sub-contractor, the Second Party shall:

#### submit for approval of the Authority the name of the proposed sub- contractor, a statement of the work to be carried out and any other details known to the Second Party which the Authority shall reasonably require;

#### incorporate into the Sub-contract the terms of this Clause and such secrecy and security obligations as the Authority shall direct.

#### inform the Authority immediately he becomes aware of any breach by the Sub-contractor of any secrecy or security obligation and, if requested to do so by the Authority, terminate the Agreement.

### Termination

### The First Party shall be entitled to terminate the Agreement immediately if:

#### the Second Party is in breach of any obligation under this Clause; or

#### the Second Party is in breach of any secrecy or security obligation imposed by any other agreement with the Crown;

#### where the Authority consider the circumstances of the breach jeopardise the secrecy or security of the Secret Matter and notifies its contractor accordingly.

# OFFICIAL-SENSITIVE SECURITY REQUIREMENTS

## In this Clause "Information" means information recorded in any form disclosed or created in connection with the Agreement.

## The Contractor shall protect all Information relating to the aspects designated OFFICIAL-SENSITIVE as identified in the Security Aspects Letter attached to EDP Task Order Form, in accordance with the official security conditions contained in the Agreement or annexed to the Security Aspects Letter.

## The Contractor shall include the requirements and obligations set out in Clause 68.2 in any Sub-contract placed in connection with or for the purposes of the Agreement which requires disclosure of OFFICIAL-SENSITIVE Information to the Sub-contractor or under which any Information relating to aspects designated as OFFICIAL-SENSITIVE is created by the Sub-contractor. The Contractor shall also include in the Sub-contract a requirement for the Sub-contractor to flow the requirements of this Clause to its Sub-contractors and through all levels of the supply chain to the lowest level where any OFFICIAL-SENSITIVE Information is handled.

# Security Aspects Letter

The Authority shall advise the Contractor of the Clauses applicable to security in each Task Order Form when it issues section 1 of the EDP Task Order Form to the Contractor:

the Authority shall include the "OFFICIAL, OFFICIAL-SENSITIVE and SECRET Security Clauses for Contracts" in each EDP Task Order Form where security related information classified as OFFICIAL, OFFICIAL-SENSITIVE or SECRET forms part of that EDP Task Order Form; and

### the Contractor shall sign and return to the Authority a Security Aspects Letter where issued with the EDP Task Order Form.

The Authority may amend the conditions relating to Clause 65 (*Security Measures*) in the event of the Government changing the security classification system.

# CYBER

## Definitions

### In this Clause, the following words and expressions shall have the meanings given to them, except where the context requires a different meaning:

"**Associated Company**" means:

(a) any associated company of the Contractor from time to time within the meaning of Section 449 of the Corporate Tax Act 2010 or any subordinate legislation; and

(b) any parent undertaking or subsidiary undertaking of the Contractor from time to time within the meaning of section 1162 Companies Act 2006 and it is further agreed that where the ownership of shares in any such undertaking have been pledged or transferred to a third party by way of security, the original parent shall still be considered a member of the subsidiary undertaking;

"**Cyber Risk Level**" means the level of Cyber Risk relating to this Agreement or any Sub-contract assessed in accordance with the Cyber Security Model;

"**Cyber Security Implementation Plan**" means the plan referred to in Clause 68.3 including but not limited to any risk-balance case and mitigation measures required by the Authority;

"**Cyber Security Incident**" means an event, act or omission which gives rise or may give rise to:

(a) unauthorised access to an information system or electronic communications network;

(b) disruption or change of the operation (including but not limited to takeover of control) of an information system or electronic communications network;

(c) destruction, damage, deletion or the change of MOD Identifiable Information residing in an information system or electronic communications network;

(d) removal or limiting the possibility to use MOD Identifiable Information residing in an information system or electronic communications network; or

(e) the appropriation, publication, dissemination or any other use of non-public MOD Identifiable Information by persons unauthorised to do so.

"**Cyber Security Instructions**" means DEFSTAN 05-138, together with any relevant ISN and specific security instructions relating to this Agreement issued by the Authority to the Contractor;

"**Cyber Security Model**" and "**CSM**" mean the process by which the Authority ensures that MOD Identifiable Information is adequately protected from Cyber Incident and includes the CSM Risk Assessment Process, DEFSTAN 05-138 and the CSM Supplier Assurance Questionnaire;

"**CSM Risk Assessment Process**" means the risk assessment process which forms part of the Cyber Security Model and is used to measure the Cyber Risk Level for this Agreement and any Sub-contract;

"**CSM Supplier Assurance Questionnaire**" means the supplier assessment questionnaire which forms part of the Cyber Security Model and is to be used by the Contractor to demonstrate compliance with this Clause;

"**Data**" means any data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media.

"**DEFSTAN 05-138**" means the Defence Standard 05-138 as amended or replaced from time to time;

"**Electronic Information**" means all information generated, processed, transferred or otherwise dealt with under or in connection with the Agreement, including but not limited to Data, recorded or preserved on any information system or electronic communications network;

"**Good Industry Practice**" means in relation to any undertaking and any circumstances, the exercise of skill, diligence, prudence, foresight and judgment and the making of any expenditure that would reasonably be expected from a skilled person in the same type of undertaking under the same or similar circumstances;

"**ISN**" means Industry Security Notices issued by the Authority to the Contractor whether directly or by issue on the gov.uk website at: https://www.gov.uk/government/publications/industry-security-notices-isns;

"**JSyCC WARP**" means the Joint Security Co-ordination Centre MOD Defence Industry Warning, Advice and Reporting Point or any successor body notified by way of ISN;

"**MOD Identifiable Information**" means all Electronic Information which is attributed to or could identify an existing or proposed MOD capability, defence activities or personnel and which the MOD requires to be protected against loss, misuse, corruption, alteration and unauthorised disclosure.

"**NSA/DSA**" means, as appropriate, the National or Designated Security Authority of the Contractor that is responsible for the oversight of the security requirements to be applied by the Contractor and for ensuring compliance with applicable national security regulations;

"**Sites**" means any premises from which Contractor Deliverables are provided in connection with this Agreement or from which the Contractor or any relevant Sub-contractor manages, organises or otherwise directs the provision or the use of the Contractor Deliverables and/or any sites from which the Contractor or any relevant Sub-contractor generates, processes, stores or transmits MOD Identifiable Information in relation to this Agreement;

"**Supplier Cyber Protection Service**" means the CSM Risk Assessment Process and CSM Supplier Assurance Questionnaire.

**Authority Obligations**

### In accordance with this Clause 68.2, the Authority can confirm that the Cyber Risk Level for this Engineering Delivery Partner Agreement is Low.

### The Authority shall:

#### determine the Cyber Risk Level appropriate to this Agreement and, where the Contractor has not already been notified of the Cyber Risk level prior to the date of this Agreement, shall provide notification of the relevant Cyber Risk level and the appropriate Cyber Security Instructions to the Contractor as soon as is reasonably practicable; and

#### notify the Contractor as soon as reasonably practicable where the Authority reassesses the Cyber Risk Level relating to this Agreement.

**Contractor Obligations**

### The Contractor shall, and shall procure that its Sub-contractors shall:

#### comply with REDACTED

#### complete the CSM Risk Assessment Process in accordance with the Authority’s instructions, ensuring that any change in the Cyber Risk Level is notified to any affected Sub-contractor, and complete a further CSM Risk Assessment or CSM Supplier Assurance Questionnaire where a change is proposed to the Contractor’s supply chain which has or may have an impact on the Cyber Risk Level of this Agreement or on receipt of any reasonable request by the Authority;

#### carry out the CSM Supplier Assurance Questionnaire no less than once in each year of this Agreement commencing on the first anniversary of completion of the CSM Supplier Assurance Questionnaire;

#### 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 in accordance with Good Industry Practice provided always that where there is a conflict between the Contractor’s obligations under 68.3.1.(A) above and this 68.3.1.(D) the Contractor shall notify the Authority in accordance with the notification provisions in REDACTED as soon as it becomes aware of the conflict and the Authority shall determine which standard or measure shall take precedence;

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

#### notify the JSyCC WARP in accordance with REDACTED 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 full details of the circumstances of the incident and any mitigation measures already taken or intended to be taken;

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

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

#### include provisions equivalent to 68.7.1 of this Clause in all Sub-contracts imposing provisions equivalent to this Clause 68.3 (the “equivalent provisions”) and, where a Sub-contractor breaches terms implementing this Clause in a Sub-contract, the Contractor shall, and shall procure that its Sub-contractors shall, in exercising their rights or remedies under the relevant Sub-contract:

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

##### have regard to the equivalent provisions.

PROVIDED ALWAYS THAT where the Contractor has notified the Authority that it or one or more if its Sub-contractors cannot comply with 68.3.1.(A) to 68.3.1.(I) above the Authority and Contractor will seek to agree a Cyber Security Implementation Plan and where the Authority has agreed a Cyber Security Implementation Plan with the Contractor, the Contractor shall, and shall procure that its Sub-contractors shall, comply with such Cyber Security Implementation Plan until implementation is agreed to have been achieved whereupon 68.3.1.(A) to 68.3.1.(I) above shall apply in full. In the event that a Cyber Security Implementation Plan cannot be agreed the provisions of Clause 64 (*Dispute Resolution*) or any agreed alternative dispute resolution procedure shall apply.

**Management Of Sub-contractors**

### The Authority agrees that the Contractor shall be entitled to rely upon the self-certification by a Sub-contractor of its compliance with its obligations pursuant to Clause 68.3.1. In the event that a Sub-contractor is found to be in breach of its obligations in Clause 68.3.1, and where the Contractor has relied upon the Sub-contractor’s self-certification, the Contractor shall not be held to be in breach of this Clause.

### Where the Contractor becomes aware that a Sub-contractor is not complying with its obligations, the Contractor shall notify the Authority and provide full details of the Sub-contractor’s non-compliance as soon as reasonably practicable and shall consult with the Authority as to the appropriate course of action which may include but not be limited to the agreement of a remedial plan or termination of the Sub-contract having regard to Clause 68.3.1.(I).

### Having regard to the Authority’s views, the Contractor shall take all reasonable measures to address any non-compliance of a Sub-contractor in accordance with the reasonable timescales required by the Authority. Where the Contractor fails to do so, this shall amount to a breach of this Clause and the provisions of 68.7.2 or 68.7.3 as appropriate shall apply.

### The Contractor shall, and shall procure that its Sub-contractors shall, include provisions equivalent to this Clause 68.4 in all Sub-contracts which flow down the obligations set out in Clause 68.3.1 of this Agreement.

**Records**

### The Contractor shall keep and maintain, and shall ensure that any Sub-contractor shall keep and maintain, until 6 years after termination or expiry of this Agreement, or as long a period as may be agreed between the Parties, full and accurate records including but not limited to:

#### details of all MOD Identifiable Information relating to the Contractor Deliverables provided under this Agreement; and

#### copies of all documents required to demonstrate compliance with REDACTED and this Clause, including but not limited to 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.

### 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 those records as may be required in connection with this Agreement.

**Audit**

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

#### to review and verify the integrity, confidentiality and security of any MOD Identifiable Information;

#### to review the Contractor's and/or any Sub-contractor’s compliance with its obligations under this Clause; and

#### to review any records created during the provision of the Contractor Deliverables, including but not limited to any documents, reports and minutes which refer or relate to the Contractor Deliverables for the purposes of 68.6.1.(A) and 68.6.1.(B) above.

### 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.

### 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 but not limited to:

#### all information requested by the Authority within the permitted scope of the audit;

#### reasonable access to any Sites controlled by the Contractor or any Associated Company and any Sub-contractor and to any equipment used (whether exclusively or non-exclusively) in the performance of the Agreement and, where such Sites and/or equipment are outside the control of the Contractor, shall secure sufficient rights of access for the Auditors as shall be necessary to allow audits to take place; and

#### access to any relevant staff.

### The Authority shall endeavour to (but is not obliged to) provide at least 15 Business Days notice of its intention to conduct an audit.

### The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause, unless the audit identifies a material breach of the terms of this Clause by the Contractor and/or Sub-contractor in which case the Contractor shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.

**Breach of Obligations**

### In exercising its rights or remedies under this Clause, the Authority shall:

#### act in a reasonable and proportionate manner having regard to such matters as the gravity of any breach or potential breach and the Cyber Risk Level of this Agreement; and

#### give all due consideration, where appropriate, to action other than termination of the Agreement, including but not limited to a remedial period if this is appropriate in all the circumstances.

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

#### to terminate the Agreement (whether in whole or in part) and to claim damages in accordance with Clause 61 (*Early Termination*) as though such breach is a material breach; and

#### where the Agreement has not been terminated, to recover from the Contractor any other loss sustained in consequence of any breach of this Clause, subject to any provision which is agreed elsewhere in this Agreement.

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

#### to recover from the Contractor the amount of any loss sustained in consequence of any breach of this Clause, subject to any provision which is agreed elsewhere in this Agreement; and

#### where the Contractor does not comply with any reasonable instructions issued by the Authority or the Contractors NSA/DSA within the time period specified to remedy such breach or prevent further breaches, the Authority shall be entitled to terminate this Agreement (whether in whole or in part) and to claim damages in accordance with Clause 61 (*Early Termination*) as though such breach is a material breach.

### Where the Contractor commits an act of fraud, negligence or wilful misconduct in respect of its obligations under this Clause the Authority shall be entitled to terminate this Agreement (whether in whole or in part) and to claim damages in accordance with Clause 61 (*Early Termination*) as though such breach is a material breach.

**General**

### On termination or expiry of this Agreement the provisions of this Clause excepting 68.3.1.(B) and 68.3.1.(C) above shall continue in force so long as the Contractor and/or and Sub-contractor holds any MOD Identifiable Information relating to this Agreement.

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

#### The Contractor agrees that the Authority has absolute discretion to determine changes to REDACTED and/or the Cyber Risk Level. In the event that there is such a change to REDACTED or the Cyber Risk Level, 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 REDACTED or Cyber Risk Level provided always that the Contractor shall seek to mitigate the impact on time and cost to the extent which it is reasonably practicable to do so and further provided that such costs shall not be allowed unless they are considered to be appropriate, attributable to the Agreement and reasonable in all the circumstances.

#### Subject to 68.8.3.(A) above, where the Contractor seeks such adjustment or extension, the Authority will proceed in accordance with Clause 20 (*Formal Amendments to the Agreement*) or any agreed alternative change control procedure to determine the request for adjustment or extension. The Contractor must deliver a Contractor Change Proposal to the Authority within 8 weeks of the occurrence of the change in REDACTED or Cyber Risk Level or such longer period as may be agreed by the Parties, identifying the impact of that change and accompanied by full details of the request for adjustment. For the avoidance of doubt, the Authority shall not be required to withdraw any Authority Notice of Change which may have been issued insofar as it relates to REDACTED or the Cyber Risk Level whether or not the Contractor Change Proposal is rejected. In the event that the Contractor does not agree with the Authority’s determination, then the provisions of Clause 64 (*Dispute Resolution*) or any agreed alternative dispute resolution procedure shall apply.

### The Contractor shall not recover any costs and/or other losses under or in connection with this Clause where such costs and/or other losses are recoverable or have been recovered by the Contractor elsewhere in this Agreement or otherwise. For the avoidance of doubt this shall include but not be limited to 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 Agreement or has recovered such costs and/or losses in other contracts between the Contractor and the Authority or with other bodies.

1. – Intellectual Property, Information and Disclosure

# Ownership of Intellectual Property

The Contractor shall not by virtue of this Agreement acquire any right, title or interest in any IPR owned by or licensed to the Authority (including Authority IPR) other than under the licences expressly set out in this Agreement.

The Authority shall not by virtue of this Agreement acquire right, title or interest in any Contractor Background IPR, any Third Party IPR or any Project Specific IPR other than under the licences expressly set out in this Agreement.

Save for any IPR that is designated as Project Specific IPR, all IPR created or developed by or on behalf of the Contractor (including by any Contractor Related Party or any COI Associate) under or for the purposes of this Agreement or the Services, and any modifications, updates and developments of Authority IPR or of Third Party IPR supplied by the Authority to the Contractor or any Contractor Related Party for the purpose of this Agreement that (in either case) are created by or on behalf of the Contractor (including by any Contractor Related Party or any COI Associate) shall be owned by and vest in the Authority (the **"Authority Foreground IPR"**).

The Contractor hereby assigns (or shall procure the assignment of) all right, title and interest in any present and future Authority Foreground IPR to the Authority with full title guarantee. The Contractor shall (and shall procure that any Contractor Related Party or any COI Associate shall) execute all documents and do all such acts and things as the Authority may reasonably require to give full effect to the terms of Clauses 69.3 and this Clause 69.4 and to perfect the Authority's title to Authority Foreground IPR. The Contractor shall mark any copyright work bearing or embodying any Authority Foreground IPR or on which Authority Foreground IPR is recorded with the legend "© Crown-owned copyright [*insert the year of generation of the work*]". The Contractor shall procure the waiver by any Contractor Related Party or any COI Associate of any moral rights that they may have in the Authority Foreground IPR.

# Licence of Authority IPR

The Authority hereby grants to the Contractor, and to each Contractor Related Party, for the Term only, a non-exclusive, royalty-free, non-transferable, sub-licensable licence to use all such Authority IPR to the extent necessary for the purpose of the Contractor's performance of this Agreement and the Services. The Authority may at its discretion and by written notice to the Contractor impose restrictions on the Contractor's or any Contractor Related Party's use of that IPR to specific purposes within the scope of this Agreement and the Services.

The Authority gives no warranty as to the suitability of any Authority IPR for the purpose of the Contractor or any Contractor Related Party performing the obligations of the Contractor under this Agreement and the Services. The Contractor shall not (and shall procure that any Contractor Related Party shall not) do anything which will prejudice the rights of ownership by the Crown or the Authority of any of the Authority IPR.

The Contractor and the Contractor Related Parties shall have no other rights to use the Authority IPR other than as set out in this Agreement.

# Licence of Contractor IPR

The Contractor hereby grants (and shall procure that any Contractor Related Party or any COI Associate grants) to the Authority a perpetual, irrevocable, non-exclusive, royalty-free, worldwide, transferable licence or sub-licence to grant (with the right to grant sub-licences) to use, copy, modify and disclose the Contractor Background IPR to:

receive, use and otherwise have the full benefit of this Agreement and the Services and any replacement, substitute or follow-on services;

operate, perform, maintain, modify, update and develop the Services or any part of them, and to provide or receive replacement, substitute or follow-on services (including where provided by a replacement contractor);

enable the Authority to receive, use and obtain the full benefit of the Contractor Deliverables and any IPR therein;

operate, perform, maintain, modify, update and develop the services, duties, obligations and functions of the Authority (including the procurement of defence equipment, providing support and logistics and management of equipment, (including support and logistics) through its life);

perform any review, audit, or legal duty (statutory or otherwise);

integrate the Services with the Authority's procurement, operation and support of Authority assets with which the Services are reasonably associated at any time during or after the Term;

conduct any UK governmental purpose which may be connected with the use of the Services; and

(in addition to the provisions of Clause 71.1.2) run a competition in relation to the provision of replacement, substitute or follow-on services.

## The Contractor hereby grants, or shall procure the direct grant, to the Authority of a perpetual, royalty free, irrevocable and nonexclusive licence to use, copy, modify and disclose the Project Specific IPRs for any purpose relating to the Services or to the exercise of the Authority's business or function, including the right to sub-licence the Project Specific IPRs to other Contracting Authorities, to the Replacement Contractor or to any other third party providing services to the Authority, provided in each case that such rights shall not extend to the commercial exploitation of the Project Specific IPRs and in each case that such rights shall not extend beyond any express limitations set out in the relevant Part B Task as to extent of use, number of included user licences, or any other matter.

The Contractor shall not (and shall procure that any Contractor Related Party and any COI Associate shall not) assign or otherwise transfer or dispose of any Contractor Background IPR to any Third Party during or after the Term unless it preserves for the Authority the rights granted to it under this Agreement.

The Authority shall be entitled to sub-license the rights to use, copy, modify and disclose the Contractor Background IPR set out in Clause 71.1 to any Authority Related Party for any of the purposes referred to in Clauses 71.1.1 to 71.1.8.

The licences and rights referred to in this Clause 71 (*Licence of Contractor IPR*) shall survive any expiry or termination, for whatever reason, of this Agreement.

# Licence and sub-licence of Third Party IPR provided by the Contractor

The Contractor shall promptly notify the ADT Commercial Lead whenever the Contractor or any Contractor Related Party requires use of Third Party IPR, other than COTS IPR, for the purpose of providing the Services.

The Contractor shall ensure that all licences entered into with Third Parties for the right to use Third Party IPR, notified in accordance with Clause 72.1, shall be held either in its own name or that of the relevant Contractor Related Party as licensee.

In respect of all licences referred to in Clause 72.2, the Contractor shall ensure that each licence either:

grants the Contractor or Contractor Related Party the right to grant a perpetual, irrevocable and transferable sub-licence (with the right to grant sub-sub-licences) of the Third Party IPR to the Authority (or to any other person nominated by the Authority); or

grants to the Authority a non-exclusive, perpetual and irrevocable right (with the right to grant sub-licences) to the Third Party IPR,

in each case, that will allow the Authority to use, copy, modify and disclose the Third Party IPR to a substantially similar extent to that licensed to the Contractor or Contractor Related Party and for the purposes set out in Clause 71.1.1 to 71.1.8.

Where the Contractor is unable to obtain the terms set out in Clause 72.3 from any Third Party it shall obtain the Authority's consent before entering into a licence with such Third Party for use of the Third Party IPR (such consent shall be entirely at the Authority's discretion) or, alternatively, the Authority may enter into a direct licence with such Third Party with a right for the Contractor or any Contractor Related Party to use such Third Party IPR on the Authority's behalf.

Any royalties or other fees payable in obtaining or exercising any licence or sub-licence of Third Party IPR, or any fees which are incurred using any right granted under them in accordance with the terms and conditions of this Agreement, shall be for the account of the Contractor.

On the Termination Date or the Expiry Date (as applicable) the Contractor shall procure the novation, at its own expense, of all licences of Third Party IPR obtained by the Contractor in accordance with Clause 72.2 to the Authority (or, at the Authority's request, to an Authority Related Party).

Prior to the Termination Date or the Expiry Date (as applicable), at the Authority's request the Contractor shall procure a transferable, perpetual, irrevocable, non-exclusive, licence for the Authority to use, disclose and to sub-licence the Third Party IPR for the purposes set out in Clauses 71.1.1 to 71.1.8 and the provisions in Clause 72.5 shall apply to any such licence.

# Protection of information

Notwithstanding Clause 46 (*Government Furnished Assets and Contractor Assets*), in respect of all information, documents and other materials in any form and any other articles used for the purposes of this Agreement, either or both relating to or bearing in embodying any Authority IPR, Third Party IPR or Contractor Background IPR, or on which any such IPR is recorded, the Contractor shall:

mark that information with a notice regarding confidentiality or ownership as the Authority may notify from time to time and shall not delete or modify any copyright notices contained within the information, documents, other materials or articles;

ensure the back-up and storage in safe custody of all data, materials and documents in accordance with JSP 440, those back-ups to be available to the Authority on reasonable request; and

promptly restore the items referred to in Clause 73.1.2 if they are lost or corrupted.

# Contractor's IPR indemnity

The Contractor shall indemnify the Authority (and the Authority Related Parties) fully from and against all claims arising out of or in connection with any actual or alleged infringement of Third Party IPR arising from the performance of this Agreement or the Services by the Contractor or by any Contractor Related Party or from the Authority's receipt and use of the Services or the exercise of its rights granted under this Agreement (an **"IPR Claim"**).

If, in respect of an IPR Claim, any part of the Services, the Contractor Background IPR, the Authority Foreground IPR or anything else provided by the Contractor (or Contractor Related Parties or any COI Associate) under this Agreement is alleged to or is held to constitute an infringement of Third Party IPR (an **"Infringing Part"**), the Authority may require the Contractor to:

procure for the Authority the right to continue using the Infringing Part;

modify the Infringing Part so that it is non-infringing, without materially detracting from its overall functionality, performance or compatibility or from the overall performance of the Contractor's obligations under this Agreement; or

replace the Infringing Part with other non-infringing items or services that have an equivalent functionality, performance and compatibility.

The indemnity in Clause 74.1 shall not apply in respect of a claim to the extent that it arises from:

the use of Contractor Background IPR or Third Party IPR by the Authority otherwise than in accordance with the terms of this Agreement and any applicable licence or sub-licence conditions provided that these have been notified to the ADT Commercial Lead on the grant of the applicable licence or sub-licence; or

any modification or development carried out by or for the Authority to any item supplied by the Contractor (or Contractor Related Parties) under this Agreement, where such modification or development is not authorised or approved by the Contractor.

## Subject to Clause 74.5, in relation to any IPR Claim:

### the Contractor shall have control of and be allowed to conduct all negotiations and proceedings;

### the Authority shall provide the Contractor with such reasonable assistance as is required by the Contractor, regarding the IPR Claim; and

### the Authority shall not without the prior written consent of the Contractor (such consent not to be unreasonably withheld or delayed), make any admission relating to the claim or attempt to settle it.

## In relation to the settlement or agreement of any terms or any payment relating to any IPR Claim in respect of which the Authority exercises its rights of Crown Use, the Authority shall be entitled to take such steps as may be required to comply with Applicable Law, and the Contractor shall provide the Authority with such reasonable assistance as is required by the Authority, regarding such steps and the IPR Claim; and

## The Authority shall indemnify the Contractor (and the Contractor Related Parties) in full against all Losses arising out of or in connection with any actual or alleged infringement of Third Party IPR which results from the use by the Contractor (or the Contractor Related Parties) of any Authority IPR (excluding any Authority Foreground IPR) or Third Party IPR provided by the Authority to the Contractor or Contractor Related Party for the purposes of this Agreement (a "Contractor IPR Claim").

## The indemnity in Clause 74.6 shall not apply in respect of any Contractor IPR Claim to the extent that it arises from:

### the use of such Authority IPR or Third Party IPR by the Contractor or a Contractor Related Party otherwise than in accordance with the terms of this Agreement and any applicable licence or sub-licence conditions provided that these have been notified to the Contractor’s Representative in writing; or

### any modification or development carried out by or for the Contractor to any item supplied by the Authority under this Agreement, where such modification or development is not authorised or approved in writing by the Authority.

## In relation to any Contractor IPR Claim under the provisions of Clause 74.6:

### the Authority shall have control of and be allowed to conduct all negotiations and proceedings; and

### the Contractor shall provide the Authority with such reasonable assistance as is required by the Authority regarding the Contractor IPR Claim; and

### the Contractor shall not without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed) make any admission relating to the Contractor IPR Claim or attempt to settle it.

## Subject to Clauses 74.4 and 74.8 (as applicable), each Party shall consult with the other Party in relation to any negotiations and proceedings relating to any IPR Claim or Contractor IPR Claim (as applicable) and the Party having control and conduct of such IPR Claim or Contractor IPR Claim, acting reasonably, shall have regard to the reasonable views and comments of the other Party in relation to the conduct of such negotiations and proceedings.

# Further assurances

The Contractor undertakes to execute all documents and do all acts which may be necessary for the Authority to obtain the benefit of Clauses 69 (*Ownership of Intellectual Property*) to 76 (*Use and Sharing of Know How*), including consenting to the registration of any licence against any IPR which is registered.

The Contractor shall register all licences granted to it to use any registered Third Party IPR.

The Contractor shall, on request by the Authority, enter into negotiations to grant the Authority a licence of Contractor Background IPR or a sub-licence of Third Party IPR on fair and reasonable terms for use for any purpose not permitted by this Agreement.

The Contractor shall immediately notify the Authority in writing (which for this purpose does not include email) if it becomes aware of any actual, suspected or threatened infringement of, or other claim in relation to, the Authority IPR. The Authority shall decide what action, if any, to take and any award of costs or damages or other compensation payment recovered shall be for the account of the Authority. The Contractor shall (and shall procure that any Contractor Related Party shall) (at the Authority's cost) provide any assistance which the Authority requires in connection with any of these matters.

# Use and Sharing of Know How

Subject to Clause 78 (*Confidentiality*), the Contractor shall (and shall procure that any Contractor Related Party shall), save to the extent prohibited by Applicable Law and any rights of or obligations to Third Parties (other than Contractor Related Parties and COI Associates), share information and know-how relating to the Agreement and the Services with the Authority and, as directed by the Authority, with Authority Related Parties (including contractors and service providers of the Authority providing equivalent services in relation to any other areas of DE&S) and other Third Parties.

# Data Protection

The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority and the Contractor will be considered Controllers and the Authority and the Contractor will be considered Processors. The only processing that the Contractor is authorised to do is listed in Schedule R by the Authority and may not be determined by the Contractor.

The Contractor shall notify the Authority immediately if it considers that any of the Authority’s instructions infringe the Data Protection Legislation.

The Contractor shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Authority, include:

### a systematic description of the envisaged processing operations and the purpose of the processing;

### an assessment of the necessity and proportionality of the processing operations in relation to the Services;

### an assessment of the risks to the rights and freedoms of Data Subjects; and

### the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

### process that Personal Data only in accordance with Schedule R, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;

### ensure that it has in place Protective Measures, which have been reviewed and approved by the Authority as appropriate to protect against a Data Loss Event having taken account of the:

#### nature of the data to be protected;

#### harm that might result from a Data Loss Event;

#### state of technological development; and

#### cost of implementing any measures;

### ensure that :

#### the Contractor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule R);

#### it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:

##### are aware of and comply with the Contractor’s duties under this Clause;

##### are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;

##### are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Authority or as otherwise permitted by this Agreement; and

##### have undergone adequate training in the use, care, protection and handling of Personal Data; and

### do not transfer Personal Data outside of the EU unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:

#### the Authority or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46, LED Article 37 or the EEA) as determined by the Authority;

#### the Data Subject has enforceable rights and effective legal remedies;

#### the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and

#### the Contractor complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;

### at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data.

## Subject to Clause 79.1, the Contractor shall notify the Authority immediately if it:

### receives a Data Subject Access Request (or purported Data Subject Access Request);

### receives a request to rectify, block or erase any Personal Data;

### receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

### receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;

### receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

### becomes aware of a Data Loss Event.

The Contractor’s obligation to notify under Clause 77.5 shall include the provision of further information to the Authority in phases, as details become available.

Taking into account the nature of the processing, the Contractor shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 77.5 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:

### the Authority with full details and copies of the complaint, communication or request;

### such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;

### the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;

### assistance as requested by the Authority following any Data Loss Event;

### assistance as requested by the Authority with respect to any request from the Information Commissioner’s Office, or any consultation by the Authority with the Information Commissioner's Office.

The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause.

The Contractor shall allow for audits of its Data Processing activity by the Authority or the Authority’s designated auditor.

The Contractor shall designate a data protection officer as required by the Data Protection Legislation. If the Contractor decides not to designate a data protection officer, the Contractor must provide the Authority with the reasons for this decision within 30 days of the Agreement Commencement Date.

Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:

### notify the Authority in writing of the intended Sub-processor and processing;

### obtain the written consent of the Authority;

### enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 77 such that they apply to the Sub-processor; and

### provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.

The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.

The Authority may, at any time on not less than 30 Business Days’ notice, revise this Clause by replacing it with any applicable controller to processor standard Clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

The Parties agree to take account of any guidance issued by the Information Commissioner’s Office. The Authority may on not less than 30 Business Days’ notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner’s Office.

# Confidentiality

The Parties agree that provisions of this Agreement and each of the Associated Contracts shall, subject to Clause 78.2, not be treated as Commercially Confidential Information and may be disclosed without restriction.

Clause 78.1 shall not apply to any of those provisions of this Agreement, or to any information contained within an Associated Contract, which is designated as Commercially Sensitive Information. Any such provision of information shall, subject to Clause 81.1, be kept confidential for the periods specified in Schedule H (*Contractor’s Commercially Sensitive Information*) or otherwise agreed by the Parties.

Notwithstanding the provisions of Clause 78.1, each Party shall:

treat all information it receives from the other Party under this Agreement or Associated Contracts or in connection with the provision of the Services as Commercially Confidential Information;

only disclose such information to those of the Contractor Related Parties or Authority Related Parties having a need to know for the purposes of this Agreement and the Services and the Associated Contracts;

not copy any information otherwise than for the purposes of this Agreement; and

not disclose any such information to Third Parties except as permitted under, and subject to the provisions of, Clause 27 (*Conflicts of Interest*) and Clause 81 (*Disclosure*).

The Contractor shall ensure that all Engaged Personnel are aware of the obligations set out in Clause 78.3 prior to receiving any information.

Upon expiry or termination of this Agreement for any reason, save to the extent permitted to be retained under this Agreement or required to be retained by Applicable Laws, the Contractor shall (and shall procure that each Contractor Related Party shall) destroy or return to the Authority all Authority Commercially Sensitive Information of the Authority or any Authority Related Party in its possession or control.

The provisions of this Clause 78 (*Confidentiality*) and Clause 81 (*Disclosure*) shall supersede and replace any other confidentiality undertakings agreed in writing between the Parties with respect of the subject matter of this Agreement prior to the date of this Agreement.

# CONTROLLED INFORMATION

The Contractor shall, and shall procure that the Contractor Related Parties shall:

not use Controlled Information other than in connection with the provision of the Services;

not copy the Controlled Information except as strictly necessary for the purpose of provision of the Services;

not disclose the Controlled Information to any Third Party (other than any Engaged Personnel) without the prior written notice of the Authority;

take all reasonable measures to protect the Controlled Information against unauthorised access and against loss; and

take all reasonable measures to ensure that:

Controlled Information is disclosed to Engaged Personnel only to the extent necessary for provision of the Services; and

Engaged Personnel to whom Controlled Information is disclosed are made aware of and required to comply with the terms of this Clause 79 (*Controlled Information*).

Where Controlled Information is provided to the Contractor or to any Engaged Personnel, the Contractor shall:

maintain a register of that Controlled Information, which shall include a description of the Controlled Information, a record of the number of copies made and a record of all access to the Controlled Information including access to any copies of the Controlled Information;

maintain this register for the duration of this Agreement and for two (2) years following the Expiry Date or Termination Date (as applicable);

make the register of access available to the Authority upon reasonable notice for inspection and audit for so long as it is required to be maintained under this Clause 79 (*Controlled Information*); and

upon expiry or termination of this Agreement for any reason, the Contractor shall (and shall procure that each Contractor Related Party shall):

return to the Authority all original and duplicate copies of the Controlled Information; or

at the Authority's request, destroy these copies and provide a certificate of destruction to the Authority.

The restrictions on the copying, use or disclosure in Clauses 79.1.1 to 79.1.3 (inclusive) shall not apply to Controlled Information to the extent that the Contractor can demonstrate that the information in question:

is already in, or comes into, the public domain otherwise than as a result of a breach of this Clause 79 (*Controlled Information*);

was already known to the Contractor (or where applicable, the Contractor Related Party), without restrictions on disclosure or use, prior to the Contractor (or where applicable, the Contractor Related Party) receiving it under or in connection with this Agreement; or

was lawfully provided by a Third Party without restriction on use or further disclosure.

# Legal Advice

This Clause 80 (*Legal Advice*) is without prejudice to any duties of confidentiality or restrictions on disclosure pursuant to the Agreement, including under Clause 78 (*Confidentiality*), Part XI (*Security*) and Schedule G (*COI Compliance Regime*).

The Contractor shall ensure that the Privilege and Confidentiality Agreement is executed by all Engaged Personnel at the same time as the Letter of Placement and prior to starting work under the relevant Approved Tasking Order. A copy of each document shall be provided to the Authority.

The Contractor acknowledges and agrees that under the terms of the Privilege and Confidentiality Agreement the Engaged Personnel may not disclose to the Contractor any Legal Advice (as defined in that Privilege and Confidentiality Agreement), and the Contractor shall not request that any Engaged Personnel do so. The Contractor shall immediately return to the Authority (and delete from its computer systems and any electronic information retrieval system) any such Legal Advice that it receives, or in any way whatsoever obtains access to, which has not been made available to it directly by, or with the authorisation of, the Authority or any Authority Related Party (other than Engaged Personnel).

# Disclosure

The obligations set out under Clauses 78.2 and 78.3 not to release information to Third Parties shall not apply to:

any disclosure by the Authority of information comprising Authority Foreground IPR;

any disclosure of information that is reasonably required by any person engaged in the performance of their obligations under the Agreement to the extent required for the performance of those obligations;

any disclosure of information which a Party can demonstrate is already in, or comes into, the public domain otherwise than as a result of a breach of Clause 78 (*Confidentiality*);

any disclosure to enable a determination to be made under Clause 64 (*Dispute Resolution Procedure*);

any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or Parliamentary obligation placed upon the Party making the disclosure or the rules of any stock exchange or governmental or regulatory authority (whether having the force of law or if not having the force of law) compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental or regulatory authority concerned;

any disclosure of information which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party;

any disclosure of information to the Parties' own professional advisers, insurance advisers or lenders;

any disclosure by the Authority of information as may be reasonably required:

for the purpose of conducting a due diligence exercise, to any proposed contractor, its advisers and lenders, should the Authority decide to retender all or part of the Agreement or a replacement or continuation thereof or any part thereof;

in the course of carrying out its public functions;

on a confidential basis to a proposed body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement; or

for any other purpose in the exercise of the Authority's rights of disclosure and use set out under Clauses 69 (*Ownership of Intellectual Property*) to 76 (*Use and Sharing of Know How*);

any disclosure of information by the Authority to any Government Body or their respective advisers or to any person engaged in providing services to the Authority for any purpose related to or ancillary to the Agreement;

any disclosure of information for the purpose of:

the examination and certification of the Authority's or the Contractor's accounts;

any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources; or

(without prejudice to the generality of Clause 81.1.5) compliance with the FOIA or the Environmental Information Regulations,

provided that neither Clause 81.1.5 nor Clause 81.1.10(C) shall permit disclosure of Commercially Confidential Information that would not be disclosed in accordance with Clause 78.3 where that information is exempt from disclosure under section 41 of the FOIA or regulation 12 of the Environmental Information Regulations;

any disclosure of information by the Contractor to a Sub-contractor where the Sub-contractor has a need to know such information for the purpose of the relevant Sub-contract (but provided the Sub-contractor is under obligations of confidentiality no less onerous than those in this Agreement); or

any disclosure of information that was, is or becomes available to the Authority on a non-confidential basis from a person who, to the Authority's knowledge, is not bound by a confidentiality agreement with the Contractor Group or otherwise prohibited from disclosing the information to the Authority.

Where disclosure is permitted under the provisions of this Clause 81 (*Disclosure*) the Party disclosing the information shall procure that the recipient of the information shall be subject to obligations of confidentiality no less onerous than those contained in this Agreement. This obligation shall not however apply to disclosures of information made under the provisions of Clauses 81.1.3, 81.1.5, 81.1.6, 81.1.8(D), 81.1.10(B) or 81.1.10(C).

The Contractor shall not (and shall procure that the Contractor Related Parties shall not) make use of the Agreement or any Commercially Confidential Information issued or provided by or on behalf of the Authority in connection with the Agreement otherwise than for the purpose of the Agreement and the Services, except with the written consent of the Authority (or information that could be disclosed by the Contractor to Third Parties under the provisions of Clauses 81.1.3 or 81.1.6).

Where the Contractor, in carrying out its obligations under the Agreement, is provided with information by or on behalf of the Authority relating to any person, the Contractor shall not disclose or make use of any such information, otherwise than for the purpose for which it was provided, unless the Contractor has obtained the prior written consent of the Authority.

Where the Contractor, in carrying out its obligations under the Agreement, is provided with information by or on behalf of a Third Party relating to any person, the Contractor shall not disclose or make use of any such information, otherwise than for the purpose for which it was provided, unless the Contractor has obtained the prior written consent of the Third Party.

The Contractor shall not, and shall ensure that the Contractor Related Parties do not:

### disclose or permit disclosure of any details of this Agreement to the news media or any Third Party other than Sub-contractors (and then only to the extent required in order to perform the relevant Sub-contract) or make any press announcements or publicise this Agreement or its contents in any way;

### use the Authority's name or brand in any promotion or marketing or announcement of orders; or

### disclose that the Authority is a customer or client of the Contractor,

without the prior written consent of the Authority (which shall not be unreasonably withheld or delayed).

The provisions of this Clause 81 (*Disclosure*), Clause 82 (*Contractor Right to Request Confidentiality*) and Clause 83 (*Publication*) are without prejudice to the application of the Official Secrets Acts 1911 to 1989, Clause 27 (*Conflicts of Interest*), Part XI (*Security*) and Clause 77 (*Data Protection*).

# Contractor Right to Request Confidentiality

The Contractor may at any time request in writing, stating reasons, that the Authority keeps particular information confidential and does not disclose it to Third Parties. The Contractor may further request in writing at any time that, where the Authority discloses information pursuant to Clause 84 (*Freedom of Information Act*), the Authority make representations to the recipient of such information as to the desirability of keeping such information confidential. Any such request by the Contractor shall be accompanied by a document setting out in writing the requested representations. The Authority shall act reasonably when considering whether to make such representations.

# Publication

Subject to Clause 78.2 and Clause 83.2, the Contractor gives its consent to the Authority to publish to the general public (including on a website) the content of the Agreement (including any amendments agreed from time to time). The Contractor shall assist and cooperate with the Authority to enable the Authority to publish the Agreement.

Where an amendment to the Agreement occurs, the Authority shall consult with the Contractor over whether any of those changes should be treated as Commercially Sensitive Information and so be redacted for public availability.

The Contractor acknowledges and accepts that its representations on redactions during consultation under Clause 83.2 may not be determinative and that the decision as to whether to redact information is a matter in which the Authority shall exercise its own discretion, using as its guiding principles the exemptions from disclosure available under the provisions of the FOIA and the Environmental Information Regulations.

# Freedom of Information Act

The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall facilitate the Authority's compliance with its information disclosure requirements pursuant to the same in the manner provided for in this Clause 84 (*Freedom of Information Act*).

Where the Authority receives a Request for Information (as defined in the FOIA) in relation to information that the Contractor is holding on its behalf and which the Authority does not hold itself, the Authority shall refer to the Contractor such Request for Information as soon as reasonably practicable and in any event within five (5) Business Days of receiving a Request for Information and the Contractor shall:

provide the Authority with a copy of all such information in the form that the Authority requires as soon as reasonably practicable and in any event within ten (10) Business Days (or such other period as the Authority acting reasonably may specify) of the Authority's request; and

provide all necessary assistance as reasonably requested by the Authority in connection with any such information, to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations (as applicable).

Following notification under Clause 84.2, and up until such time as the Contractor has provided the Authority with all the information specified in Clause 84.2.1, the Contractor may make representations to the Authority as to whether or not or on what basis information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Authority shall be responsible for determining at its absolute discretion:

whether information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and

whether information is to be disclosed in response to a Request for Information and in no event shall the Contractor respond directly, or allow any Sub-contractor to respond directly, to a Request for Information unless expressly authorised to do so by the Authority.

The Contractor acknowledges that (notwithstanding the provisions of Clauses 78 (*Confidentiality*) to Clause 83 (*Publication*) and this Clause 84 (*Freedom of Information Act*)) the Authority shall act in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the FOIA (the **"Code"**).

When acting in accordance with the Code, the Authority may be obliged in certain circumstances under the FOIA or the Environmental Information Regulations to disclose information concerning the Contractor or DE&S:

without consulting the Contractor; or

following consultation with the Contractor (having taken its views into account).

1. – Insurance and Liabilities

# Insurance

## Without prejudice to its liability to indemnify or otherwise be liable to the Authority under this Agreement, the Contractor shall for the periods specified in Schedule L (Insurances) take out and maintain or procure the taking out and maintenance of the insurances as set out under this Clause 85 and Schedule L (Insurances) and any other insurances as may be required by Applicable Laws, together the s. The Contractor shall ensure that each of these s are effective in each case not later than the date on which the relevant risk commences.

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

## Where specified in Schedule L (Insurances) the Contractor shall ensure that the relevant policy of insurance:

### shall contain an indemnity to principals Clause or additional insureds equivalent, under which the Authority shall be indemnified in respect of claims made against the Authority arising from death or bodily injury or third party property damage, and for which the Contractor is legally liable in respect of this Agreement;

### names the Authority as co-insured for its separate interest with attendant non vitiation, waiver of subrogation and notice of cancellation provisions.

## The Contractor shall discharge in full all duties and obligations in respect of the Insurance Act 2015 when procuring, maintaining or amending any insurance(s) required by this Agreement, including in circumstances where the Contractor is required to name the Authority on any such insurance policies to protect the Authority’s separate interests.

## The Contractor shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.

## The Authority may elect (but shall not be obliged) where notice has been provided to the Contractor to purchase any insurance which the Contractor is required to maintain pursuant to this Agreement but has failed to maintain in full force and effect, and the Authority shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Contractor.

## The Contractor shall from the date of this Agreement and within fifteen (15) Business Days after the renewal of each of the s, provide evidence, in a form satisfactory to the Authority, that the s are in full force and effect and meet in full the requirements of this Clause 85 and Schedule L (Insurances). Receipt of such evidence by the Authority shall not in itself constitute acceptance by the Authority or relieve the Contractor of its liabilities and obligations under this Agreement.

## The Contactor shall notify the Authority in writing at least ten (10) days prior to the cancellation, suspension, termination or non-renewal of any of the s. This Clause 85.8 shall not apply where the termination of any s occurs purely as a result of a change of insurer in respect of any of the s required to be taken out and maintained in accordance with this Clause 85.

## The Contractor shall promptly notify to insurers any matter arising from, or in relation to, this Agreement for which it may be entitled to claim under any of the s. In the event that the Authority receives a claim relating to this Agreement, the Authority shall co-operate with the Authority and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.

## Except where the Authority is the claimant party, the Contractor shall give the Authority notice within twenty (20) Business Days after any insurance claim relating to this Agreement on any of the Services or Approved Tasking Orders, but for the application of the applicable policy excess, and (as required by the Authority) full details of the incident giving rise to the claim.

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## Where any requires payment of a premium, the Contractor shall be liable for such premium.

## Where any insurance referred to in this Clause 85 and Schedule L (Insurances) is subject to an excess or deductible below which the indemnity from insurers is excluded, the Contractor shall be liable for such excess or deductible. The Contractor shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Agreement or otherwise.

## All insurance proceeds received in respect of the Property Damage "All Risks" Insurance as specified in Schedule L (Insurances) shall be used to reinstate, repair or replace the insured property in respect of which the insurance proceeds were received.

# Liability

## Acknowledgements

## Nothing in this Agreement or pursuant to any Approved Tasking Order shall be construed to limit or exclude either Party’s liability for:-

### Death or personal injury caused by its negligence or that of its Staff;

### Fraud or fraudulent misrepresentation by it or its Staff;

### any breach of any obligations implied by common law or statute law including but not limited to those set out in Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;

### Any claim under Clause 69 *(Ownership of Intellectual Property*);

### any other matter which, by Law, may not be limited or excluded.

## Nothing in this Agreement shall impose any liability on the Authority in respect of any liability incurred by the Contractor to any other person, but this shall not be taken to exclude or limit any liability of the Authority to the Contractor that may arise by virtue of either a breach of this Agreement and any pursuant EDP Approved Tasking Order or by negligence on the part of the Authority, or the Authority’s employees, servants or agents.

## Personal Injury & Loss of Property

## This Clause 86.3 applies to Personal Injury or Loss of Property which arises as a result of the Contractor’s negligence or default or that of its employees (acting in the course of their employment), agents or Sub-contractors in connection with the performance or purported performance of this Agreement, and in each pursuant EDP Approved Tasking Order placed hereunder, by the Contractor. Clause 86.3 shall not apply in the case of an Aviation Product Occurrence or Grounding where DEFCON 638 (Edn 11/14) has been agreed as part of the EDP Approved Tasking Order.

## Subject to the following provisions, the Contractor shall:

### Compensate the Authority:

#### For any such Loss of Property suffered by the Authority; and

#### For any such costs or expenses reasonably incurred by the Authority in connection with any Loss of Property;

### Indemnify and defend the Crown and Servants of the Crown against all claims, actions, and proceedings made or brought against the Crown or Servants of the Crown in respect of Personal Injury or Loss of Property to which Clause 86 applies and against all liabilities, damages, costs and expenses suffered or incurred in connection therewith;

### Indemnify and defend the Crown against any Loss consequent upon the making of any payment by the Crown to indemnify and defend in whole or in part, a Servant of the Crown against any such claim, action, proceeding, liability, damage, costs or expenses; and

### Indemnify and defend the Crown against any Loss consequent upon the making of any payment by the Crown to a Servant of the Crown in respect of Loss of Property to which this Clause applies suffered or incurred by that Servant of the Crown and against any payment made under any Government Provision in connection with any Personal Injury to which this Clause applies which is incurred by any Servant of the Crown.

## The Authority shall immediately notify the Contractor of any claim, action or proceedings made or brought in respect of any Personal Injury or Loss of Property to which this Clause applies.

## The Contractor shall, (subject to Clause 86.7 and 86.8) be responsible for dealing with or settling that claim, action or proceeding.

## The Authority shall in any event deal with any such claim, action or proceeding which is made by or against a Servant of the Crown, and Clause 86 shall not apply to any such claim, action or proceeding.

## If, when the Contractor or its insurers are dealing with any such claim, action or proceeding, any matter or issue arises which involves, or may involve, any privilege or special right of the Crown (including a matter relating to the discovery or production of documents) the Contractor or its insurers shall consult the Authority before taking any further action on the matter and shall act in relation thereto as may be required by the Authority; and if either the Contractor or its insurers fail to comply with this Clause, Clause 88.6 shall cease to apply.

## The Contractor shall further indemnify the Authority against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Authority in connection with or in consequence of any such liability, deduction, contribution, assessment or claim.

## Calculating Liability

In calculating the relevant amounts under Clause 88.1 there shall be no double accounting of liabilities.

## Liability for Fraud, Death and Personal Injury Not Excluded

Nothing in this Clause 86.11 shall purport to limit or exclude the liability of either Party for death or personal injury caused by its negligence or otherwise or for fraud, to the extent that the same is not permissible under Applicable Law.

## Limit on Claims Brought

Neither Party shall be liable to the other Party for any liability arising out of or in connection with this Agreement (including for negligence or a deliberate repudiatory breach) unless that other Party gives notice of a claim, summarising the nature of the claim as far as it is known to that other Party and the amount claimed, within one (1) Year of the Termination Date or Expiry Date (as applicable).

## Consequential and Indirect Loss

Neither Party shall be liable to the other under this Agreement for any indirect or consequential losses.

## Proportionate liability

If the Contractor is liable to the Authority, or any others for whom Services are provided, under this Agreement or otherwise in connection with the Services, for loss or damage to which any other persons have also contributed (but excluding Contractor Related Parties), the Contractor's liability to such parties shall be several, and not joint, with such others, and shall be limited to the Contractor's fair share of that total loss or damage, based on the Contractor's contribution to the loss and damage relative to the others’ contributions. No exclusion or limitation on the liability of other responsible persons imposed or agreed at any time shall affect any assessment of the Contractor's proportionate liability hereunder, nor shall settlement of or difficulty enforcing any claim, or the death, dissolution or insolvency of any such other responsible persons or their ceasing to be liable for the loss or damage or any portion thereof, affect any such assessment. For the avoidance of doubt nothing in this Clause shall affect the joint and several liability of the entities comprising the Contractor.

## Sole Recourse

### The Authority shall make any claim or bring proceedings under this Agreement only against the Contractor, and not against any Sub-contractor or Contractor Related Party or any Sub-contractors, members, shareholders, directors, officers, principals or employees of any Sub-contractor or Contractor Related Party. The Contractor Related Parties shall be entitled to rely on this Clause.

### Nothing in Clause 86.15.1 shall affect:

#### any rights of the Authority under:

##### any Compliance Agreement;

##### any Privilege and Confidentiality Agreement; or

##### any other agreement (whether or not entered into pursuant to this Agreement); or

#### the operation of express rights granted by this Agreement to third parties pursuant to the Contracts (Rights of Third Parties) Act 1999.

**IN WITNESS** whereof this Agreement has been entered into the day and year first hereinbefore mentioned.

**SIGNED** )

for and on behalf of ) **………………………………………**

**THE SECRETARY OF STATE FOR DEFENCE** )

Name of signatory: **…………………………..**

Title of signatory: **…………………………..**

In the presence of:

Signature of witness: **…………………………..**

Name of witness: **…………………………..**

Address of witness: **…………………………..**

**…………………………..**

**SIGNED by the CONTRACTOR**

for and on behalf of ) **………………………………………**

Name of signatory: **…………………………..**

Title of signatory: **…………………………..**

for and on behalf of ) **………………………………………**

Name of signatory: **…………………………..**

Title of signatory: **…………………………..**

for and on behalf of ) **………………………………………**

)

Name of signatory: **…………………………..**

Title of signatory: **…………………………..**