



MINISTRY OF DEFENCE

DATED

16 April 2015

(1) THE SECRETARY OF STATE FOR DEFENCE

AND

(2) LEIDOS EUROPE, LIMITED

CONTRACT NO. LCS(T)/0001

LOGISTIC COMMODITIES AND SERVICES TRANSFORMATION
DELIVERY PARTNER CONTRACT

Simmons & Simmons

Simmons & Simmons LLP CityPoint One Ropemaker Street London EC2Y 9SS United Kingdom
T +44 20 7628 2020 F +44 20 7628 2070 DX Box No 12



MINISTRY OF DEFENCE

VOLUME 1

(1) THE SECRETARY OF STATE FOR DEFENCE

AND

(2) LEIDOS EUROPE, LIMITED

CONTRACT NO. LCS(T)/0001

LOGISTIC COMMODITIES AND SERVICES TRANSFORMATION
DELIVERY PARTNER CONTRACT

Signed for and on behalf of
THE SECRETARY OF STATE
FOR DEFENCE

Signature: [REDACTED]

Name: [REDACTED]

Position: MOD DIRECTOR
COMMERCIAL

DATED:

16 April 2015

Signed for and on behalf of LEIDOS
EUROPE, LIMITED

Signature: [REDACTED]

Name: [REDACTED]

Position CHAIRMAN

CONTENTS

Part 1 : INTERPRETATION.....	1
1. Definitions	1
2. Interpretation.....	1
3. Precedence of Documents.....	3
Part 2 : CONTRACT MANAGEMENT AND COMMENCEMENT	4
4. Conditions Precedent.....	4
5. Term	7
6. Due Diligence	7
Part 3 : THE SERVICES.....	10
7. Provision of the Services.....	10
8. Compliance with Law and Relevant Consents	11
9. Service Delivery Plan	13
10. Access to Authority Sites in the provision of the Services	14
11. Ethical Procurement Policy	15
12. Non-exclusivity	15
13. Subcontracting	16
14. Key Subcontracts.....	19
15. Competitive Procurement of Key Subcontracts	25
16. Delivery, vesting and liens	26
17. Interface with Relevant Authority Contractors	28
18. Authority Dependencies	29
Part 4 : SUPPLYCO	31
19. DP obligations in respect of SupplyCo	31
Part 5 : LIAISON AND GOVERNANCE	33
20. Governance	33
21. Monitoring	33
22. Management Information	34

23.	Specified MI	40
24.	Dispute Resolution	40
25.	Change of Control and National Interest	41
Part 6 : CHANGE		44
26.	Change	44
27.	Change in Law	44
Part 7 : PAYMENT AND FINANCIAL		45
28.	Payment, Performance & Incentivisation Mechanism	45
29.	Payment	45
30.	Annual Planning Cycle	47
31.	Change in currency	47
32.	Value For Money	47
33.	Auditing	47
34.	Transparency	48
35.	Overseas Expenditure, Import and Export Licences	49
36.	Insurance	52
37.	DP and Parent Company Guarantees and DP security	54
38.	Security Documentation	55
Part 8 : TRANSITION		56
39.	Transition	56
Part 9 : SUPERVENING EVENTS		60
40.	Supervening Events	60
Part 10 : PROPERTY AND ASSETS		63
41.	Property Arrangements	63
42.	Assets	76
Part 11 : ENVIRONMENT, HEALTH AND SAFETY		84
43.	Environment, Health and Safety	84
Part 12 : MEASURES IN A CRISIS AND SECURITY		85

44.	Measures in a Crisis.....	85
45.	Security.....	87
Part 13 : INFORMATION TECHNOLOGY, INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY		88
46.	Information Technology.....	88
47.	Intellectual Property	89
48.	Protection of Intellectual Property Rights.....	99
49.	Data Protection	101
50.	Authority Data	103
51.	Confidentiality	104
52.	Freedom of Information.....	108
Part 14 : PEOPLE		110
53.	DP Representative	110
54.	Authority Representative.....	110
55.	Notices to Representatives	111
56.	Resources and Training	112
57.	Personnel Policies and Procedures.....	112
58.	Key Personnel.....	112
59.	TUPE	113
60.	Non-Discrimination.....	113
61.	Equal Opportunities	113
62.	Pensions	116
63.	CONDO	118
Part 15 : STEP-IN, FINANCIAL DISTRESS AND TERMINATION		119
64.	Authority Step-In	119
65.	Financial Distress.....	122
66.	Termination for Authority Default.....	122
67.	Termination for DP Default.....	123
68.	Termination for Continuing Supervening Event	124

69.	Termination for Prohibited Acts	125
70.	Voluntary Termination by the Authority	125
71.	Partial Termination	126
72.	Effect of Termination	126
73.	Continuing Obligations	126
74.	Accrued Rights	127
75.	Payments on Termination	127
76.	Sole Remedy	128
77.	Rectification Plan Process	128
	Part 16 : WARRANTIES, INDEMNITIES AND LIABILITIES	129
78.	DP Representations and Warranties	129
79.	DP Indemnities	132
80.	Control of Indemnity Claims	133
81.	Liability	135
82.	No Double Recovery	136
83.	DP's claims in relation to this Agreement	136
	Part 17 : GENERAL CONDITIONS	137
84.	Assignment	137
85.	Appointment of Managing Contractor	137
86.	Public Relations and Publicity	137
87.	Mitigation	138
88.	Notices	138
89.	Addresses	139
90.	Disclosure to the Authority	140
91.	Conflicts of Interest	140
92.	No Recourse to Public Funds	141
93.	Other Contracts with the Authority	141
94.	Further Assurance.	141

95.	Waivers.....	142
96.	Duty of the DP to notify Occasion of Tax Non-Compliance	142
97.	Capacity of the Authority.....	143
98.	Entire Agreement	143
99.	Amendments.....	144
100.	Independent Contractor	144
101.	Severability	145
102.	Third Party Rights	145
103.	Counterparts	145
104.	Governing Law and Jurisdiction	145

SCHEDULES

Schedule	1	Definitions
Schedule	2	Statement of Requirements
Schedule	3	Codes and Standards
Schedule	4	Service Delivery Plan
Schedule	5	Legacy Contracts
Schedule	6	Relevant Authority Contractors
Schedule	7	Authority Dependencies
Schedule	8	Authority Baseline
Schedule	9	Annual Planning Cycle
Schedule	10	Payment, Performance & Incentivisation Mechanism
Schedule	11	Specified MI
Schedule	12	Governance
Schedule	13	Audit
Schedule	14	Financial Distress
Schedule	15	Payments on Termination
Schedule	16	Rectification Plan Process
Schedule	17	Exit Management
Schedule	18	Not Used
Schedule	19	Required Insurances
Schedule	20	Key Personnel
Schedule	21	Employee Transfer Arrangements on Entry
Schedule	22	Contractors on Deployed Military Operations
Schedule	23	Key Subcontractors
Schedule	24	Key Subcontractor Collateral Warranty
Schedule	25	Change Procedure
Schedule	26	Dispute Resolution
Schedule	27	Commercially Sensitive Information
Schedule	28	Confidentiality Undertakings
Schedule	29	Software Escrow Agreement
Schedule	30	Security
Schedule	31	Systems
Schedule	32	Information Sharing Agreement
Schedule	33	Assets
Schedule	34	Licence to Occupy Authority Licence Property
Schedule	35	Lease of Authority Lease Property
Schedule	36	Environment, Health and Safety
Schedule	37	Montreal Protocol Substances
Schedule	38	Escrow Accounts Arrangements
Schedule	39	Further DP Obligations in respect of SupplyCo
Schedule	40	Form of Parent Company Guarantees

THIS AGREEMENT is dated

16 April 2015

and made

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR DEFENCE**, (the "Authority"), and
- (2) **LEIDOS EUROPE, LIMITED**, a company registered in England with number 9351724 whose registered office is at Denny End Road Waterbeach, Unit G8, Stirling House, Cambridge, United Kingdom CB25 9QE (the "Delivery Partner" or "DP").

BACKGROUND:

- (A) The Authority is seeking to rationalise the procurement and inventory management of commodities, the storage of commodities and other Authority spares, equipment and materiel and distribution and freighting activities as part of the Logistic Commodities and Services Transformation Project (the "Project").
- (B) Proposals were submitted on behalf of the DP in response to the Authority's invitation to negotiate and the Authority and the DP have discussed such proposals. The Authority and the DP have agreed to enter into this agreement (the "Agreement") which sets out the terms and conditions upon which the DP will carry out this Project.

IT IS AGREED as follows:

PART 1: INTERPRETATION

1. **Definitions**

In this Agreement, the definitions set out in schedule 1 (*Definitions*) shall apply.

2. **Interpretation**

2.1 In this Agreement, except where the context otherwise requires:

- (A) references to this Agreement shall include references to the schedules to this Agreement which, subject to clause 3.1, shall be construed as one with this Agreement, and references to schedules shall include references to any annexes or appendices to those schedules;
- (B) the masculine includes the feminine and vice versa;
- (C) the singular includes the plural and vice versa;
- (D) a reference in this Agreement to any clause, schedule, annex, appendix, part or paragraph is, except where it is expressly stated to the contrary, a reference to such clause, schedule, annex, appendix, part or paragraph of this Agreement;
- (E) unless stated to the contrary, any reference to this Agreement or to any other document shall include any permitted variation, amendment, novation or supplement to this Agreement or to such other document;
- (F) any reference to any enactment, order, regulation, instrument, code, standard or other similar instrument shall be construed as a reference to the enactment, order, regulation, instrument (including any EU instrument), code, standard, or other similar instrument as amended, replaced, consolidated or re-enacted;

- (G) a reference to a person includes firms, partnerships, associations, corporations, other bodies corporate or Crown Bodies and their successors and permitted assignees or transferees;
- (H) headings are for convenience of reference only and shall not be taken into consideration in the interpretation or construction of this Agreement;
- (I) the words "include", "includes", "including" and "included" shall be construed as illustrative and without limitation;
- (J) any obligation not to do anything shall include an obligation not to suffer, permit or cause that thing to be done;
- (K) a reference to "GBP" or "£" shall mean pounds sterling;
- (L) the words "day", "month" and "year" mean calendar day, calendar month and calendar year unless otherwise stated;
- (M) any references to time shall be London local time, unless otherwise stated; and
- (N) any reference to "writing" means a communication consisting of words in any legible and visible form, including words produced by any form of electrical or mechanical means and in typed, electronic or printed format as well as in manuscript, and "written" shall be construed accordingly.
- 2.2 Except for a confirmation of a Change pursuant to the Change Procedure which expressly changes the DP's obligations or liabilities or the Authority's rights under this Agreement, or as otherwise expressly stated in this Agreement, no review, comment or approval by the Authority shall operate to exclude or limit the DP's obligations or liabilities or the Authority's rights under this Agreement.
- 2.3 Neither the giving of any approval, consent, examination, acknowledgement nor any knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of the Authority shall, unless otherwise expressly stated in this Agreement, relieve the DP of any of its obligations under or in connection with this Agreement or of any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of approval, consent, examination, acknowledgement or knowledge or document review or course of action.
- 2.4 Where this Agreement contemplates that the Authority may elect, determine, approve, reject, consent, nominate, appoint, decide, specify, permit or consider any matter or thing, the Authority may make such election, determination, approval, rejection, consent, nomination, appointment, decision, specification, permission or consideration in its absolute discretion without being required to give reasons, unless this Agreement expressly requires otherwise.
- 2.5 This Agreement was drafted with the joint participation of the Parties and no provision of this Agreement will be construed adversely to a Party solely on the ground that such Party was responsible for the preparation of this Agreement or that provision.
- 2.6 Where used in any part of this Agreement the phrase "reasonable endeavours" shall be taken to mean an obligation to do whatever could reasonably be done in the circumstances to fulfil the obligation concerned by:
- (A) a responsible and sufficiently funded contractor acting in accordance with Good Industry Practice (in the case of the DP); or

(B) a responsible customer receiving the Services (in the case of the Authority).

3. **Precedence of Documents**

3.1 In the event of any discrepancy, inconsistency or divergence arising between the clauses of this Agreement and the schedules or between any of the schedules, then (save as expressly provided in this Agreement) the order of precedence shall be as follows:

- (A) clauses 1 (*Definitions*) to 104 (*Governing Law and Jurisdiction*) (inclusive) of this Agreement and schedule 1 (*Definitions*);
- (B) schedule 2 (*Statement of Requirements*);
- (C) schedule 3 (*Codes and Standards*);
- (D) schedule 10 (*Payment, Performance & Incentivisation Mechanism*) and schedule 15 (*Payments on Termination*);
- (E) all remaining schedules other than the Service Delivery Plan; and
- (F) the Service Delivery Plan.

3.2 If there is any inconsistency between any diagram and any text, the text shall take precedence.

3.3 In the event of any inconsistency between the schedules and the annexes or appendices thereto, the schedules shall prevail.

3.4 In the event of any inconsistency between the DP Financial Model and the ROADB, the the DP Financial Model shall take precedence.

PART 2: CONTRACT MANAGEMENT AND COMMENCEMENT**4. Conditions Precedent**

4.1 Subject to clause 5.2, the rights and obligations of each Party under this Agreement shall have no force or effect unless and until each of the following conditions (the "Conditions Precedent") has been fulfilled:

(A) the receipt by the Authority of:

- (1) certified copy extracts of the board minutes of the DP approving the execution of this Agreement, the SupplyCo Subcontract, any Subcontract to which it is a party, the Key Subcontractor Collateral Warranties, the Transfer Option Agreement, the Parent Company Guarantee and any other agreement to which it shall be a party;
- (2) certified copy extracts of the board minutes of SupplyCo approving the execution of the SupplyCo Security Agreement, the Transitional Services Agreement, the SupplyCo Subcontract, the Transfer Option Agreement, and any other agreement to which it shall be a party;
- (3) certified copies of the board minutes of the Guarantor approving the execution of the Parent Company Guarantee, the Transfer Option Parent Company Guarantee and any other agreement to which it shall be a party;
- (4) certified copy extracts of the board minutes of each of the Key Subcontractors approving the execution of all Key Subcontracts, Key Subcontract Collateral Warranties and any other agreement to which each Key Subcontractor shall be a party;
- (5) certified copies of the board minutes of the Guarantor and the Parent Company acknowledging that:
 - (a) all MOD SCIP Information is and shall always remain the property of the Authority and under the Authority's control and direction and is made available to and used by the DP and SupplyCo on that basis and strictly in accordance with the terms of this Agreement;
 - (b) the Guarantor and the Parent Company have no entitlement to access, retain, have or have control over the MOD SCIP Information and therefore cannot and will not direct or require the disclosure of MOD SCIP Information by the DP or SupplyCo; and
 - (c) only financial information and performance data from the MOD SCIP Information, which is accredited as either BIL2 or BIL1, which relates to the performance of this Agreement, and which a Relevant Entity properly requires (an) individual(s) to have on a need to know basis to monitor and/or maintain compliance with obligations to the Authority and/or fund the DP and SupplyCo, may be transferred from the DP or SupplyCo to a Relevant Entity, and no other Information may be so transferred at any time;
- (6) an irrevocable undertaking from each of the Guarantor and SupplyCo in favour of the Authority, stating that each of the Guarantor and SupplyCo undertakes to the Authority to comply with the provisions of paragraph 13 of schedule 30 (*Security*) in relation to itself and any entity which from time to time it Controls;

- (7) the Parent Company Guarantee duly executed by the Guarantor;
 - (8) a certified copy of a current delegation of financial transactions authority from the Guarantor showing that the signatory of the Parent Company Guarantee and the Transfer Option Parent Company Guarantee is authorised to guarantee the obligations of the DP and SupplyCo;
 - (9) a written legal opinion on the Parent Company Guarantee and the Transfer Option Parent Company Guarantee from an external legal adviser qualified to practise in the jurisdiction in which the Guarantor is established and has its head office, in form and substance satisfactory to the Authority;
 - (10) evidence as required by clause 36 (*Insurance*) of the policies of insurance contemplated by schedule 19 (*Required Insurances*);
 - (11) certified copies of the Key Subcontracts (including the SupplyCo Key Subcontract) with each of the Key Subcontractors referred to in schedule 23 (*Key Subcontractors*) executed by the DP and each relevant Key Subcontractor (including the SupplyCo Key Subcontractor);
 - (12) information to the Authority's satisfaction in respect of Shareholders in the DP as required by clause 25.1(A)(1)-(3);
 - (13) a certified copy of the Reciprocal Loan Agreement, which shall relate to a sterling currency facility and be governed by English law, and which shall be subject to the Authority's approval, and a written legal opinion stating that the Reciprocal Loan Agreement is binding on the lender from an external legal adviser qualified to practise in the jurisdiction in which the lender is established and has its head office, in form and substance satisfactory to the Authority;
 - (14) certified copies of a confidentiality undertaking from each Key Subcontractor in the form set out in schedule 28 (*Confidentiality Undertakings*);
 - (15) certified copies of the constitutional documents of the DP and SupplyCo under which the DP and SupplyCo are prohibited from disclosing MOD SCIP Information to any individual not engaged in the provision of the Services, any US national other than a Security Cleared US National, any Relevant Entity, the US (or any other foreign government) or any agency thereof at any time without the prior written approval of the Authority;
 - (16) satisfactory evidence that the Escrow Accounts required pursuant to schedule 38 (*Escrow Accounts Arrangements*) have been established in the name of the DP and SupplyCo at the Designated Branch, copies of the bank mandates, lists of authorised signatories and related account opening documents; and
 - (17) or deposit as otherwise directed by the Authority of any bearer instrument, share certificate or other document of title or evidence of ownership in relation to or representing its Shares (as defined in the DP Security Agreement) further to paragraph 7.1(B) of the DP Security Agreement;
- (B) execution by all relevant parties and receipt by the Authority of duly executed counterparts of:
- (1) the Transfer Option Agreement;

- (2) the Transitional Services Agreement;
 - (3) the DP Security Agreement;
 - (4) the SupplyCo Security Agreement;
 - (5) the Parent Company Guarantee;
 - (6) the Transfer Option Parent Company Guarantee;
 - (7) all Key Subcontractor Collateral Warranties required to be procured by the DP further to clause 14.2; and
 - (8) the Development Agreement for Lease; and
- (C) agreement and finalisation between the DP and the Authority to the Authority's satisfaction of, and in respect of items (2) – (7) below receipt by the Authority of:
- (1) the Managing Agent Terms;
 - (2) the Service Delivery Plan referred to in schedule 4 (*Service Delivery Plan*);
 - (3) the structure and format of the DP Financial Model and ROADB to be effective from 1 April 2016 and which shall thereafter apply for the remainder of this Agreement including;
 - (a) the Work Breakdown Structure Report (WBS Report) as described in paragraph 2 (*The Work Breakdown Structure Report*) of appendix 1 (*Specified MI*) to schedule 11 (*Specified MI*);
 - (b) a financial reporting hierarchy that provides the format and structure of the data hierarchy required to meet the reporting and transparency requirements set out in this Agreement;
 - (4) sample transactional data sets from DP and the Key Subcontractors which shall provide examples of the transactional level detail that is available from the Key Subcontractor accounting systems;
 - (5) the completion and submission of a work package list inclusive of value by work package in respect of the first Contract Year;
 - (6) the completion and submission of a control account list inclusive of value by work package in respect of the first Contract Year; and
 - (7) the DP Financial Model and ROADB for the first Contract Year to be effective from the Effective Date until 31 March 2016.
- 4.2 When this Agreement has been duly executed by both Parties and all of the Conditions Precedent have been satisfied (or at the Authority's sole discretion waived) it shall become unconditional and effective.
- 4.3 When all of the Conditions Precedent have been satisfied (or waived), the Authority shall notify the DP in writing of such and confirm that the Effective Date has occurred.

- 4.4 If the Conditions Precedent have not been satisfied or waived by the Long Stop Date the Authority may, at its sole discretion, elect to extend the Long Stop Date. If the Authority has not so elected and the Conditions Precedent have not been satisfied or waived by the Long Stop Date, this Agreement shall not enter into effect and neither Party shall have any obligations, rights or liabilities to the other in respect of it and no payment will be due by either Party to the other by way of compensation provided that the relevant provisions of clause 73 (*Continuing Obligations*) shall continue to apply.

5. **Term**

- 5.1 Subject to clause 5.2, this Agreement shall commence on the Effective Date and, subject to the provisions for earlier termination set out in this Agreement, shall continue from the Effective Date until the Termination Date, unless extended in accordance with clause 5.3.

- 5.2 Notwithstanding clause 5.1 above, the provisions of the following shall come into effect on the date of this Agreement to govern the Parties' activities in relation to fulfilling the Conditions Precedent in accordance with clause 4 (*Conditions Precedent*) and carrying out any due diligence and compliance with employee consultation obligations including consultation under the Transfer Regulations:

(A) clauses 1 (*Definitions*), 2 (*Interpretation*), 3 (*Precedence of Documents*), 4 (*Conditions Precedent*), 5.2 (*Term*), 24 (*Dispute Resolution*), 51 (*Confidentiality*), 52 (*Freedom of Information*), 78.3(A), 78.3(E), 78.3(F), 78.3(G), 78.3(I), 78.3(P) and 78.3(Q) (*DP Representations and Warranties*), 81.1 to 81.7 inclusive (*Liability*), 84 (*Assignment*), 86 (*Public Relations and Publicity*), 88 (*Notices*), 98 (*Entire Agreement*), 101 (*Severability*), 102 (*Third Party Rights*), 103 (*Counterparts*) and 104 (*Governing Law and Jurisdiction*).

(B) schedules 1 (*Definitions*) and 26 (*Dispute Resolution*).

- 5.3 The Authority may at its sole option extend the Term beyond the thirteenth (13th) Anniversary Date for a period of up to two (2) years by service on the DP of a notice on or prior to the eleventh (11th) Anniversary Date, either in respect of all or part of the Services.

- 5.4 Any extension of the Term shall be on the terms of this Agreement.

- 5.5 The DP shall comply with its obligations set out in schedule 17 (*Exit Management*).

6. **Due Diligence**

- 6.1 The DP acknowledges and agrees that the Authority has delivered or made available the Disclosed Data and that the DP has:

- (A) satisfied itself of all details relating to the nature of the Service Requirements;
- (B) satisfied itself as to the assets to which it will acquire rights and the nature and extent of the risks assumed by it under this Agreement;
- (C) been supplied with sufficient information and satisfied itself about all relevant aspects of the defence support chain;
- (D) gathered all information necessary regarding Legacy Contracts (including any licences, support and other agreements relating to the defence support chain) which may be novated to, assigned to or managed by the DP under this Agreement;

- (E) gathered all information necessary to perform its obligations under this Agreement and other obligations assumed, including:
- (1) information as to the nature, location and condition of all relevant land (including hydrological, geological, geo-technical and sub-surface conditions);
 - (2) information relating to all relevant archaeological finds, areas of archaeological, scientific or natural interest;
 - (3) information relating to local conditions and facilities and the quality of existing structures;
 - (4) obtained all surveys, information and any and all data and any supporting documentation necessary for carrying out its obligations under this Agreement; and
 - (5) raised all relevant due diligence questions with the Authority before the date of this Agreement.
- 6.2 The Authority shall not be liable for any costs arising from the DP's failure to perform its obligations under this clause 6 or from any actual or perceived lack by the DP of information or knowledge.
- 6.3 The DP 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 on grounds that any information, whether obtained from the Authority or otherwise (including information made available by the Authority), is incorrect or insufficient.
- 6.4 The DP acknowledges, represents and warrants that:
- (A) the Authority has relied upon the DP's expertise and professionalism in the carrying out of all due diligence activities in relation to this Agreement including the requesting of and verification of all Disclosed Data; and
 - (B) the Disclosed Data, together with the DP's own expertise and knowledge of the Authority's operations, are sufficient to enable the DP to satisfy itself:
 - (1) as to the scope and nature of the Services to be provided; and
 - (2) that it is able to perform its obligations under this Agreement.
- 6.5 The DP shall not be entitled to any additional payment nor be excused from any liability under this Agreement and has no right to make a Claim against the Authority as a result of:
- (A) the DP misinterpreting any matter or fact relating to the Service Requirements, or the functions, facilities, condition or capabilities of the defence support chain or the Contract Support Items; or
 - (B) the DP having failed to review the Disclosed Data or any documents referred to in the Disclosed Data.

- 6.6 Subject to clause 6.7, no warranty, representation or undertaking (whether express or implied) is given by the Authority as to the relevance, accuracy, completeness, adequacy or fitness for purpose of any Disclosed Data or that such information constitutes all of the information relevant or material to the Service Requirements and the Services. The DP represents and agrees that it has placed and will place no reliance on the Disclosed Data and that it has made its own enquiries to satisfy itself as to the accuracy, adequacy and completeness of the Disclosed Data supplied to it in connection with this Agreement. Accordingly, the DP shall not be relieved from any obligation under this Agreement in connection with:
- (A) the supply and the content of any Disclosed Data; and
 - (B) any representations or statements made in respect of any Disclosed Data, and all liability on the part of the Authority in connection with the matters set out at clauses 6.5(A) and 6.5(B) is excluded to the extent permitted by Law.
- 6.7 Nothing in this clause 6 shall exclude any liability which the Authority or any of its agents or employees would otherwise have to the DP in respect of any statements made fraudulently or fraudulent omissions to make statements prior to the Effective Date.
- 6.8 The DP acknowledges that any risk assessment which has been, or may be, undertaken in connection with this Agreement has been, or will be, a project management function only. Such risk assessment does not affect the legal relationship between the Parties. The issuing of any risk assessment questionnaire and the process of risk assessment generally including the identification of (or failure to identify):
- (A) particular risks and their impact; or
 - (B) risk reduction measures, contingency plans and remedial actions,
- shall not in any way limit or exclude the DP's obligations under this Agreement and shall be entirely without prejudice to the Authority's rights, privileges and powers under this Agreement. The risks identified as a result of any risk assessment questionnaire and risk assessment process remain the risks of the DP and are not assumed by the Authority except to the extent that the Authority expressly and unequivocally accepts those risks under the Agreement.

PART 3: THE SERVICES

7. **Provision of the Services**

- 7.1 The DP shall perform all its obligations under this Agreement and provide the Services to the Authority with effect from the Planned Services Commencement Date in accordance with the terms and conditions of this Agreement. The DP undertakes to the Authority that it shall ensure that at all times the Services are provided, and all of the DP obligations hereunder are performed:
- (A) so as to satisfy the Statement of Requirements as set out in schedule 2 (*Statement of Requirements*);
 - (B) in accordance and in compliance with:
 - (1) the Service Delivery Plan;
 - (2) Law;
 - (3) Good Industry Practice;
 - (4) all Relevant Consents; and
 - (5) the Codes and Standards;
 - (C) in an economic, efficient, effective and resource and energy efficient manner;
 - (D) in a manner that is safe and not injurious to health and does not create safety hazards and that does not cause a nuisance or damage to property or harm to the Environment;
 - (E) so as not to detract from or damage the image and reputation of the Authority;
 - (F) so as not to impede the Authority in carrying out its functions or increase the cost to the Authority of carrying out its functions including so as to accommodate the operations and activities of the Authority; and
 - (G) in accordance with all reasonable directions given to the DP by the Authority during the Term provided that those directions are not inconsistent with this Agreement.
- 7.2 The DP shall at all times act in good faith towards and co-operate fully with the Authority, its agents, representatives, contractors (including Legacy Contractors) and utility providers and with other Government bodies and departments.
- 7.3 If the DP fails to provide the Services or otherwise comply with its obligations in accordance with this Agreement, the Authority may, in addition to its other rights, require the DP to re-perform the relevant Services or obligations at the DP's own cost.
- 7.4 Compliance with the Service Delivery Plan shall not relieve the DP of its responsibility for ensuring compliance with any of its obligations under this Agreement including schedule 2 (*Statement of Requirements*).
- 7.5 The DP shall not use any Project Assets or any of the Authority Sites to provide storage, distribution or procurement or other services for any Third Party other than as expressly set out in this Agreement.

- 7.6 To the extent a Service Performance Standard is not specified in respect of a particular Service, that Service shall be provided to a standard that is consistent with Good Industry Practice.
- 7.7 The DP shall continuously review the Codes and Standards during the life of this Agreement and notify the Authority if the DP identifies that the applicability of a provision of any of the Codes and Standards is inconsistent with, or conflicts with, industry best practice. Any proposed change to the applicability of any of the Codes and Standards shall be brought by the DP to the next PFWG Weekly Meeting convened pursuant to schedule 12 (*Governance*) for consideration by the Authority.
- 7.8 In the event of any inconsistency between any of the Codes and Standards or between any of the Codes and Standards and the processes and procedures set out in the Service Delivery Plan, the DP shall notify the Authority Representative of such inconsistency immediately upon becoming aware of the same, and the Authority Representative shall, as soon as reasonably practicable, advise the DP which specific code or standard (or part thereof) and/or process and procedure (or part thereof) of the Service Delivery Plan the DP is required to comply with.

8. Compliance with Law and Relevant Consents

- 8.1 The DP shall perform its obligations under this Agreement (and shall procure that SupplyCo and any other Subcontractors so perform their respective obligations) and shall ensure that all operations or activities carried out by the DP, SupplyCo and the Subcontractors and DP Personnel in connection with this Agreement comply at all times with:

- (A) all Law in force from time to time, whether local, national or supranational, and in particular (without limitation) the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982;
- (B) the International Traffic in Arms Regulations (or any similar US Government law or regulation);
- (C) all applicable industry codes of good conduct; and
- (D) any instructions of any relevant regulatory body or organisation whether or not having the force of law (including those relating to health and safety at work, public safety and environmental matters),

so as to ensure that the Authority is not at any time through any action or inaction of the DP, SupplyCo or any DP Related Party placed in breach of any Law or its contractual obligations towards third parties.

- 8.2 Subject to clause 8.4, the DP shall, in its name (or, where necessary, in the name of SupplyCo or any other relevant Subcontractor), apply for, obtain, maintain and renew and shall adhere to the applicable conditions of all Relevant Consents and ensure that it obtains all such Relevant Consents before carrying out any activities for which they are required, and that it maintains these for as long as they are required for the purposes of this Agreement.
- 8.3 The DP shall immediately notify the Authority if it becomes aware of any allegation of non-compliance with any Law or Relevant Consent from time to time by itself or SupplyCo or any other Subcontractor in relation to this Agreement.

- 8.4 Save as agreed otherwise pursuant to schedule 33 (*Assets*) and clause 47.2 (*Licences Granted by the Authority*), the Authority shall apply for, obtain, maintain and renew all Relevant Consents that, as a matter of law, only the Authority, and not the DP, is eligible to obtain and the DP is not able to obtain and shall adhere to the applicable conditions of all such Relevant Consents.
- 8.5 The DP shall promptly provide the Authority with such information relating to any Relevant Consent applied for or obtained as the Authority may require from time to time.
- 8.6 Where the period of a Relevant Consent would extend beyond the termination or expiry of this Agreement the DP shall, before applying for and throughout the process of obtaining such Relevant Consent, consult with the Authority about the terms of such Relevant Consent and use reasonable endeavours to ensure that, to the extent the terms would apply after the termination or expiry of this Agreement, they do not adversely affect any interest of the Authority.
- 8.7 The Authority shall be entitled at its cost to appeal against or object to the terms of any Relevant Consent sought or obtained by the DP if the Authority, acting reasonably, considers that such Relevant Consent, or the terms on which such consent is sought, is not required for the provision of the Services or the discharge of the DP's obligations pursuant to this Agreement.
- 8.8 Without prejudice to clauses 8.4, 8.7 and 35 (*Overseas Expenditure, Import and Export Licences*), the Authority shall (on request) use its reasonable endeavours to assist the DP in obtaining, renewing or extending the Relevant Consents pursuant to clause 8.2 and the DP shall use its reasonable endeavours to assist the Authority in obtaining, renewing or extending the Relevant Consents pursuant to clause 8.4.
- 8.9 Without prejudice to clause 8.1, the DP shall ensure that it, SupplyCo and any other Subcontractors shall:
- (A) comply with all applicable Law relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("Relevant Requirements");
 - (B) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct were carried out in the UK;
 - (C) comply with the Authority policy on fraud, theft, bribery, corruption, irregularity and waste referred to in schedule 3 (*Codes and Standards*) as the Authority may update it from time to time ("Relevant Policy");
 - (D) have and shall maintain in place throughout the term of this agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policy and clause 8.9(A), and will enforce them where appropriate;
 - (E) promptly report to the Authority any request or demand for any undue financial or other advantage of any kind received by the DP, SupplyCo or any other Subcontractor in connection with the performance of this Agreement of which the DP is, or ought reasonably to be, aware;
 - (F) immediately notify the Authority in writing if a foreign public official becomes an officer or employee of the DP or SupplyCo or acquires a direct or indirect interest in the DP or SupplyCo, and the DP warrants that it and SupplyCo have no foreign public officials as officers, employees or direct or indirect owners at the date of this Agreement; and

- (G) on 31 March annually, certify to the Authority in writing signed by an officer of the DP compliance with this clause 8 by the DP and all persons associated with it under clause 8.10. The DP shall provide such supporting evidence of compliance as the Authority may reasonably request.
- 8.10 The DP shall ensure that any DP Related Party who is performing services or supplying goods in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the DP in this clause 8 ("Relevant Terms"). The DP shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Authority for any breach by such persons of any of the Relevant Terms.
- 8.11 For the purpose of this clause 8, the meaning of "adequate procedures" and "foreign public official" and whether a person is associated with another person shall be determined in accordance with section 7 of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively.
- 8.12 For the avoidance of doubt, breach by the DP, SupplyCo or any other Subcontractors of any of the provisions under clause 8.9, shall be considered a Prohibited Act for which the Authority shall be entitled to terminate this Agreement or any relevant specified part or parts of the Services in accordance with clause 69 (*Termination for Prohibited Acts*).
9. **Service Delivery Plan**
- 9.1 The DP shall perform its obligations under, observe all the provisions of and comply with all the requirements of the Service Delivery Plan, and shall not amend or seek to terminate the Service Delivery Plan save in accordance with this clause 9.
- 9.2 The DP may propose amendments to the Service Delivery Plan for approval by the Authority at the PFWG Monthly Meetings, provided that such amendments if implemented do not:
- (A) result in any cost to the Authority;
 - (B) affect any risk or liability of the Authority (including any liability for Project Assets); or
 - (C) affect the liability of the DP to provide the Services in accordance with the Statement of Requirements or to perform its obligations under this Agreement.
- 9.3 The DP shall ensure that any amendment to the Service Delivery Plan or any part of the Service Delivery Plan agreed by the Authority in accordance with schedule 12 (*Governance*) or schedule 25 (*Change Procedure*) and this clause 9 is reflected in an updated Service Delivery Plan within twenty (20) Business Days of being agreed.
- 9.4 On 31 March in each Contract Year the DP shall provide the Authority with:
- (A) one hard and one soft copy of the updated Service Delivery Plan reflecting any changes which have been agreed in accordance with this clause 9, schedule 12 (*Governance*) and schedule 25 (*Change Procedure*); and
 - (B) a certificate in writing confirming that all agreed amendments to the Service Delivery Plan have been incorporated into the updated version.

9.5 The Authority may carry out a review to check that all agreed amendments have been incorporated in the updated Service Delivery Plan.

9.6 Configuration Control

(A) The DP shall be responsible at all times for maintaining full version control of the Service Delivery Plan and any documents referred to or required to be provided under the Service Delivery Plan and/or this Agreement (including the other schedules to this Agreement).

(B) Where any amendment is made in accordance with this Agreement to the Service Delivery Plan, including those made in accordance with schedule 25 (*Change Procedure*), the DP shall:

(1) produce a revised version of the Service Delivery Plan (the "Revised Service Delivery Plan") incorporating such amendment with the next sequential issue number marked on each page, together with a cover page clearly marked with the issue number and date of issue and a record of changes from the preceding version;

(2) promptly deliver to the Authority one soft copy of the Revised Service Delivery Plan; and

(3) ensure that the Revised Service Delivery Plan is thereafter used by both the Authority and the DP unless and until it is amended again in accordance with this Agreement.

9.7 When a Revised Service Delivery Plan has been delivered to the Authority in accordance with clause 9.6(B), it shall supersede any previous versions and shall constitute the definitive version of the Service Delivery Plan for all purposes unless and until further revised copies are delivered to the Authority in accordance with clause 9.6(B).

9.8 Save as expressly provided for in this Agreement, neither the DP nor the Authority shall be entitled to amend the Service Delivery Plan.

10. Access to Authority Sites in the Provision of the Services

10.1 Where the DP or any DP Related Party has access to any Authority Site (which for the purpose of this clause 10 excludes any Authority Lease or Licence Property) for the carrying out of any of the Services, the DP shall and shall ensure that any DP Related Party shall:

(A) not cause any damage to such Authority Sites;

(B) not cause or permit any discharge, release, spillage, leakage, escape, deposit or disposal of any Hazardous Substances at, in, on, or under any Authority Sites (other than in full compliance with EHS Law) and the DP shall indemnify the Authority in respect of any breach of this obligation;

(C) comply with paragraph 2.3 of schedule 36 (*Environment, Health and Safety*) to the fullest extent possible in relation to its use of the Authority Sites;

(D) not do or permit to be done on the Authority Sites anything which is illegal or which may be or become a nuisance (whether actionable or not) or cause damage or disturbance to the Authority or to any tenants or occupiers of the Authority Sites or any owner or occupier of any neighbouring property;

- (E) not knowingly do anything that will or might constitute a breach of any Relevant Consent affecting the Authority Sites that have been disclosed to the DP or which will or might vitiate in whole or in part any insurance effected by the Authority in respect of the Authority Sites from time to time of which the DP has notice;
- (F) observe any rules and regulations the Authority acting reasonably makes in the interests of good estate management and notifies to the DP from time to time in writing governing the DP's use of the Authority Sites and in particular:
 - (1) the lawful requirements and recommendations of the Authority's local fire officer and the Authority's health & safety representative in respect of the Authority Sites or their use; and
 - (2) all regulations (including military by-laws) and Government establishment regulations, standing orders, any traffic regulations and any other regulations made by the Authority;
- (G) in relation to any overseas establishments or facilities, comply with requirements of applicable local laws; and
- (H) subject to clause 42 (*Assets*) and schedule 33 (*Assets*), to make good any damage that is wilfully or negligently caused by the DP or any DP Related Party to any equipment in the Authority Sites as soon as reasonably practicable.

11. **Ethical Procurement Policy**

The DP shall comply with the Ethical Procurement Policy as set out in the Corporate Social Responsibility section of the Service Delivery Plan.

12. **Non-exclusivity**

12.1 As regards the Authority, this Agreement is not exclusive and the Authority may:

- (A) itself perform any services similar or analogous to any part of or all of the Services; or
- (B) contract with any third party to perform any services similar or analogous to any part of or all of the Services.

12.2 In the event that the Authority contracts with any third party to perform any services similar or analogous to any part or all of the Services, the DP shall provide such information and assistance and within such timescales as the Authority may reasonably request in connection with such procurement.

12.3 Without prejudice to clause 12.1, the Authority acknowledges that it is the intention of this Agreement that, other than in unusual or exceptional circumstances (including where the Authority considers it appropriate to avail itself of its rights under clause 12.1 for reasons of national security or the integrity or continuity of the defence support chain), or where the Authority believes that it provides better value for money to do otherwise, the Services will be provided by the DP.

13. Subcontracting

13.1 In respect of each Key Subcontract (including the SupplyCo Subcontract), the DP shall ensure that each such Key Subcontract (including the SupplyCo Subcontract) includes provisions obliging each Key Subcontractor (including SupplyCo) under such Key Subcontract (including the SupplyCo Subcontract) to comply with the provisions identified in clause 13.3 as though such Key Subcontractor (including SupplyCo) was a party to this Agreement in place of the DP in respect of each such provision.

13.2 In respect of each Subcontract other than those identified in clause 13.1, the DP shall, due to the importance of:

- (A) cost visibility and the Authority's ability to monitor cost, profit and performance throughout the supply chain for the Project;
- (B) the Authority's ability to ensure that it can discharge all of its functions on an ongoing basis; and
- (C) achieving and demonstrating value for money in the provision of the Commodities and the Services,

ensure that each provision identified in clause 13.3, or a provision having equivalent effect, is incorporated into such Subcontract except to the extent that due to:

- (D) the nature of the Subcontract being entered into;
- (E) the identity of the proposed parties under such Subcontract;
- (F) the nature of the Commodities or Services to be procured under such Subcontract;
- (G) custom and practice in the relevant industry;
- (H) the extent to which the relevant Commodities or Services are customarily procured on the basis of standard terms and conditions in the relevant industry; or
- (I) the extent of the procuring entity's ability to require bespoke terms and conditions for such Subcontract,

it is not reasonably practicable to do so or to do so would lead to unreasonable additional cost that would not represent value for money.

13.3 The provisions referred to in clauses 13.1 and 13.2 are:

- (A) clause 16 (*Delivery, vesting and liens*);
- (B) clause 21 (*Monitoring*);
- (C) clause 22 (*Management Information*);
- (D) clause 23 (*Specified MI*);

- (E) clause 25 (*Change of Control and National Interest*), provided that in respect only of any Key Subcontract where the Key Subcontractor is Kuehne + Nagel Limited then the DP shall not be required to include an obligation on the Key Subcontractor to comply with clause 25.1(C) to the extent that the Change of Control is such that the Key Subcontractor remains under the Control of the Kuehne + Nagel International AG;
 - (F) clause 33 (*Auditing*);
 - (G) clause 34 (*Transparency*);
 - (H) clause 35.5 (*Export Licence*);
 - (I) clause 44.6 (*Measures in a Crisis*);
 - (J) clause 45 (*Security*);
 - (K) clause 49 (*Data Protection*);
 - (L) clause 50 (*Authority Data*);
 - (M) clause 51 (*Confidentiality*);
 - (N) schedule 11 (*Specified MI*);
 - (O) schedule 13 (*Audit*); and
 - (P) schedule 30 (*Security*).
- 13.4 To the extent required by paragraph 10 (*Subcontracts*) of schedule 22 (*CONDO*), the DP shall ensure that the terms set out in appendix 1 to schedule 22 (*CONDO*) are incorporated into each Subcontract in accordance with paragraph 10 (*Subcontracts*) of schedule 22 (*CONDO*).
- 13.5 Save where expressly agreed otherwise by the Authority in writing, the DP shall ensure that the SupplyCo Subcontract and each other Subcontract includes provisions obliging:
- (A) SupplyCo or any other Subcontractor to immediately notify the DP if it becomes aware of any allegation of non-compliance with any Law under the SupplyCo Subcontract or any other relevant Subcontract or otherwise in relation to this Agreement; and
 - (B) the DP to pay any undisputed sums due to SupplyCo or any other relevant Subcontractor (or procure that they are paid) within a specified period that does not exceed thirty (30) days from the date SupplyCo's or the Subcontractor's invoice becomes payable.
- 13.6 The DP shall ensure that the terms and conditions of each Subcontract are such that:
- (A) where the Authority exercises the Transfer Option:
 - (1) any services provided to SupplyCo can be disaggregated from any services provided to the DP, so that after the SupplyCo Handover, SupplyCo will continue to be provided with the same services by the Subcontractor on the same terms and conditions as before;

- (2) no Subcontractor has any claim against SupplyCo, the Authority or a Replacement Contractor for any loss or additional costs or expenses resulting from:
- (a) any act or omission of the Subcontractor (other than SupplyCo) under or in connection with the Subcontractor's Subcontract; or
 - (b) the termination of the SupplyCo Subcontract or the SupplyCo Handover; and
- (3) no Subcontractor has any right to terminate a Subcontract as a result of:
- (a) any act or omission of the Subcontractor (other than SupplyCo) under or in connection with the Subcontractor's Subcontract; or
 - (b) the termination of the SupplyCo Subcontract or the SupplyCo Handover; and
- (B) no right to any claim, relief from obligations or to terminate any Subcontract of SupplyCo arises due to any failure to perform by the DP under any of its Subcontracts.
- 13.7 The Authority shall have the right to require the DP to terminate, or procure the termination of, the SupplyCo Subcontract or any other Subcontract:
- (A) for reasons of security and/or national security, including in connection with any failure by the DP to perform its obligations under clause 45 (*Security*) or schedule 30 (*Security*);
 - (B) where the acts or omissions of SupplyCo or any other Subcontractor would, if they were acts or omissions of the DP, entitle the Authority to terminate this Agreement;
 - (C) where there has been any fraud by SupplyCo or such other Subcontractor; or
 - (D) where the conduct of SupplyCo or such other Subcontractor exposes, or is reasonably likely to expose, the Authority to any material Claim,
- however, in doing so, the Authority shall provide thirty (30) days written notice to the DP of a required termination of a Subcontract under this clause 13.7 and the Parties shall work together in good faith to agree on a transition plan that minimises the impact on the provision of the Services.
- 13.8 The Authority shall have no obligation to make any termination or compensation payment in respect of any termination pursuant to clause 13.7, except in respect of termination further to clause 13.7(A) (in circumstances where the termination of the SupplyCo Subcontract or any Subcontract is not as a result of the DP's compliance with, or failure to comply with, its obligations under clause 45 (*Security*) or schedule 30 (*Security*)) in which case it shall pay Subcontractor Breakage Costs to the DP and such payment shall be made in accordance with clause 29 (*Payment*).
- 13.9 The DP shall remain responsible for the provision of all of the Services in accordance with the terms of this Agreement, and all acts and omissions of SupplyCo and any other Subcontractors and the acts and omissions of those employed or engaged by SupplyCo and any other Subcontractors as if they were its own, and shall not be entitled to claim any relief from its obligations under this Agreement on the grounds of any failure of performance by SupplyCo or any other Subcontractor, or any Subcontract expiring,

being terminated or ceasing to be in full force and effect for any reason, save as expressly provided in this Agreement. No term in the SupplyCo Subcontract or any other Subcontract or the absence of any SupplyCo or other Subcontract arrangement shall prevent or restrict the operation of any term set out in this Agreement.

- 13.10 The Authority may at any time request the DP to provide it with a copy of any Subcontract or proposed Subcontract, including the SupplyCo Subcontract and any Commodity Supply Contract or proposed Commodity Supply Contract, and the DP shall promptly comply with any such request.
- 13.11 The DP shall ensure that all such notices, directions, requirements and decisions are given or made as may be necessary to bring the provisions relating to secrecy and security which are included in Subcontracts under clause 13.1 into operation in such cases and to such extent as the Authority may direct.
- 13.12 The DP shall ensure that in awarding any Subcontract it shall, at all times, use reasonable endeavours to comply with the Government's policy to enable twenty-five per-cent (25%) participation of small and medium-sized enterprises ("SMEs") subject always to clause 32 (*Value for Money*) and paragraph 7 (*Commodity Supply Contracts*) of schedule 39 (*Further DP Obligations in respect of SupplyCo*).
- 13.13 The DP shall give the Authority such information and particulars as the Authority may from time to time require for the purposes of satisfying the Authority that the obligations imposed by or under the provisions of clause 13.1 have been and are being observed and as to what the DP has done or is doing or proposes to do to secure the observance of those obligations and to prevent any breach thereof.
- 13.14 Nothing in this clause 13 shall be construed as intended to prevent any person from giving any information or doing anything on any occasion when it is, by virtue of any Law, the duty of that person to give that information or do that thing.

14. **Key Subcontracts**

The provisions of this clause 14 shall apply to the SupplyCo Subcontract and any other Key Subcontracts in addition to the provisions of clause 13 (*Subcontracting*).

14.1 **Key Subcontracting process**

- (A) The DP shall obtain the Authority's prior written approval of any Key Subcontractor (including SupplyCo) and the SupplyCo Subcontract and any other Key Subcontract, in respect of which the Authority may attach such conditions to its approval as it considers appropriate, provided that it shall be deemed to be a condition of all such approvals that a Key Subcontractor Collateral Warranty is executed and provided to the Authority in accordance with clause 14.2.
- (B) By entering into this Agreement, the Authority approves SupplyCo and any other Key Subcontractors set out in schedule 23 (*Key Subcontractors*).
- (C) If the DP or SupplyCo wishes to replace an existing or add a new Key Subcontractor, the DP shall submit to the Authority a notice containing:
- (1) the name and address of the proposed Key Subcontractor;
 - (2) the purpose for which the proposed Key Subcontractor will be employed, including the scope of any services to be provided by the proposed Key Subcontractor;

- (3) details of the Key Subcontract services, works or goods;
 - (4) confirmation and sufficient supporting documentary evidence that the proposed Key Subcontractor:
 - (a) has the required security clearances; and
 - (b) has the technical competence and financial robustness to provide its proposed services and bear its proposed liabilities;
 - (5) whether or not such proposed Key Subcontractor intends to further Subcontract the work;
 - (6) a copy of such proposed Key Subcontract;
 - (7) evidence that such proposed Key Subcontract represents value for money for the Authority; and
 - (8) such other information and assistance regarding the proposed Key Subcontractor as the Authority may reasonably require (which may include details of any proposed Subcontracts of the Key Subcontractor).
- (D) The Authority shall approve or reject a proposed Key Subcontractor (including SupplyCo) or Key Subcontract (including the SupplyCo Subcontract) within thirty (30) days of the later of receipt of the details and items further to clause 14.1(C) and receipt of all other information requested further to clause 14.1(C)(8)). If the Authority does not respond within that time period, then for the purposes of clause 14.1(A), it shall be deemed to have approved the proposed SupplyCo Subcontract or other Key Subcontract and SupplyCo or other relevant proposed Key Subcontractor.
- (E) The Authority may reject a proposed Key Subcontractor (including SupplyCo) or Key Subcontract (including the SupplyCo Subcontract) where it considers that it has grounds to do so, which grounds shall include:
- (1) failure to demonstrate to the Authority's reasonable satisfaction that the Key Subcontract represents value for money for the Authority;
 - (2) considerations of security and/or national security;
 - (3) the extent to which SupplyCo or the proposed Key Subcontractor has the required technical competence or financial robustness to perform its obligations under the SupplyCo Subcontract or proposed Key Subcontract;
 - (4) risk of adverse effect on the reputation or good-standing of the Authority;
 - (5) the extent to which SupplyCo or other proposed Key Subcontractor will contract on the basis of the provisions the Authority requires to be included in the SupplyCo Subcontract or other Key Subcontract; and
 - (6) if the Authority believes there is a conflict of interest.

- (F) The DP shall, in respect of any Key Subcontract other than the SupplyCo Subcontract (which is dealt with in accordance with schedule 39 (*Further DP Obligations in respect of SupplyCo*)), not amend any Key Subcontract terms required under clauses 13 (*Subcontracting*), 14.6 or 14.7, or make any other material change to any term of any Key Subcontract or any change which may have a material effect on the provision of the Services, without the Authority's prior written consent. The DP shall notify the Authority of any proposed amendment and shall promptly provide such additional information as the Authority may reasonably request. The Authority shall either approve, or decline to approve, the proposed amendments within twenty (20) days of receipt of the proposed amendment and any other requested information. The Authority may attach such conditions to its approval as it considers appropriate.
- (G) The Authority may from time to time request such other information in relation to a Key Subcontractor (including SupplyCo) or a Key Subcontract (including the SupplyCo Subcontract) as it may reasonably require.
- 14.2 The DP shall procure that SupplyCo and each other Key Subcontractor executes a Key Subcontractor Collateral Warranty in favour of the Authority simultaneously on execution of the relevant Key Subcontract or SupplyCo Subcontract. Any costs of a Key Subcontractor shall not be Service Costs Incurred unless and until the Authority has been provided with the Key Subcontractor Collateral Warranty in the form set out at schedule 24 (*Key Subcontractor Collateral Warranty*) duly executed.
- 14.3 The DP shall promptly notify the Authority if at any time there is any material change in relation to a Key Subcontractor (including SupplyCo) or a Key Subcontract (including the SupplyCo Subcontract) which might be capable of affecting the Authority's approval, including any Change of Control of SupplyCo or any other Key Subcontractor, and in such circumstances the DP shall provide the Authority with updated details of the information which has been provided pursuant to clauses 14.1(C). The Authority may from time to time request confirmation that no such material change has occurred and the DP shall promptly either confirm that such material change:
- (A) has not occurred; or
- (B) has occurred and provide details of the relevant amendments referred to above.
- Where there has been such material change the Authority may, within thirty (30) days of receiving notice of the material change from the DP, withdraw its approval of SupplyCo or any other Key Subcontractor at any time.
- 14.4 The DP shall give the Authority such information and particulars as the Authority may from time to time require for the purposes of satisfying the Authority that the obligations imposed by or under the provisions of this clause 14 have been and are being observed and as to what the DP has done or is doing or proposes to do to secure the observance of those obligations and to prevent any breach thereof.
- 14.5 The Authority may at any time by written notice to the DP specify that a Subcontractor and a Subcontract shall as from the date stated in such notice be a Key Subcontractor and a Key Subcontract respectively and from such date the provisions of this Agreement applicable to Key Subcontractors and Key Subcontracts shall apply to such Subcontractor and Subcontract except to the extent that the Authority otherwise agrees in writing.