



**PROJECT CONTRACT IN RESPECT OF THE FUTURE MARITIME SUPPORT PROGRAMME
(FMSP) – FMSP/0010 Soft Facilities Management at Portsmouth Naval Base**

Dated

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

Sodexo Limited
(Contractor)

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**Future Maritime Support Programme Contract
relating to the provision of services by the Contractor in relation to Soft Facilities Management
at Portsmouth Naval Base**

Dated:

Between:

- (1) The Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland (the **Authority**); and
- (2) Sodexo Limited (Company No 00842846) whose registered office is at One, Southampton Row, London, WC1B 5HA (the **Contractor**).

Background:

- A The Authority requires the delivery of services in relation to Soft Facilities Management at Portsmouth Naval Base for the duration of this Contract.
- B The Contractor has agreed to provide the Soft Facilities Management at Portsmouth Naval Base in accordance with the terms and conditions set out in this Contract.

It is agreed:

Part 1 – Mechanics

1 Definitions and interpretation

1.1 Definitions

In this Contract, capitalised words and expressions shall have the meaning given to them in Schedule 1 (*Definitions*), except where the context requires a different meaning.

1.2 Interpretation

In this Contract the following rules of interpretation shall apply unless otherwise stated.

1.2.1 **Accounting terms:** Accounting terms shall be construed so as to be consistent with generally accepted accounting principles.

1.2.2 A document **in agreed form** is a document which is agreed in writing by or on behalf of the Authority and the Contractor.

1.2.3 **Authority responsibility:** The Authority shall be responsible for the acts, omissions, defaults or negligence of its directors, officers, employees and agents (other than the Contractor) in respect of its obligations under this Contract as fully as if they were acts, omissions, defaults or negligence of itself.

1.2.4 **Clause, Part, Paragraph, Appendix, Annex, Schedule or Recital:** References to any Clause, Part, Paragraph, Appendix, Annex, Schedule or Recital are to those contained in this Contract. All the Schedules, Appendices, Parts, Paragraphs and Annexes are integral parts of this Contract.

1.2.5 **Contractor responsibility:** The Contractor shall be responsible for the acts, omissions, defaults or negligence of its (and its Sub-Contractors') directors, officers, employees and agents in respect of its obligations under this Contract as fully as if they were acts, omissions, defaults or negligence of itself.

1.2.6 **CPA:** The terms of this Contract shall supersede the terms of the Competition Process Agreement on and from the Effective Date and the Competition Process Agreement is hereby terminated. This does not affect breaches of any obligations under the Competition Process Agreement by the Contractor prior to the Effective Date.

1.2.7 **Dates:** Reference to a date is to the day commencing on such date.

1.2.8 **Expressions not to limit construction:** The words "other" and "otherwise" shall not be construed as being limited by any foregoing words where a wider construction is possible. The words "include", "including" and "in particular" shall be construed as being by way of illustration or emphasis and shall not limit or prejudice the generality of any foregoing words.

1.2.9 **Gender:** Reference to any gender includes any other.

1.2.10 **Headings and background:** Headings and the Paragraphs under the heading "Background" are for ease of reference and information only and are to be ignored when interpreting this Contract.

1.2.11 **Inconsistencies:** If:

- (a) the Contractor notifies the Authority Contract Manager; or
- (b) the Authority Contract Manager otherwise discovers,

an ambiguity, error, omission, discrepancy, inconsistency or other fault in, from or between any of the terms of this Contract, the Authority Contract Manager shall issue such direction (including a direction which involves a Change) as may be necessary to resolve or correct that ambiguity, error, omission, discrepancy, inconsistency or other fault. The Authority shall act reasonably in determining whether the Contractor is entitled to any compensation or extension of time for complying with a direction under this Clause 1.2.11.

1.2.12 **Indexed:** Unless expressly specified otherwise, references to amounts expressed to be (**indexed**) are references to such amounts as indexed in accordance with Part 6 (*Indexation Formula*) of Schedule 4 (*Pricing and Payment*).

1.2.13 **Interpretation of BS/EN/ISO 9000:** Subject to Clause 1.2.14, where BS/EN/ISO 9000 or documents in the AQAP 100 series form part of this Contract either by reference in the Clauses or as invoked by such Defence Standards (**DEF STAN**) in the 05-90 series as are called up as part of this Contract the provisions of this Contract shall have effect with such amendments as are required in the given context.

1.2.14 **Living documents:** Unless stated to the contrary, any reference to this Contract or to any other document in this Contract (other than a DEFCON, DEF STAN, DEFFORM, AQAP, JSP or ISO Standard) are references to this Contract or such other document as varied, amended, novated, supplemented or replaced from time to time. Any variation, amendment, novation, supplement or replacement of this Contract or any DEFCON, DEF STAN, DEFFORM, AQAP, JSP or ISO Standard (and the impact on this Contract of any variation, amendment, novation, supplement or replacement of any other such document) shall only be effective as between the Parties if processed in accordance with the Change Procedure.

1.2.15 **Living instruments:** Any reference to any Law shall include a reference to:

- (a) the Law as:
 - (i) amended, extended, consolidated or re-enacted;
 - (ii) supplemented or applied by or pursuant to any other Law before, on or after the Commencement Date

including without limitation pursuant to the European Union (Withdrawal) Act 2018 and any Act of Parliament to implement the UK's exit from the EU, or to make changes to UK law consequent on the same, which amends, replaces, supplements or changes the European Union (Withdrawal) Act 2018 and which becomes law on or about the time of the UK's exit from the EU (a **Second Act**);

- (b) any Law (including without limitation pursuant to the European Union (Withdrawal) Act 2018 and any Second Act) which re-enacts, restates or replaces (in each case with our without modification) that enactment;
- (c) any Law identified as "Retained EU law" for the purposes of the European Union (Withdrawal) Act 2018 and any Second Act; and

- (d) any orders, regulations, codes of practice, instruments or other subordinate legislation made under the relevant Law.

- 1.2.16 **Month:** Any reference to a month is to a calendar month.
- 1.2.17 **No disadvantage:** In the interpretation of this Contract, no rule of contract interpretation applies to the disadvantage of one Party on the basis that it put forward this Contract or any part of it.
- 1.2.18 **Person:** Any reference to a "person" includes any individual, partnership, firm, trust, body corporate, government, governmental body, authority, emanation, agency, instrumentality, unincorporated body of persons or association.
- 1.2.19 **Public organisations:** Any reference to a public organisation or representative shall be deemed to include a reference to any successor to such public organisation or representative or any organisation or entity or representative which has taken over the functions or responsibilities of such public organisation or representative in whole or in part. In respect of the European Union and any other body which, following the UK's departure from the European Union will cease to have jurisdiction in respect of UK law, any equivalent UK counterpart which assumes the jurisdiction of that body or organisation in respect of UK law will continue to have such control for the purposes of this Contract.
- 1.2.20 **References to the Parties:** References to the Parties shall be to the Authority and the Contractor and a reference to a Party shall be to either the Authority or the Contractor (as applicable).
- 1.2.21 **Related words:** Where this Contract defines a word or expression, related words and expressions have a consistent meaning.
- 1.2.22 **Requisite authority:** Any decision, act, or thing which the Authority or the Contractor is required or authorised to take or do under this Contract may be taken or done only by any person authorised in accordance with Schedule 6 (*Governance*) by the Authority or the Contractor to take or do that decision, act, or thing on behalf of the Authority or the Contractor.
- 1.2.23 **Singular and plural:** Any reference to the singular includes the plural and vice versa.
- 1.2.24 **Successors in title and transferees:** Reference to any person, including a Party, includes that person's lawful successors in title and transferees (unless the transfer to the successor in title or transferee was in breach of this Contract), whether pursuant to contract, statute or otherwise.
- 1.2.25 **Third parties:** Any reference to "third parties" or a "third party" shall be construed as a reference to any person who is not a Party.
- 1.2.26 **This Clause:** The expressions **this Clause, this Schedule, this Part, this Paragraph, this Appendix** or **this Annex** unless followed by the number of a specific part of the Clause, Paragraph, Schedule, Appendix or Annex, refers to the whole Clause, Schedule, Part, Paragraph, Appendix or Annex in which it occurs.
- 1.2.27 **Times:** All references to time of day shall be a reference to whatever time of day shall be in force in England, Scotland and Wales. Any reference to day shall, unless otherwise stated, mean the period of time which begins with one midnight and ends with the next. Any

reference to a **quarter** means any three (3) Month period in any Contract Year and **quarterly** shall be construed accordingly.

1.2.28 **Not used.**

1.2.29 **Not used.**

1.2.30 **Procurement:** Any obligation on the Contractor to do any act, matter or thing includes, unless expressly stated otherwise, an obligation to procure that it is done.

1.3 Precedence of documentation

1.3.1 If there is any inconsistency between the provisions of the body of this Contract, the Schedules, any Annexes and any Referenced Document the conflict shall be resolved according to the following descending order of priority:

- (a) the clauses of this Contract and Schedule 1 (*Definitions*);
- (b) the Schedules;
- (c) any Annexes (except for those specified in Paragraphs (a), (b) and (e));
- (d) any Referenced Document; and
- (e) Annex 1 (*Contractor's Solution*) to Schedule 2 (*Requirements*).

1.3.2 The Contractor shall notify the Authority as soon as reasonably practicable on becoming aware of any inconsistency under Clause 1.3.1.

Part 2 – General Provisions

2 Duration

2.1 Provisions with immediate effect

2.1.1 The following provisions shall take effect on the date of this Contract (the **Effective Date**): Clause 1 (*Definitions and Interpretations*), this Clause 2, Clause 3 (*Conditions Precedent*), Clause 4 (*Representations, Warranties and Undertakings*), Clause 24 (*Dispute Resolution*), Clause 28 (*Security*), Clause 37 (*GFA*), Clause 41 (*Liabilities, Indemnities, Insurance and Conduct of Claims*), Part 18 (*Termination*) and Clauses 75 (*Confidentiality and Freedom of Information*) to 92 (*Governing Law and Jurisdiction*) (inclusive).

2.2 Commencement Date and Contract Period

2.2.1 With the exception of the provisions specified in Clause 2.1, this Contract shall not come into effect until the Authority has given Notice to the Contractor that it is satisfied that the Conditions Precedent set out in Clause 3.1 (*Conditions Precedent to Commencement Date*) have been satisfied or it has otherwise determined to waive any or all of such Conditions Precedent (the **Commencement Date**).

2.2.2 Subject to Clause 2.1, this Contract shall commence on the Commencement Date and continue until the Initial Expiry Date (the **Initial Period**) unless extended pursuant to Clause 2.3 or terminated earlier in accordance with its terms (the **Contract Period**).

2.3 Contract Period Extension

2.3.1 The Authority may, in its absolute discretion, extend this Contract beyond the end of the Initial Period by twenty-four (24) months by giving not less than six (6) months' Notice.

2.3.2 Where the Planned Service Delivery Date is delayed:

- (a) in circumstances where the Contractor can demonstrate that the Authority either:
 - (i) failed to promptly deliver a certificate of readiness when it should have done under Clause 3.2; or
 - (ii) has not issued a certificate of readiness as referred to in Clause 3.2 as a result of any Third Party FMSP Contract not being ready to commence full operation; or
- (b) as a result of a Force Majeure Event, Relief Event or Compensation Event in accordance with Clause 54 (*Force Majeure Events*) or Clause 55 (*Relief Events and Compensation Events*),

the Contract Period shall be extended by a period equivalent to the length of any such delay.

3 Conditions Precedent

3.1 Conditions Precedent to Commencement Date

3.1.1 The Commencement Date is conditional upon:

- (a) the delivery by the Contractor to the Authority of the Parent Company Guarantee, duly executed and delivered by the issuing party;
- (b) receipt by the Authority (in each case in form and substance satisfactory to it) of the following:
 - (i) Not used;
 - (ii) Notice from the Contractor that, to the Authority's reasonable satisfaction, it has obtained all Required Consents necessary to enable it to legally carry out the Services;
 - (iii) resolutions duly passed by the Contractor's board of directors:
 - (A) approving the entry into, terms of, and transactions contemplated by this Contract and resolving that it execute, deliver and perform this Contract;
 - (B) authorising a specified person or persons to execute this Contract and (where relevant) the Parent Company Guarantee on its behalf, to give all notices and take all other action in connection with this Contract and the Parent Company Guarantee; and
 - (C) confirming that entry into this Contract is in the commercial interests of the Contractor (stating the reasons for such conclusion);
 - (iv) resolutions duly passed by the Parent's board of directors:
 - (A) approving the entry into, and terms of, the Parent Company Guarantee and resolving that it execute, deliver and perform the Parent Company Guarantee; and
 - (B) authorising a specified person or persons to execute the Parent Company Guarantee on its behalf, to give all notices and take all other action in connection with the Parent Company Guarantee;
 - (v) Not used;
 - (vi) a sample of the signature of each person authorised by the resolutions in ((iii)) and (iv) above;
 - (vii) certified copies of the Contractor's memorandum and articles of association;
 - (viii) a legal opinion addressed to the Authority in respect of the Parent Company Guarantee; and
 - (ix) certificates of insurance required pursuant to this Contract;
- (c) Not used;
- (d) provision to the Authority of evidence that the Relevant Direct Agreements have been duly executed by each party thereto;
- (e) Not used;

- (f) Not used;
- (g) Not used; and
- (h) Not used.

3.2 Conditions Precedent to Service Delivery Date

The occurrence of the Service Delivery Date is conditional upon:

- (a) the Contractor having complied with its obligations under Schedule 13 (*Transition Arrangements*);
- (b) the Authority issuing a certificate of readiness to confirm that the Contractor is ready to commence full operation;
- (c) the Authority confirming that all FMSP Contracts are ready to commence full operation; and
- (d) receipt by the Authority (in form and substance satisfactory to it) of the executed leases and licences in respect of the Leased and Licensed Areas.

3.3 The Contractor shall fulfil the Conditions Precedent it is responsible for in Clause 3.1 (the **Commencement Date CPs**) and Clause 3.2(a) (the **Service Delivery Date CPs**). If any of the Conditions Precedent are not fulfilled to the reasonable satisfaction of the Authority or otherwise waived:

- (a) in the case of the Commencement Date CPs, within five (5) Business Days of the Effective Date; and
- (b) in the case of the Service Delivery Date CPs, by the Longstop Date,

the Authority reserves the right to determine that this Contract shall cease to be effective and this Contract will terminate on such date. Where neither Party is at fault for a failure to satisfy a Conditions Precedent, each Party shall bear its own costs arising from or connected with this Contract where it is terminated pursuant to this Clause 3.3.

3.4 The Authority may terminate this Contract if the Contractor undergoes a Material Adverse Change between the Effective Date and the fulfilment or waiver of the Conditions Precedent in Clause 3.1 or Clause 3.2.

4 Representations, Warranties and Undertakings

4.1 Contractor Representations, Warranties and Undertakings

4.1.1 The Contractor represents, warrants and undertakes to the Authority that, save as set out in the Disclosure Letter:

Corporate

- (a) it is a limited liability company, duly incorporated and validly existing under the laws of England and Wales or Scotland (as applicable) and has the corporate power to sue

and be sued in its own name and to own assets and to carry on business as it is now being conducted;

- (b) as at the Effective Date, it has the corporate power to enter into and to exercise its rights and perform its obligations under this Contract;

Execution and performance of Contract

- (c) as at the Effective Date, all action necessary to authorise the execution of and the performance of its obligations under this Contract has been taken;

Members of Contractor Group

- (d) Not used;
- (e) the Contractor is ultimately a wholly owned subsidiary of the Parent;
- (f) Not used;
- (g) internal arrangements are in place to allow the Contractor to direct each Contractor Group Member to comply with the requirements of this Contract;

Lawful obligations

- (h) the obligations expressed to be assumed by the Contractor under this Contract are legal, valid, binding and enforceable to the extent permitted by law;
- (i) the execution, delivery and performance by the Contractor of this Contract:
 - (i) does not constitute a default under any document or obligation which is binding upon a Contractor Group Member;
 - (ii) does not conflict with the memorandum and articles of association of any Contractor Group Member; and
 - (iii) does not conflict with any Law, or official or judicial order applicable to any Contractor Group Member;
- (j) Not used;

Information

- (k) all information supplied by or on behalf of the Contractor (and supplied by Contractor Personnel authorised to provide such information) from 11 January 2021 to the Authority in connection with the negotiations of, and entry into, this Contract was, to the best of the Contractor's knowledge and belief, complete, true and accurate in all material respects at the date it was supplied and was not misleading in any respect and the opinions, projections and forecasts in such information, and the assumptions on which they were based (acknowledging that any estimates provided were provided as estimates), have been arrived at after due and careful consideration and enquiry and genuinely represent the views of the Contractor;

Accounts

- (l) in relation to the latest accounts of the Contractor issued prior to the Effective Date, such accounts were prepared and audited in accordance with IFRS and give a true and fair view, or fairly represent (as applicable) the financial position of the Contractor as at the date of their preparation and for the period then ended and (in relation to accounts issued prior to the Effective Date since that date) no event has occurred which has had or could be reasonably expected to have a material adverse effect on the business or financial condition of the Contractor;

No threats to business

- (m) no claim is presently being assessed by any Contractor Group Member and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of the Contractor (having made all due enquiry), pending or threatened against any Contractor Group Member or any of the assets of any Contractor Group Member which might have a material adverse effect on the ability of the Contractor to perform its obligations under this Contract;

No insolvency

- (n) no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, having made all due enquiry, threatened) for the winding-up or dissolution of any Contractor Group Member or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues or the assets and revenues of such Contractor Group Member;

No Prohibited Acts

- (o) it has not committed any Prohibited Act;

Bidding Information and CPA

- (p) information provided by the Contractor during the ITN bidding process remains true and accurate;
- (q) at the Effective Date it has at all times complied with the terms of the CPA;

Tax

- (r) it is not materially overdue in the filing of any tax returns;
- (s) no claims or investigations are being, or are reasonably likely to be, made or conducted against it with respect to taxes;
- (t) it is a tax resident in the United Kingdom; and

Cost allocation

- (u) the cost allocation for the procurement process for this Contract and for each other FMSP Contract between the Contractor and the Authority (and any other business the Contractor has with the Authority) reflects a full and reasonable allocation of costs to each procurement process such that:

- (i) there is no cross subsidy between this Contract and any other FMSP Contract; and
- (ii) the cost allocation was not calculated to distort the procurement process for the FMSP Contracts (whether for the procurement process for this Contract or procurement processes for other FMSP Contracts as a whole),

and the Authority relies upon such warranties, representations and undertakings.

Warranties cumulative

- 4.1.2 All warranties, representations, undertakings and other obligations made, given or undertaken by the Contractor in this Contract are cumulative and none shall be given a limited construction by reference to any other.

Times when warranties and representations made

- 4.1.3 The Contractor makes all the representations, warranties and undertakings in this Clause 4.1 on the Effective Date, Commencement Date and Service Delivery Date.
- 4.1.4 In addition, the Contractor is deemed to make all the representations, warranties and undertakings in this Clause 4.1 on the first anniversary of this Contract and each anniversary thereafter.
- 4.1.5 Each representation, warranty and undertaking which it is deemed that the Contractor makes after the Effective Date shall be deemed to be made by reference to the facts and circumstances existing at the date the Contractor is deemed to make it.

4.2 Contractor Undertakings

- 4.2.1 The Contractor hereby agrees that it will not during the Contract Period without the prior written consent of the Authority:
- (a) cease to be tax resident and registered in the United Kingdom;
 - (b) enter into any other obligation or arrangement, compliance with which, in the reasonable opinion of the Authority, will or is likely to have a material adverse effect on its ability to perform its obligations under this Contract;
 - (c) whether by a single transaction or by a series of transactions (whether related or not) sell, transfer, lend or otherwise dispose of the whole or any part of its business or assets in a manner which will or is likely to have a material adverse effect on its ability to perform its obligations under this Contract; or
 - (d) permit any landlord, mortgagee or other third party any remedy (whether by way of lien or otherwise) which would have a material adverse effect on its ability to perform its obligations under this Contract or the Authority's right to legal and beneficial title to anything provided under this Contract.
- 4.2.2 The Contractor hereby agrees that during the Contract Period it shall as soon as reasonably practicable give the Authority Notice of all litigation before or of any court, arbitrator or adjudicator that the Contractor is a party to and which would or is likely to have a material adverse effect on its ability to perform its obligations under this Contract, such Notice shall be given as soon as it becomes aware that the same are threatened (following a letter before

action being issued or received by the Contractor) and immediately after they are commenced, provided that nothing in this Clause shall require the Contractor to disclose legally privileged or confidential information relating thereto.

4.3 Not used.

Part 3 – Commercial Purpose, Scope and Transition

5 Commercial Purpose

- 5.1 The Authority has appointed the Contractor to perform the Services subject to and in accordance with the terms of this Contract.
- 5.2 The Authority's purpose (the **Commercial Purpose**) in so appointing the Contractor is:
- (a) to contribute to the achievement of the following strategic benefits in the maritime sector (the **FMSP Strategic Benefits**):
 - (i) improve certainty of delivery and increased resilience in Authority platforms (the **Overriding Strategic Objective**);
 - (ii) deliver significant value for money benefits through a transformed, world-class maritime support enterprise;
 - (iii) allow increased investment in Service Delivery Location facilities;
 - (iv) improve the lived experience of RN Personnel; and
 - (v) underpin increased resilience and sustainability in the whole force support enterprise across the Royal Navy, the Authority and industry,and in doing so ensure that the FMSP Strategic Benefits in Clauses 5.2(a)(ii) to 5.2(a)(v) (inclusive) contribute to the Overriding Strategic Objective;
 - (b) Not used; and
 - (c) to achieve the Outcomes.
- 5.3 In performing the Services and its obligations the Contractor shall:
- (a) at all times have regard to and act in a manner that supports the achievement of the Commercial Purpose; and
 - (b) consult with the Authority about the Authority's requirements in relation to the Commercial Purpose.

6 Scope

6.1 Scope

The scope of this Contract is the provision of services by the Contractor in relation to Soft Facilities Management at Portsmouth Naval Base, in accordance with the Requirements, any TAF and the terms of this Contract.

6.2 No volume guarantee

No volume of work requiring the provision of Services is guaranteed to be awarded to the Contractor under this Contract.

6.3 Exclusivity under this Contract

- 6.3.1 The Contractor has the exclusive right to provide the Services listed at (i) PSF 2.7.1 (excluding "Unofficial Functions, homecomings, families day and private functions"); and (ii) PSF 2.7.2, **Error! Reference source not found.** Schedule 2 (*Requirements Table*) of this Contract.
- 6.3.2 Subject to Clause 6.3.1, nothing in this Contract affords any exclusivity rights to the Contractor in relation to the provision of the Services.

6.4 Limitation of scope

The Contractor shall not be permitted to conduct any activities or take any action at any Service Delivery Location other than as permitted or contemplated under this Contract.

7 Services

7.1 Contract for Services

7.1.1 The Contractor shall:

- (a) perform all of the work, services and activity; and
- (b) except as is expressly provided to the contrary, provide all tools, materials, items, persons, and other resources of any kind,

that are in each case necessary to comply with and fulfil the Requirements and any TAF (the **Services**).

7.1.2 The Contractor shall perform the Services in accordance with the Method Statements and Service Delivery Plans.

7.1.3 The Contractor undertakes that the Outcomes, Outputs, Inputs, Method Statements and Service Delivery Plans are compatible within and between each other and that:

- (a) the Requirements are feasible; and
- (b) the Method Statements and the Service Delivery Plans conform with, and will implement in every respect, the Requirements.

7.1.4 Without limiting Clause 7.1.3, the Contractor accepts all risks:

- (a) as to consistency and compatibility within or between; and
- (b) arising from any discrepancies or errors that are present or subsequently appear within or between,

each component of the Requirements, and the Method Statements and the Service Delivery Plans.

7.2 Collaboration Principles and Interface Obligations

In performing the Services and its obligations under this Contract the Contractor shall comply with the collaboration principles and interface obligations set out in Schedule 16 (*Collaboration and Integration*).

7.3 Correction of non-conforming Services

The Parties acknowledge and agree that:

- (a) the provisions of Schedule 5 (*Performance Management and Measurement*) shall apply in relation to any failure by the Contractor to provide the Services (or any Goods related to the Services) in accordance with the Requirements. If a Service (or Goods related to a Service) is, or are, found to be deficient, defective or not in conformance with the applicable requirements of this Contract then:
 - (i) the Authority may at any time notify such deficiency, defect or non-conformance to the Contractor; and
 - (ii) the Contractor shall promptly proceed to rectify or re-perform such Services (or repair or replace the relevant Goods related to the Services) in order to bring such Services (or Goods related to such Services) into conformance with the applicable requirements of this Contract; and
- (b) without prejudice to any ongoing obligation to perform the Services, where:
 - (i) there is an acceptance process set out or referred to in a Task Approval Form, in Schedule 2 (*Requirements*) or in Schedule 3 (*Lot Specific Conditions*); or
 - (ii) Clause 45 (*Acceptance and Approval*) applies,

in respect of Services, the Contractor shall correct any defects, deficiencies or non-conformances (subject to and in accordance with the requirements of that acceptance process) until all the relevant criteria are satisfied and any applicable acceptance certificate has been completed in accordance with that acceptance process. Any costs incurred in the correction of defects, deficiencies or non-conformances in accordance with this Clause 7.3 shall be the responsibility of the Contractor.

7.4 Not used.

8 Not used

9 Mobilisation and Transition

The Contractor shall comply with the provisions set out in Schedule 13 (*Transition Arrangements*).

Part 4 – Not Used

Part 5 – Standards of Conduct and Required Consents

11 Standards

11.1 General Standards

11.1.1 Without prejudice to any other provision of this Contract, the Contractor shall perform its obligations hereunder, or ensure that its obligations are performed at all times:

- (a) in accordance with Good Industry Practice;
- (b) having regard to and with a view to fulfilment of the Commercial Purpose;
- (c) in a manner that is not likely to be injurious to health or to cause damage to property; and
- (d) in such a manner that it is undertaken safely and in compliance with all Naval Base Health & Safety and Security Requirements.

11.1.2 Consistency of approach

In taking steps to achieve the Commercial Purpose the Contractor shall use all reasonable endeavours to ensure that each part of (each a **Contractor Part**):

- (a) its organisation;
- (b) the organisation of each Contractor Group Member; and
- (c) the organisation of every person acting on each Contractor Group Member's behalf or under its authority or control (including Sub-Contractors),

shall act consistently with each other Contractor Part in:

- (i) assessing and dealing with subjects for their consideration; and
- (ii) the application of, and compliance with, this Contract.

11.1.3 The Contractor shall use all reasonable endeavours to ensure that its organisational group structure is compatible with the effective and efficient delivery of the Requirements and shall not be an encumbrance to delivering the Commercial Purpose.

11.2 Specific Standards

Not used.

12 Observance of Law and Regulations

12.1 The Contractor shall ensure that the Services and all operations or activities carried out by the Contractor and Contractor Personnel pursuant to this Contract shall be conducted in accordance, and comply at all times, with:

- (a) all applicable Law; and

- (b) each other instrument or code of practice whether or not having the force of law that applies or relates to the Services, including any Authority policy or guidance (each a **Regulation**).

12.2 Should there be any conflict or inconsistency between any of the Regulations, the Contractor shall comply and ensure the compliance by the relevant Contractor Personnel with the provision of the Regulation which requires the higher standard of performance save where this would be in breach of the Law, in which case the requirements of the Law shall prevail.

12.3 The Contractor shall include in its contracts with its Sub-Contractors provisions equivalent to those set out in Clauses 12.1 and 12.2, and shall enforce such provisions should any Sub-Contractor be in breach thereof.

13 Required Consents

13.1 The Contractor shall:

- (a) identify, obtain, maintain and comply with all Required Consents other than Authority Consents, where necessary entering into of any legal agreements necessary for the grant of such Required Consents;
- (b) use all reasonable endeavours to assist the Authority to obtain, maintain, implement and comply with all Required Consents that, as a matter of Law or policy, only the Authority is eligible to obtain (the **Authority Consents**);
- (c) be responsible for implementing each Required Consent within the period of its validity in accordance with its terms and relevant Law save for those Required Consents which only the Authority can implement as a matter of Law or policy;
- (d) other than in respect of Authority Consents, provide free of charge, to the Authority Contract Manager a copy of any application for a Required Consent (with a copy of all accompanying drawings and other documents) and a copy of any Required Consents obtained and any associated legal agreement;
- (e) comply with the conditions attached to any Required Consent and the terms of any associated legal agreement;
- (f) procure that no Required Consent or associated legal agreement is breached by it or any Contractor Group Member; and
- (g) preserve each Required Consent and procure that:
 - (i) each Required Consent is not revoked or quashed due to any act or omission of any Contractor Group Member; and
 - (ii) (to the extent within the Contractor's control) all Required Consents continue in full force and effect for such time as is necessary for the Contractor to carry out its obligations under this Contract,

and for the purposes of this Clause 13.1 the Contractor shall be deemed to have complied with its obligations to obtain or implement Required Consents to the extent that it has obtained or implemented the relevant Required Consents pursuant to any other agreement or arrangement between the Parties.

- 13.2 The Contractor shall not (and shall use all reasonable endeavours to procure that no Contractor Group Member shall) without the prior consent of the Authority Contract Manager (which consent shall not be unreasonably withheld or delayed) apply for or agree to any change, relaxation or waiver of any Required Consent (whether obtained before or after the Commencement Date) or of any condition attached to it. Subject to the compliance by the Contractor with its obligations under this Clause 13 and subject to the provisions of Clause 72 (*Change in Law*), references in this Contract to Required Consents shall be construed as referring to the Required Consents as from time to time varied, relaxed or waived.
- 13.3 The Contractor shall (subject to the terms of Schedule 12 (*Liabilities, Indemnities, Insurance and Conduct of Claims*)) indemnify the Authority against all Losses incurred by it in respect of claims made against the Authority by third parties arising as a result of any breach of Clause 13.1 or Clause 13.2 by the Contractor and/or any act or omission of any Sub-Contractor or Contractor Group Member that results in such breach.
- 13.4 The Authority shall, subject to the Contractor's compliance with Clause 13.1(b), use all reasonable endeavours to obtain and/or maintain all Authority Consents. Any failure by the Authority to obtain and/or maintain any such Authority Consent shall constitute a Compensation Event for the purposes of and subject to Clause 55.2 (*Compensation Events*).
- 13.5 The provisions of Schedule 9 (*Standards of Conduct and Required Consents*) shall apply.
- 13.6 The Authority shall use reasonable endeavours to assist the Contractor to obtain, maintain, implement and comply with all Required Consents that the Contractor is required to obtain.

Part 6 – Pricing and Payment

14 Pricing and Payment

The provisions of Schedule 4 (*Pricing and Payment*) shall apply.

15 Contract Pricing Statement

The provisions of Schedule 17 (*Contract Pricing Statement*) shall apply.

Part 7 – Reviews, Performance Management, Records and Reporting

16 Progress Reports and Financial Reports

16.1 Progress Reports

16.1.1 The Contractor shall supply the Authority with reports on the progress of this Contract. Such reports shall detail, as a minimum:

- (a) performance and delivery of the Services including reportable volumes;
- (b) risks and opportunities relating to, and arising from, performance of the Contractor's obligations;
- (c) any other information specified in this Contract; and
- (d) any other information reasonably requested by the Authority.

16.1.2 The Contractor shall supply reports under Clause 16.1.1 to the addressees, in the form and with the frequency that in each case is specified in Schedule 22 (*Reports*).

16.2 Progress Meetings

16.2.1 The Contractor shall attend progress meetings at the frequency and times specified by the Authority (acting reasonably).

16.2.2 The Authority Contract Manager and other members of its team that the Authority considers appropriate shall attend each meeting. In advance of the meeting, the Authority Contract Manager shall advise the Contractor of the required expertise of the Authority's supporting team.

16.2.3 The Contractor Contract Manager shall be required to attend each meeting supported by personnel suitably qualified to respond to the areas of expertise notified by the Authority.

16.2.4 All meetings will be held at Portsmouth Naval Base unless notified by the Authority.

16.2.5 Unless stated otherwise the Contractor shall be responsible for making a record of the discussions and decisions of the meeting, in draft form, to the Authority Contract Manager at the address given in Clause 84 (*Notices*), for agreement prior to the final version being issued.

16.3 Not used.

16.4 Monthly Financial Reports

The Contractor shall submit to the Authority:

- (a) Not used;
- (b) Not used;
- (c) a Monthly Costs Forecast on the tenth (10th) Business Day of each month; and

- (d) other financial reports to the addressees in the form and with the frequency that in each case is specified in Schedule 22 (*Reports*) or as otherwise agreed with the Authority.

16.5 Quarterly Reports

Within ten (10) Business Days following the end of each quarter the Contractor shall submit to the Authority a report detailing in respect of each of the Services:

- (a) the nature, magnitude and likelihood of all financial and output risks affecting the performance of its obligations relating to such Service.
- (b) Not used.

16.6 Not used.

16.7 Not used.

17 Annual Report and Reviews

17.1 Annual Report

17.1.1 The Contractor shall, no later than the day falling twenty (20) Business Days after last day of every Contract Year (in each case the **Reference Contract Year**), provide to the Authority a report which shall include the following information:

- (a) the performance of the Contractor against the KPIs set out in Schedule 5 (*Performance Management and Measurement*) during the Reference Contract Year;
- (b) a high level review of the performance of all aspects of this Contract during the Reference Contract Year, including:
 - (i) its management; and
 - (ii) the operation of the Services;
- (c) the extent to which, in the Contractor's reasonable opinion, the Commercial Purpose is being achieved;
- (d) Staffing levels for the Reference Contract Year;
- (e) Not used;
- (f) a summary of Changes made to the Contract in the Reference Contract Year;
- (g) a summary of Changes to the Requirements which the Contractor understands are expected to be made to the Contract in the current Contract Year;
- (h) a summary of Force Majeure Events, Relief Events and Compensation Events in the Reference Contract Year;
- (i) a summary of Disputes (whether resolved or unresolved) which have arisen during the Reference Contract Year;

- (j) a summary of any potential Qualifying Changes in Law as set out in Clause 72.4 (*Change in Law*);
- (k) any other information specific to the operation of the Contract in the Reference Contract Year which the Authority may require;
- (l) a summary of TAFs used in the Reference Contract Year;
- (m) a summary of sums paid under the Flexible Pricing Mechanism; and
- (n) any financial (or other) risks identified by the Contractor in relation to the remaining term of the Contract.

17.2 Not used.

17.3 Annual Contract Review

17.3.1 The Parties shall hold an Annual Contract Review as soon as reasonably practicable after provision of the Annual Contract Report for any Contract Year.

17.3.2 The Contractor shall deliver to the Authority Representative on the Lot Delivery Board as part of the Annual Contract Review all such data, documents, records and information requested by either Party's representative on the Lot Delivery Board in order to assist it to perform the Annual Contract Review.

17.3.3 The Lot Delivery Board shall consider the information submitted by the Contractor to the Authority Representative pursuant to the Annual Contract Report and Annual Contract Review together with the following:

- (a) any Change in Law anticipated to be implemented or policy or procedures that may affect either the Services, performance levels, or the Total Contract Price of the Contract (or any part thereof);
- (b) any other Change to the Contract which may be required during the then current Contract Year or the remaining term of the Contract.

17.3.4 The Contractor shall produce a report on the Annual Contract Review. The Annual Contract Review report shall summarise the overall level of contract performance by the Contractor by reference to the requirements of this Contract.

17.3.5 Any recommendations arising from the Annual Contract Review shall be implemented by the Contractor. Where such recommendations require a Change, they shall be implemented in accordance with Schedule 30 (*Change Procedure*).

17.4 Not used.

18 Open Book Accounting

18.1 The Contractor shall maintain on an open book basis, such financial, accounting and other records and information in connection with this Contract (collectively, **Open Book Data**) as may be reasonably required in order to:

- (a) permit the Authority to comply fully with its obligations under this Contract;

- (b) permit the Authority to undertake any review or check that the Contractor's compliance with its obligations is in accordance with this Contract;
- (c) demonstrate and verify:
 - (i) Not used;
 - (ii) Not used;
 - (iii) Not used;
 - (iv) any other matter relating to the price payable under the Contract;
- (d) assist the Authority to calculate, assess, validate, agree, identify errors in, and to satisfy itself about: (i) data provided under or in relation to; (ii) performance of the Contractor in relation to; and (iii) the operation of, Schedule 2 (*Requirements*), Schedule 3 (*Lot Specific Conditions*), Schedule 4 (*Pricing and Payment*) and Schedule 5 (*Performance Management and Measurement*); and
- (e) assist the Authority to operate the Authority's internal financial processes applicable in respect of each Contract Year.

18.2 The Open Book Data shall be kept sufficiently up to date and accurate for use by the Authority for the purposes set out in this Clause 18, and shall include all cost data and supporting information.

18.3 Without prejudice to the generality of Clauses 18.1 to 18.2 (inclusive), whenever making a proposal, estimate or calculation in relation to any matter to be determined or agreed pursuant to Schedule 3 (*Lot Specific Conditions*), Schedule 4 (*Pricing and Payment*) or Schedule 30 (*Change Procedure*) (as applicable) the Contractor shall:

- (a) supply to the Authority in electronic format all such supporting material or evidence as is reasonably required to support, explain, illustrate and justify its proposal, estimate or calculation, including comprehensive details of all calculation methods; and
- (b) in the case of estimates, the Open Book Data shall provide a reasonable estimate, taking into account all relevant circumstances and stating all assumptions made.

Standards

18.4 The Contractor undertakes that in providing Open Book Data, it shall have regard to and comply with the provisions of Clause 11 (*Standards*).

Inclusion of Open Book Provisions in Sub-Contracts

18.5 If, in connection with or for the purposes of this Contract, any Key Sub-Contract is placed by the Contractor, then except in so far as the Authority otherwise agrees in writing, the Contractor shall:

- (a) include in that Key Sub-Contract provisions in the same form set out in this Clause 18 and Clause 19 (*Audits, Checks, Inspections and Examination*) so that the Authority, CAAS, the National Audit Office, the Comptroller and Auditor General are entitled to the same rights in respect of access to and use of the records of the Key Sub-

Contractor as they have in relation to the Contractor's records by virtue of this Clause 18; and

- (b) enforce its rights under those provisions in the event of any breach thereof by the relevant Key Sub-Contractor.

Other relevant obligations

- 18.6 All Open Book Data referred to in this Clause 18 is subject to the obligations set out in this Contract at Clause 28 (*Security*), Clause 75 (*Confidentiality and Freedom of Information*), Clause 76 (*Transparency*) and Clause 82 (*Public relations and publicity*).

Contractor's Records and Accounts

- 18.7 The Contractor shall maintain Open Book Data from the date on which the Contract was entered into for the period ending:

- (a) on the sixth (6th) anniversary of the financial year of the Contract in which the obligation to keep those relevant records first arose; or
- (b) two (2) years after the Contract Completion Date,

whichever is the longer (and this Clause 18.7 shall survive termination or expiry).

- 18.8 The Contractor shall maintain books of accounts relating to the provision of the Services and in so doing shall observe the requirements of good industry practice.

- 18.9 Subject and without prejudice to the provisions of Clause 75 (*Confidentiality and Freedom of Information*), the Contractor shall (at its own cost):

- (a) permit all records containing Open Book Data and such other records as are required to be produced and maintained by the Contractor under this Contract to be examined and, if necessary, copied by or on behalf of the Authority; and
- (b) provide further information or explanation relating to the Open Book Data, whether after the examination of the Open Book Data or otherwise, where required by the Authority.

19 Audits, Checks, Inspections and Examinations

- 19.1 The Contractor shall provide such assistance as the Authority or its nominee, acting reasonably and providing reasonable Notice, may require for its representatives to visit any place where the books of account and records (whether held manually or on electronic systems and records) containing the Open Book Data are held and examine the same.

- 19.2 Without prejudice to the rights of the Authority under Clauses 18 (*Open Book Accounting*), 18.7 (*Contractor's Records and Accounts*) and Schedule 4 (*Pricing and Payment*), CAAS, the National Audit Office, the Comptroller and Auditor General and their respective staff shall each be entitled to undertake financial, management and other audits, checks, inspections and examinations relating to this Contract and the performance of any of the Services and/or any other obligations of the Contractor under this Contract. Such audits, checks and inspections may include:

- (a) any examination of documents relating to expenditure and income in respect of the Services which are owned, held or otherwise within the control of the Contractor; and
- (b) an examination and certification of the accounts of the Authority by the Comptroller and Auditor General, or any examination by the Comptroller and Auditor General pursuant to Part II of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources and may require the Contractor to produce such oral or written explanations as he considers necessary.

19.3 Without prejudice to Clause 75 (*Confidentiality and Freedom of Information*) the Contractor shall promptly provide CAAS, the National Audit Office, the Comptroller and Auditor General and their respective staff, as the case, may be, with all reasonable co-operation and with direct access to both its personnel (including those engaged in the Contractor's performance of this Contract) and any Open Book Data for the performance of any such audit, check, inspection and/or examination referred to in Clause 18 (*Open Book Accounting*). Such co-operation and access shall include:

- (a) ensuring that appropriate security systems are in place to prevent unauthorised access to, extraction of and/or alteration to the Open Book Data during such inspection, audit or check; and
- (b) making, granting or procuring visibility of any documents and records forming part of the Open Book Data available for inspection.

Restrictions on Authority examination

19.4 The Authority must give the Contractor at least twenty (20) Business Days' Notice of its intention to examine Open Book Data.

19.5 The Authority may only examine the Open Book Data on a Business Day between the hours of 09:00 and 17:00.

19.6 The Authority agrees that, where exercise of the rights granted at Clause 18.1 and 18.9(a) 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 Services.

20 Access and Facilities to be provided by the Contractor

20.1 The Contractor's progress and quality standards in performing the Services shall be monitored by the Authority. The Contractor shall provide to the Authority's representatives, relevant accommodation / facilities, at no direct cost to the Authority, and all reasonable access to its premises for monitoring the Contractor's progress and quality standards in performing the Contract.

20.2 Any accommodation provided pursuant to Clause 20.1 shall be adequately furnished, lit, heated and ventilated and shall include suitable cloakroom and communication facilities for the use of the Authority's representatives.

20.3 The Contractor shall use reasonable endeavours to ensure that the provisions equivalent to those in Clause 20.1 are included in those of its Key Sub-Contracts as are identified by the

Authority so that Authority's representatives may have access to and be provided with access and facilities at premises of Key Sub-Contractors that are being used in connection with performance of the Services. Access to such Key Sub-Contractors' premises shall be arranged by the Authority through the Contractor.

21 Performance Management

The provisions of Schedule 5 (*Performance Management and Measurement*) shall apply.

22 Risk Assessment

22.1 The process of risk assessment generally (whether by the Contractor or the Authority), which has been or may be undertaken in connection with this Contract, 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 any Party's obligations under this Contract and shall be entirely without prejudice to any Party's rights, privileges and powers under this Contract.

22.2 Without prejudice to its rights or remedies under (or pursuant to, or in connection with) this Contract, the Contractor shall be deemed prior to executing this Contract to have, and warrants that it has, generally obtained for itself all necessary information as to:

- (a) the risks, contingencies and all other circumstances which may influence or affect the Requirements and its obligation to provide the Services; and
- (b) any other factors which would affect its decision to enter into this Contract or the terms on which it would do so.

Part 8 – Governance and Dispute Resolution

23 Governance

The provisions of Schedule 6 (*Governance*) shall apply.

24 Dispute Resolution

Any and all Disputes arising out of or in connection with this Contract shall be dealt with in accordance with the Dispute Resolution Procedure (as set out in Schedule 7 (*Dispute Resolution Procedure*)) unless it is expressly stated elsewhere in this Contract with reference to a particular type of dispute or to a dispute in relation to specific subject matter that:

- (a) the Dispute Resolution Procedure shall not apply; or
- (b) the Dispute Resolution Procedure shall apply only to a certain extent, in which case it shall apply to that extent.

Part 9 – Conduct at the Service Delivery Locations and other Government Establishments

25 Contractor's Personnel at the Service Delivery Locations and other Government Establishments

25.1 Liability in Respect of Damage to Government Property

Without prejudice to the provisions of Clause 37 (*GFA*) and Schedule 12 (*Liabilities, Indemnities, Insurance and Conduct of Claims*) (and in particular Paragraph 3.4 (*Claims relating to Government Establishments*)), the Contractor shall make good or, at the option of the Authority, indemnify the Authority for all damage occurring to any Government property or any Third Party Contractor Property occasioned by the Contractor, or by any of the Contractor's Personnel or any Sub-Contractor, arising from its or their presence on a Government Establishment in connection with this Contract.

25.2 Contractor's Property

All property of the Contractor and its Sub-Contractors and Contractor Personnel (each a **Contractor Party**) shall be at the risk of the Contractor whilst it is on any Government Establishment, and the Authority shall accept no liability for any loss or damage howsoever occurring thereto or caused thereby, except as follows and subject always to Paragraph 2.2.2 (*Authority's Liability*) of Schedule 12 (*Liabilities, Indemnities, Insurance and Conduct of Claims*):

- (a) where any such loss or damage was caused or contributed to by any act, neglect or default of any HM Government servant or agent, then the Authority shall accept liability therefor to the extent to which such loss or damage is so caused or contributed to as aforesaid;
- (b) where any property of the Contractor has been taken on charge by the Officer in Charge, and a proper receipt has been given therefor, then the Authority shall be liable for any loss or damage occurring to that property while held on such charge as aforesaid; and/or
- (c) Not used,

in which circumstances the Authority shall make good or, at the option of the Contractor in accordance with the provisions of Schedule 12 (*Liabilities, Indemnities, Insurance and Conduct of Claims*), pay compensation for any damage to such property.

25.3 Contractor Personnel

25.3.1 The Contractor shall submit in writing to the Authority for approval, initially and as necessary from time to time, a list of those Contractor Personnel who are reasonably likely to need to enter a Government Establishment for the purpose of, or in connection with, work under this Contract, giving such particulars as the Authority may require, including full details of birthplace and parentage of any such Contractor Personnel who:

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

25.3.2 The Authority shall issue clearance passes for those Contractor Personnel who are approved by it in accordance with Clause 25.3.1 for admission to a Government Establishment and Contractor Personnel shall not be admitted unless in possession of such a pass. Passes shall remain the property of the Authority and shall be surrendered on demand or on completion of the work.

25.3.3 Notwithstanding the provisions of Clauses 25.3.1 and 25.3.2 if, in the opinion of the Authority, any representative of the Contractor shall misconduct itself, or it shall not be in the public interest for any person to be employed or engaged by the Contractor in relation to this Contract, the Contractor shall remove such person without delay on being required to do so and shall cause the work to be performed by such other person as may be necessary.

25.3.4 The decision of the Authority upon any matter arising under Clauses 25.3.1 to 25.3.3 inclusive shall be final and conclusive.

25.4 Observance of Site Regulations

The following provisions apply:

- (a) the Contractor shall ensure that all Contractor Personnel have the necessary probity (as conclusively evidenced by the relevant Contractor Personnel undertaking the HM Government's Baseline Personnel Security Standard (the **Security Standard**)) and, where applicable, are cleared to the appropriate level of security when employed within the boundaries of a Government Establishment;
- (b) where the Contractor requires information on the Security Standard (or security clearance for Contractor Personnel) or is not in possession of the relevant rules, regulations or requires guidance on them, the Contractor shall apply in the first instance to the Authority Representative;
- (c) on request, the Contractor shall be able to demonstrate to the reasonable satisfaction of the Authority that the Contractor's processes to assure compliance with the Security Standard have been carried out. Where that assurance is not already in place, the Contractor shall permit the Authority to inspect the processes being applied by the Contractor to comply with the Security Standard;
- (d) the Contractor shall comply and shall ensure that all Contractor Personnel comply with the rules, regulations and requirements that are in force whilst at that Government Establishment which shall be provided by the Authority on request (provided that if there is any change to such rules, regulations and requirements from those in force at the Commencement Date, this shall be addressed as a Change in Law; and
- (e) when on board ship, compliance with the rules, regulations, and requirements shall be in accordance with the ship's regulations as interpreted by the Officer in Charge. Details of those rules, regulations and requirements shall be provided on request by the Officer in Charge. The provisions in Clause 25.4(d) relating to Change shall apply equally to this Clause 25.4(e).

25.5 Not used

25.6 Not used

25.7 Sharing health and safety information

25.7.1 The Contractor shall promptly report to the relevant Officer in Charge any of the following matters arising out of the performance of this Contract:

- (a) any injury, disease or dangerous occurrence at any Government Establishment arising out of the performance of this Contract, which is required to be reported under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR) to the Officer in Charge of the relevant Government Establishment. This would be in addition to any report, which the Contractor may be required to submit under RIDDOR to the relevant enforcing authority (for example, the Health and Safety Executive or Local Authority); or
- (b) the receipt by the Contractor of any statutory or regulatory notice from any Health and Safety Authority or Defence Authority asserting any material breach of Health and Safety Law or health and safety requirement.

25.8 Not used

25.9 Not used

25.10 Health And Safety Hazard Control

Where any Contractor Personnel are to enter a Government Establishment for the purpose of performing the Services:

- (a) the Contractor shall notify the Officer in Charge or the site project liaison officer or the Authority Representative of:
 - (i) any health and safety hazards associated with the work to be performed by the Contractor or any of Contractor Personnel;
 - (ii) any foreseeable risks to the health and safety of all persons associated with such hazards; and
 - (iii) any precautions to be taken by the Contractor as well as any precautions which, in the opinion of the Contractor, ought to be taken by the Authority, in order to control such risks;
- (b) the Authority shall notify the Contractor of:
 - (i) any health and safety hazards which may be encountered by the Contractor or any of Contractor Personnel on the Government Establishment;
 - (ii) any foreseeable risks to the health and safety of the Contractor or any of Contractor Personnel, associated with such hazards; and
 - (iii) any precautions to be taken by the Authority as well as any precautions which, in the Authority's opinion, ought to be taken by the Contractor, in order to control such risks;

- (c) the Contractor shall notify Contractor Personnel of and, where appropriate, provide adequate instruction in relation to:
 - (i) the hazards, risks and precautions notified by the Contractor to the Authority under Clause 25.10(a);
 - (ii) the hazards, risks and precautions notified by the Authority to the Contractor under Clause 25.10(b); and
 - (iii) the precautions which, in the opinion of the Contractor, ought to be taken by Contractor Personnel in order to control those risks;
- (d) The Contractor shall provide the Officer in Charge or the site project liaison officer or the Authority Representative with:
 - (i) copies of those sections of the Contractor's own safety policies and, where appropriate, the safety policies of Sub-Contractors which are relevant to the risks notified under Clause 25.10(a);
 - (ii) copies of any related risk assessments; and
 - (iii) copies of any notifications and instructions issued by the Contractor to Contractor Personnel under Clause 25.10(c); and
- (e) the Authority shall provide the Contractor with:
 - (i) copies of those sections of the Authority's own safety policies which are relevant to the risks notified under Clause 25.10(b);
 - (ii) copies of any related risk assessments; and
 - (iii) copies of any notifications and instructions issued by the Authority to its employees similar to those called for from the Contractor under Clause 25.10(c).

25.11 Ensuring safety of Authority Personnel at Contractor sites

With respect to any workplace in a Leased and Licensed Area or Site which (in either case) is under the control of the Contractor as principal employer, the Contractor shall ensure that it manages all risks to the health and safety of any employees of the Authority including Authority Secondees who are visiting or working in such a workplace in accordance with the relevant requirements under the Lease or Licence.

25.12 Duty of co-operation and assurance

Where, in delivering the Services, the Contractor is engaged in operational activities which because of their nature give rise to duties or obligations for the Authority with respect to the safety of those activities, the Contractor shall provide all such assistance, information and co-operation to the Authority as the Authority may require to enable the Authority to discharge those duties or obligations.

25.13 Major Incidents

25.13.1 If in the course of provision of the Services there is an incident which causes damage to any part of a Government Establishment which leads to a breach of security or safety (a **Major Incident**) then:

- (a) where the Contractor becomes aware of the occurrence of a Major Incident, the Contractor shall immediately inform the Authority Contract Manager; and
- (b) where the Authority becomes aware of the occurrence of a Major Incident, which has an impact on the Contractor's ability to perform the Services, the Authority shall provide to the Contractor all information relating to such Major Incident that it considers, acting reasonably (which shall include taking into account any issues of national security), the Contractor requires to deal with that Major Incident.

25.13.2 If the Authority deems the incident to be sufficiently serious to require investigation, the Contractor shall, if so requested by the Authority, conduct such an investigation to establish the recovery and remedial action which the Contractor would undertake to rectify the situation (a **Major Incident Investigation**) and shall submit to the Authority Contract Manager the results of its investigations. If the incident is such that the UK Health and Safety Executive sets up an enquiry to investigate the cause then the Contractor shall be required only to establish recommendations for recovery and remedial action which the Contractor shall submit to the Authority Contract Manager as required.

25.13.3 Where an investigation is to be conducted by the Contractor, the Authority shall have the right to nominate other persons to participate in the investigation in any of the following capacities:

- (a) as a member of the investigating team;
- (b) in an advisory capacity; and
- (c) to question witnesses.

25.13.4 The presence of other persons shall be without prejudice to the Authority's right to accept or reject the findings and recommendations of the investigation.

25.13.5 If the Contractor wishes to call the Authority's personnel to an enquiry, then prior approval to do so shall be sought from the Authority Contract Manager, who shall advise on the procedure to be followed.

25.13.6 If the Contractor wishes to call a member of staff belonging to other suppliers to an enquiry, then approval to do so shall be sought from the Authority Contract Manager, who shall advise on the procedure to be followed.

25.13.7 A full report of the investigation signed at director level of the Contractor (a **Major Incident Report**) shall be forwarded to the Authority Contract Manager and shall include:

- (a) notes of oral evidence given;
- (b) copies of any written evidence, sketches or diagrams which may be produced to illustrate evidence of witnesses; and
- (c) conclusions and recommendations.

25.13.8 If there is any difference of opinion among the investigation team on any material point, the grounds of difference shall be stated fully.

25.13.9 The Major Incident Report shall be without prejudice to the rights of the Authority under this Contract, or otherwise, in respect of any loss or damage arising from any such incident.

25.14 Management of Health and Safety

25.14.1 The Contractor shall, with respect to the provision of the Services and the Contractor's occupation of the Service Delivery Locations and Leased and Licenced Areas, comply in all respects with:

- (a) all applicable Health and Safety Law;
- (b) all safety related requirements established by licence, permit or statutory notice granted or issued by Health and Safety Authorities from time to time including but not limited to nuclear site licences granted by the Office for Nuclear Regulation (**ONR**), and any notices issued by the ONR or Health and Safety Executive.

25.14.2 The Contractor shall notify the Authority immediately upon becoming aware of any material breach of Clauses 25.14.1(a) or 25.14.1(b) above.

25.14.3 The Contractor shall at all times throughout the provision of the Services have in place and be certified under a recognised independently audited safety management system such as ISO 45001 or equivalent standard.

25.15 Health and safety and environmental performance reporting

25.15.1 The Contractor shall supply the Authority with reports on its performance, in terms of effective health and safety management and compliance with Environmental Law, in delivering the Services. Such reports shall include, as a minimum, details of the following matters arising out of or in connection with the Services:

- (a) all reports and notifications which the Contractor or any Sub-Contractor has sent or been required to send to any Health and Safety Authority under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (**RIDDOR**);
- (b) any other notifications or reports of breaches under Health and Safety Law or Environmental Law which the Contractor or any Sub-Contractor has sent or been required to send to any Competent Authority;
- (c) the service on the Contractor or any Sub-Contractor of any statutory or regulatory notice from any Competent Authority or Defence Authority asserting any material breach of Environmental Law or Health and Safety Law or health and safety requirement;
- (d) any other formal enforcement action in respect of any breach of Health and Safety Law or Environmental Law against the Contractor or any Sub-Contractor or any officer or manager of the Contractor or Sub-Contractor including criminal prosecution or the imposition of any civil sanction;
- (e) copies of any compliance assessment reports relating to compliance with Environmental Law of Health and Safety Law produced by any Competent Authority

for example and without limitation recording the level of compliance with Environmental Permits; and

- (f) copies of independent audit or compliance reports relating to environmental or health & safety management or compliance, including audits of compliance with the Contractor's environmental management system such as DEF STAN 00-051 Environmental Management Requirements for Defence Systems dated 14 April 2018 or equivalent environmental management standard or ISO 45001 or equivalent safety standard and with Safety, Health and Environment Manual BRD167 or any replacement or equivalent system as the Authority may specify.

25.15.2 The Contractor shall supply the reports under Clause 25.15.1 to the addressees, in the form and with the frequency that in each case is specified in Schedule 22 (*Reports*).

26 Not used

Part 10 – Personnel

27 Qualifications and Experience

- 27.1 The Contractor shall ensure, as at the Commencement Date, and at all times thereafter that it has amongst its employees a sufficient number of suitably qualified and experienced personnel (SQEP) engaged in the performance of the Services.
- 27.2 The Contractor shall consult the Authority on the appointment of any Contractor Personnel to the Contract Manager for this Contract and the Authority shall be entitled to reject any individual the Contractor proposes to fill such roles. Where requested by the Contractor, the Authority shall provide reasons for rejecting any appointment under this Clause.
- 27.3 The Contractor shall support all Contractor Employees who volunteer to form part of the Naval Base Nuclear Emergency Response Organisation (NERO) Team and/or the Emergency Response Team (ERT), including allowing all Contractor Employees paid time to attend training activities and incidents. The Contractor shall not be responsible for any acts or omissions of any Contractor Employees whilst they carry out such voluntary activities.

28 Security

28.1 Interpretation

28.1.1 The Contractor shall:

- (a) take all reasonable steps to ensure that all Contractor Security Personnel engaged on any work in connection with this Contract have notice that the Official Secrets Act 1911-1989 apply to them and will continue so to apply after the completion or termination of this Contract; and
- (b) if directed by the Authority, ensure that any Contractor Security Personnel shall sign a statement acknowledging that, both during the term of this Contract and after its completion or termination, he is bound by the Official Secrets Acts 1911-1989 (and where applicable, any other Law).

28.2 Security Aspects Letter

The Contractor shall comply with the Security Aspects Letter in its performance of this Contract.

28.3 Disclosure of Secret Matters

In addition to its obligations pursuant to Clause 75 (*Confidentiality and Freedom of Information*) the Contractor shall, not without the prior written consent of the Authority to do otherwise, either before or after the Expiry Date, do or permit to be done anything which it knows or ought reasonably to know may result in a Secret Matter being disclosed to or acquired by a person in any of the following categories:

- (a) who is not a British citizen;
- (b) who does not hold the appropriate authority for access to the Secret Matter;
- (c) whom the Authority has notified the Contractor in writing that the Authority requires that Secret Matters shall not be disclosed to or acquired by that person;

- (d) who is not a member of Contractor Security Personnel; or
- (e) who is a member of Contractor Security Personnel but has no need to know the information for the proper performance of this Contract.

28.4 Access to Secret Matters

28.4.1 In addition to its obligations pursuant to Clause 75 (*Confidentiality and Freedom of Information*) unless it has the prior written consent of the Authority to do otherwise, the Contractor shall, both before and after the Expiry Date take all reasonable steps (including ensuring that all Contractor Security Personnel with access to Secret Matters comply with the requirements of this Clause) to ensure that:

- (a) 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 so far as may be necessary for the proper performance of this Contract; and
- (b) any Secret Matter is at all times strictly safeguarded in accordance with the Security Policy Framework and upon request, is delivered to the Authority who shall be entitled to retain it.

28.4.2 The decision of the Authority, acting reasonably, on the question whether the Contractor has taken or is taking all reasonable steps as required by the foregoing provisions of this Clause 28.4 shall be final and conclusive.

28.5 Persons with Access to Secret Matters

28.5.1 The Contractor shall provide to the Authority:

- (a) upon request, such records giving particulars of those Contractor Security Personnel who have had access to a Secret Matter;
- (b) upon request, such information as the Authority may require so as to be satisfied that the Contractor and Contractor Security Personnel are complying with this Clause 28, including the measures taken or prepared by the Contractor so as to comply with its obligations and to prevent any breach of them; and
- (c) such particulars of any failure by the Contractor or any Contractor Security Personnel to comply with this Clause 28 immediately on such failure becoming apparent.

28.5.2 The Contractor shall ensure that, for the purpose of checking the Contractor's compliance with Clause 28.5 (*Persons with Access to Secret Matters*), a representative of the Authority shall be entitled at any time to enter and inspect any of the premises used by the Contractor connected with this Contract and inspect any document or thing in any such premises, which is being used or made for the purposes of this Contract. Such representative shall be entitled to all such information as he may reasonably require.

28.5.3 Subject to Clause 75 (*Confidentiality and Freedom of Information*) if at any time either before or after the expiry of the Contract Period it comes to the notice of the Contractor that any unauthorised person is seeking or has sought to obtain information concerning any Secret Matter, the Contractor shall forthwith inform the Authority of the matter with full particulars thereof.

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

- (a) 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;
- (b) incorporate into the Sub-Contract the terms of Appendix B (*Security Measures Provisions to be included in Relevant Sub-Contracts*) to Schedule 14 (*Supply Chain and Sub-Contracting Strategy*) and such secrecy and security obligations as the Authority shall direct; and
- (c) 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.

28.6 Nothing in this Clause shall be construed as intended to prevent any person from giving any information or doing any thing on any occasion when it is, by virtue of any Law or Regulation, the duty of that person to give that information or do that thing.

28.7 Breach of Security

[REDACTED]

28.8 Official-Sensitive Security Requirements

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

28.8.2 The Contractor shall include the requirements and obligations set out in Clause 28.8.1 in any Sub-Contract placed in connection with or for the purposes of this Contract which requires disclosure of OFFICIAL-SENSITIVE Information to the Sub Contractor or under which any Information relating to aspects designated as OFFICIAL-SENSITIVE is created by the Sub-Contractor. The Contractor shall also include in the Sub-Contract a requirement for the Sub-Contractor to flow the requirements of this clause to its sub-contractors and through all levels of the supply chain to the lowest level where any OFFICIAL-SENSITIVE Information is handled.

28.8.3 In this condition “Information” means information recorded in any form disclosed or created in connection with the Contract.

28.9 Not used

29 Equality

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

29.2 Without prejudice to the generality of the obligation in Clause 29.1, the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 (or any

statutory modification or re-enactment thereof) or other relevant or equivalent legislation in the country where this Contract is being performed.

29.3 The Contractor agrees to secure the observance of the provisions of this Clause 29 by any of its employees, agents or other persons acting under its direction or control who are engaged in the performance of this Contract.

29.4 The Contractor agrees to reflect this Clause 29 in any Sub-Contract that it enters into to satisfy the requirements of this Contract and to require its Sub-Contractors to reflect this Clause in their Sub-Contracts that they enter into to satisfy the requirements of this Contract.

30 Secondment

30.1 Agreement to Second

30.1.1 The Contractor and the Authority agree that from time to time during the Contract Period the Authority may seek to place Authority Secondees on secondment with the Contractor and the Contractor may seek to place Contractor Secondees on secondment with the Authority subject to the consent of the Secondees concerned, the agreement of the parties at the relevant time, and to the terms of this Clause 30.

30.2 Identification of Secondees

30.2.1 The Authority, acting reasonably and in consultation with the Contractor, shall identify which employees of the Authority are to be placed on secondment from time to time with the Contractor.

30.2.2 The Contractor shall provide to the Authority a list of employees of the Contractor who volunteer to become Royal Fleet Auxiliary personnel and the Authority shall be entitled at its discretion to accept or reject such volunteers. In respect of other Contractor Secondees, the Contractor, acting reasonably and in consultation with the Authority, shall identify which employees of the Contractor are to be placed on secondment from time to time with the Authority, provided that the Contractor shall identify only employees who have, in the reasonable opinion of the Contractor, appropriate experience and qualifications to perform the duties for the purposes of which they are to be seconded.

30.3 Preservation of Employment Status

Throughout the secondments, Contractor Secondees shall remain employees of the Contractor and subject to the terms of their employment with the Contractor and the Authority Secondees shall remain employees of the Authority and subject to the terms of their employment with the Authority, save as expressly agreed otherwise between the Contractor and the Authority.

30.4 Duration of Secondments

30.4.1 The duration of each secondment shall be agreed between the Authority and the Contractor, before commencement of the relevant secondment, but all secondments will in any event terminate automatically upon termination of this Contract.

30.4.2 If the employment of any of the Contractor Secondees or the Authority Secondees terminates for any reason, the secondment of that Secondee shall automatically terminate at the date of termination of the Secondee's employment.

30.5 Entry of Secondment and Interchange Agreements

- 30.5.1 In respect of each Authority Secondee, before commencement of the relevant secondment, the Authority, the Contractor and the Authority Secondee shall enter into an interchange agreement with each Authority Secondee on agreed terms.
- 30.5.2 In respect of each Contractor Secondee, before commencement of the relevant secondment, the Authority, the Contractor and the Contractor Secondee shall enter into an interchange agreement on agreed terms.
- 30.5.3 The Authority shall be entitled to update, replace or amend any agreed interchange agreements (as referred to in Clauses 30.5.1 and 30.5.2) from time to time and where:
- (a) the Contractor has been involved in industry wide consultation in relation to such updating, replacement or amendment, any changes shall be introduced into this Contract as a Mandatory Change; or
 - (b) the Contractor has not been involved in industry wide consultation in relation to such updating, replacement or amendment, the Authority shall notify the Contractor of any changes and they shall be introduced into this Contract through (and subject to) the Change Procedure.

31 Staff Arrangements

- 31.1 The provisions of Part 1, (*Employee Transfer Arrangements on Entry*) Part 2 (*Employee Transfer Arrangements on Exit*) and Part 3 (*Redundancy*) of Schedule 10 (*Personnel*) shall apply.

31.2 Non Solicitation

Unless otherwise agreed by the Authority in writing, the Contractor shall not, on its own behalf or on behalf of or in conjunction with any other person, solicit or entice away or endeavour to solicit or entice away from the Authority any Authority employee (including RN Personnel) during the Contract Period and for a period of twelve (12) months after the Contract Period.

32 Pensions

The provisions of Part 4 (*Pensions*) of Schedule 10 (*Personnel*) shall apply.

33 RN Personnel

The provisions of Part 7 (*RN Personnel*) of Schedule 4 (*Pricing and Payment*) and Part 5 (*RN Personnel*) of Schedule 10 (*Personnel*) shall apply.

34 Industrial Action

In the event that the Contractor reasonably believes or is aware (and the Contractor shall take reasonable steps to ensure that it is aware) that any actual or threatened industrial action (whether or not in contemplation or furtherance of a trade dispute and whether or not authorised or endorsed by a trade union without the support of a ballot) including strike, go-slow, work to rule, lock-out or labour shortage, but excluding National Strikes not involving Contractor Personnel (**Relevant Industrial Action**), is likely to give rise to a right for the Authority to issue an Required Action Notice, the Contractor shall, without prejudice to any other right or remedy the Authority has under this Contract, use all reasonable endeavours to:

- (a) prevent such Relevant Industrial Action from occurring where possible; and
- (b) mitigate the impact of any such Relevant Industrial Action on the performance of the Services.

Part 11 – Leased and Licensed Areas and Environmental Provisions

35 Leases and Licenses

Schedule 11 (*Leased and Licenced Areas*) shall apply in relation to the use and occupation of the Leased and Licensed Areas.

36 Environmental Provisions

- 36.1 The Contractor shall comply with all Environmental Laws which may apply from time to time to the provision of the Services and/or the occupation of the Leased and Licensed Areas by the Contractor and it shall notify the Authority immediately upon becoming aware of any breach or potential breach of Environmental Laws.
- 36.2 The Contractor shall obtain maintain and comply fully with all Environmental Permits.
- 36.3 The Contractor shall, and shall procure that its Sub-Contractors shall, at all times throughout the provision of the Services, have in place and be certified under a recognised independently audited environmental management system such as ISO14001:2015 or equivalent standard, applied to all aspects of the Services.
- 36.4 The Contractor shall not cause or knowingly permit the presence of any Hazardous Substance in on or under the Service Delivery Locations or the Leased and Licensed Areas in circumstances which constitute a breach of Environmental Law or give rise or may give rise to a legal requirement for Remediation.
- 36.5 The Contractor shall not exacerbate, mobilise, disturb, release, or cause to migrate any Hazardous Substances at, on, in, under or from (as the context so requires) the Service Delivery Locations or the Leased and Licensed Areas, unless agreed with the Authority as part of the delivery of the Services.
- 36.6 The Contractor shall provide to the Authority all such information and documentation in relation to Environmental Matters at the Service Delivery Locations and/or the Leased and Licensed Areas as the Authority may reasonably require from time to time, including in relation to any Environmental Permit, any Hazardous Substance stored or used or any Environmental Matter relevant to the Services.
- 36.7 The Contractor shall not disclose information to any Regulatory Body in relation to any Environmental Matter at or in connection with the Service Delivery Locations and/or the Leased and Licensed Areas without giving the Authority reasonable notification that it is going to make such a disclosure and obtaining the Authority's written approval for such a disclosure (such approval not to be unreasonably withheld) save for disclosures which are expressly required by Law. The Contractor shall give Notice to the Authority as soon as possible of any disclosures made in accordance with this Clause 36.7.
- 36.8 The Contractor shall notify the Authority immediately of any breach or alleged breach of its obligations or duties under this Clause 36, including any spillage or accident involving the release of Hazardous Substances, and any investigation into or enforcement action taken in respect of any Environmental Matter by a Regulatory Body.
- 36.9 Subject to Clause 36.10, the Contractor shall indemnify the Authority against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and

expenses) suffered or incurred by the Authority arising out of or in connection with any breach by the Contractor of its obligations and duties contained within this Clause 36.

- 36.10 Save in respect of any breach by the Contractor of Clause 36.5 and without prejudice to the Authority's right to claim against the Contractor or any member of the Contractor's Group in respect of Historic Contamination where it has previously provided services at the Service Delivery Locations and/or the Leased and Licensed Areas pursuant to a separate contract with the Authority, the Contractor shall not under this Clause 36 assume any responsibility or liability for the Remediation of Historic Contamination.
- 36.11 Any dispute in relation to the liability of the Contractor arising under this Clause 36 will be referred to the Dispute Resolution Procedure.

Part 12 – GFA and Redundant Materiel

37 GFA

37.1 Provision of GFA

37.1.1 For the purposes of this Clause 37 any reference to GFA includes any services to be provided to the Contractor by the Authority pursuant to this Contract (whether directly or through an Third Party FMSP Contract). Any reference to Issued Property does not include a reference to such services.

37.1.2 Throughout the Contract Period and subject to and in accordance with its terms, the Authority shall provide or shall procure the provision by third parties of (in either case, free of charge) GFA as referred to in Schedule 15 (*GFA and Issued Property*) (and contained on the Contractor GFA List (as referred to therein) as at the Service Delivery Date).

37.1.3 For the avoidance of doubt, any equipment, assets, property, services or other items required by the Contractor to perform its obligations hereunder, unless expressly provided by the Authority under the terms of this Contract, will be provided by the Contractor at the Contractor's cost.

37.2 GFA Service

37.2.1 Obligations in respect of GFA Service

- (a) FMSP will incorporate a “GFA Service” in each naval base which will be executed on behalf of the Authority by the local FMSP Hard Facilities Management provider. The Contractor shall engage with the local FMSP Hard Facilities Management provider to:
 - (i) coordinate demands for locally held GFA as defined within the Contractor GFA List (**FMSP Contract GFA**);
 - (ii) Not used;
 - (iii) manage the FMSP Contract GFA in accordance with this Clause 37;
 - (iv) return the FMSP Contract GFA to the local FMSP Hard Facilities Management provider for inspection, maintenance, repair and long term storage or re-issue when not required for use or when required by the local FMSP Hard Facilities Management provider or other local FMSP contractor(s) for them to perform their obligations; and
 - (v) provide reasonable access to the local FMSP Hard Facilities Management provider to allow it to conduct maintenance, repair, inspection and accounting activity.

37.2.2 Not used.

37.3 Verification of GFA

37.3.1 The Authority has provided to the Contractor, at or around the Commencement Date, the Initial Contractor GFA List. No later than one-hundred and twenty (120) Business Days prior to the Service Delivery Date, the Contractor will provide to the Authority a list of all items of GFA it has identified from the Initial Contractor GFA List as essential to the performance of

the Contractor's obligations under this Contract on and from the Service Delivery Date (the "**Essential GFA List**").

37.3.2 As part of the transitioning arrangements at Portsmouth Naval Base, the Contractor shall be provided with access to the GFA items identified in the Essential GFA List in order to confirm the location and condition of the listed items.

37.3.3 No later than forty (40) Business Days prior to the Service Delivery Date, the Contractor will provide to the Authority an updated Essential GFA List which will identify those items which the Contractor has identified pursuant to Clause 37.3.1 as:

- (a) listed on the Essential GFA List but which cannot be located; or
- (b) (based on the Contractor's reasonable opinion) not fit for purpose or the use of which would breach applicable Law and/or Regulations (in which case the Contractor will also provide a short description of the issue, the cost of replacement (which shall be reasonable and verifiable) and also whether such issue could be remedied, including where possible, the likely difference in cost between repair and replacement),

(the **Interim Essential GFA List**).

37.3.4 Where an item on the Essential GFA List is missing in accordance with Clause 37.3.1 above the Authority will use its reasonable endeavours to procure a replacement item prior to the Service Delivery Date or will request that the Contractor procure such item (at the Authority's approval and cost).

37.3.5 No later than thirty-five (35) Business Days prior to the Service Delivery Date, the Authority shall confirm in writing to the Contractor:

- (a) those items which the Contractor has identified under Clause 37.3.1 as not included on the Contractor GFA List; and
- (b) those items on the Interim Essential GFA List which the Authority agrees are not fit for purpose or the use of which would breach applicable Law and/or Regulations,

which shall constitute the **Final Essential GFA List**.

37.3.6 Following such confirmation by the Authority pursuant to Clause 37.3.5 above, the Authority may, at its discretion:

- (a) use its reasonable endeavours to: procure such item (or replacement item (as appropriate)); or to repair such item prior to the Service Delivery Date; or
- (b) request that the Contractor procure such item (at the Authority's cost); or
- (c) instruct the Contractor to repair such item (in which case the Contractor shall be provided with such access to the item as reasonably required) at the Authority's cost.

37.3.7 The Authority will, in its notice in writing served under Clause 37.3.5 above, confirm in respect of each item on the Final Essential GFA List which of the following three remedial steps shall be taken:

- (a) the Authority will use its reasonable endeavours to procure such item (or replacement item (as appropriate)) or repair such item prior to the Service Delivery Date; or

- (b) the Contractor shall procure such item (at the Authority's approval and cost); or
- (c) the Contractor shall repair such item at the Authority's cost (in which case the Contractor shall be provided with such access to the item as reasonably required).

37.3.8 The Authority will update the Initial Contractor GFA List and Schedule 15 (*GFA and Issued Property*) (as appropriate) as required pursuant to Clause 37.3.7 as soon as reasonably practicable.

37.4 Obligations in respect of GFA

37.4.1 Final Muster

- (a) The Contractor shall undertake an audit of all remaining GFA identified in the Contractor GFA List but which has not been included in the Final Essential GFA List within forty-five (45) calendar days of the Service Delivery Date and notify the Authority of any items which cannot be located or are in the Contractor's reasonable opinion not fit for purpose or the use of which would breach legislation. Should any such items be identified the provisions of Clause 37.3.6 will apply.
- (b) Immediately following completion of the audit carried out under Clause 37.4.1, the Contractor shall provide:
 - (i) a list of those items which are considered to be serviceable or repairable which shall record the condition of each item; and
 - (ii) a list of Redundant Materiel,and Clauses 39.3 and 39.4 shall apply.

37.4.2 General Obligations

- (a) From the Service Delivery Date and throughout the Service Delivery Period:
 - (i) the Contractor undertakes to the Authority to utilise all GFA for its intended purpose only, to exercise all due and reasonable care in the use of GFA and to comply at all times with any guidelines in respect of such GFA and which have been provided to the Contractor in accordance with Clause 37.1;
 - (ii) subject to Clause 37.1.3, in the event that the Authority is unable to provide any GFA as described in Clause 37.1 by the time, and in the quantities, agreed with the Contractor (and unless the Authority is able to provide a suitable alternative to allow the Contractor to comply with its obligations under this Contract), the Contractor shall be entitled to serve a Notice on the Authority Representative (as soon as reasonably practicable but otherwise not later than two (2) Business Days of the Authority's inability to provide any such GFA in respect of each occasion) identifying where the performance of its obligations under this Contract will be adversely affected by such failure of provision (an **Affected Service**) and the anticipated costs of acquiring services, equipment or other assets (on, acting reasonably, a like-for-like basis) in lieu of the remaining GFA from a third party (always demonstrating best value for money). Where failure by the Authority to provide the GFA will result in an Affected Service, the Authority shall, at its option:

- (A) amend its Requirements in respect of the obligations effected so as to enable the Contractor to comply with its obligations hereunder insofar as is possible in the absence of the GFA; and/or
- (B) authorise the acquisition by the Contractor or from a suitable third party of services, equipment or other assets in lieu of the GFA in which event the Authority shall reimburse the Contractor for all Actual Costs related to the procurement,

provided that the Contractor shall be obliged to deliver to the Authority copies of all warranties, receipts, guides and other relevant documents in respect of such items;

- (iii) any services, resources, facilities, information, equipment or other supplies acquired in lieu of the GFA under Clause 37.4.2(a)(ii) (other than any on a temporary or leased basis) shall thereafter for the purposes of this Contract be deemed to be GFA;
- (iv) where any such services, resources, facilities, information, equipment or other supplies acquired in lieu of the GFA under Clause 37.4.2(a)(ii)(B) have been secured by the Contractor on a temporary or leased basis, notwithstanding this Part 12 of this Contract, these shall not be treated as GFA and the Contractor shall be solely responsible for their appropriateness and for their care, maintenance, upkeep and return;
- (v) pending the exercise of the Authority's option under Clause 37.4.2(a)(ii) (or, if later, until the alternative services, equipment or assets whose acquisition has been authorised by the Authority is ready for use in the delivery of the Services (which may include installation, configuration or calibration)) the Contractor shall be:
 - (A) relieved from any deduction or reduction under the KPI regime in respect of the Affected Service; and/or
 - (B) entitled to claim any direct costs reasonably and properly incurred by the Contractor and authorised by the Authority (in writing) as a result of performing the Affected Services,

to the extent that such failure, delay or additional cost is directly attributable to the absence of such GFA and subject to the Contractor having used reasonable endeavours to mitigate such impact on the performance of the Affected Services;

- (vi) the provisions of Clauses 37.4.2(a)(ii) and 37.4.2(a)(v) shall not apply where the Authority's failure to provide GFA is as a result of a Contractor Group Member or a Subcontractor of such Contractor Group Member failing to provide the relevant GFA to the Authority pursuant to a separate contract with the Authority;
- (vii) save as set out in this Clause 37.4.2, the Authority shall not be liable to the Contractor for any Loss arising as a result, whether directly or indirectly, of the Authority not providing any services, information, equipment, assets or

supplies which are not specified in Schedule 15 (*GFA and Issued Property*) or otherwise agreed to be provided by the Authority; and

- (viii) to the extent that the Parties identify any new assets required to support the performance of the Services, which if they were provided by the Authority would constitute GFA, the Parties shall discuss and agree, in good faith, the most suitable method for procuring such items and the Party best placed to carry out such procurement.
- (b) The Authority shall supply to the Contractor copies of all manufacturers' instructions in its possession in relation to GFA which have not already been provided to the Contractor on or before the Services Delivery Date. The Authority further undertakes to forward all up-dates and additional instructions that it receives in respect of GFA as reasonably practicable.
- (c) The Contractor undertakes and agrees to keep the GFA in good and serviceable condition for day to day use. The Contractor shall ensure all regular care, use and day-to-day upkeep of GFA is performed in accordance with Good Industry Practice and the Contractor shall (unless otherwise agreed) comply with any recommendations or instructions of the manufacturer/service provider (or any equivalent, as relevant) or the Authority and all applicable Law and Regulation.
- (d) If requested, the Authority, within a reasonable time, and where practicable before delivery of the GFA, shall notify the Contractor of the value of the GFA.

37.4.3 Storage, Day-to-Day Upkeep and Return of GFA

- (a) The Contractor shall, in respect of the items identified in the Contractor GFA List and in Paragraph **Error! Reference source not found.** of Schedule 15 (*GFA and Issued Property*) be responsible for:
 - (i) safe, secure and suitable storage, protection day-to-day upkeep and safe use of GFA and shall use its reasonable endeavours to ensure that any guarantee which may be given to the Authority in respect of such items shall not be invalidated; and
 - (ii) day-to-day maintenance whilst such GFA is held by the Contractor. The Contractor is to carry out such day-to-day upkeep, in accordance with applicable Law and Regulation and Good Industry Practice, equipment handbooks and associated documentation issued by or on behalf of the Authority. If no such handbooks or documentation exist, the Contractor shall carry out such day-to-day upkeep as is appropriate and reasonable in a workmanlike and proper manner so as to ensure that the GFA is at all times available for use in provision of the Services.
- (b) Subject to Clause 37.4.5(d) the Contractor shall be responsible for the safe custody and due return of Issued Property, whether or not incorporated into the infrastructure, and shall be responsible for all loss or damage thereto, until re-delivered in accordance with the Authority's instructions upon termination or expiry of this Contract.

37.4.4 Inspection of GFA

- (a) In relation to any GFA issued to the Contractor prior to the Service Delivery Date the Contractor shall notify the Authority of any defects, deficiencies or discrepancies in such GFA within five (5) Business Days of becoming aware of the same.
- (b) For GFA issued to the Contractor on or after the Service Delivery Date, within five (5) Business Days of receipt of the GFA, or such later date as the Parties shall agree, the Contractor shall:
 - (i) check the GFA to verify that it corresponds with the relevant consignment note;
 - (ii) conduct a reasonable visual inspection;
 - (iii) conduct any additional inspection and testing as may be necessary and practicable to check that the GFA is not defective or deficient for the purpose for which it has been provided; and
 - (iv) notify the Authority of any defects, deficiencies or discrepancies discovered.

37.4.5 Defects

- (a) From the Service Delivery Date, in relation to any GFA, the Contractor shall notify the Authority of any defects, deficiencies or discrepancies in such GFA or any unavailability of GFA as soon as reasonably practicable after becoming aware of such defect, deficiency, discrepancy or unavailability but in any event not later than two (2) Business Days of becoming aware of the same. For the purposes of this Clause, defects, deficiencies, discrepancies or unavailability shall include where such GFA is not safe, or of the quality required to perform its function in the context of the Services, where there exist material errors or omissions (in the case of information and documentation), or where viruses or malicious code are present (in the case of software).
- (b) If:
 - (i) the Contractor fails to comply with its obligations to notify under Clauses 37.4.2(a)(ii), 37.4.4 or 37.4.5(a) above; or
 - (ii) any defect, deficiency, discrepancy or unavailability of GFA (whether properly notified to the Authority in accordance with the Clauses referred to in Clause 37.4.5(b)(i) or not) is determined by the Authority to have been caused by the Contractor (including by any action or omission leading to a failure to: properly maintain the Asset Register or record the Asset Condition; properly carry out day-to-day upkeep of GFA; use GFA for its intended purpose; or negligence of the Contractor) the Authority shall be entitled either itself or through a third party to arrange for the replacement, repair, maintenance, substitution or re-performance of GFA (as appropriate and at the Authority's discretion) and the Contractor shall reimburse to the Authority on demand by the Authority all reasonable costs and expenses incurred by the Authority in connection with such replacement, repair or maintenance.
- (c) Subject to Clause 37.4.5(d), the Contractor shall not be liable in respect of:

- (i) defects, deficiencies or discrepancies notified to the Authority in accordance with Clause 37.4.4(a) which the Contractor can show could not reasonably have been mitigated by it;
 - (ii) defects, deficiencies or discrepancies notified to the Authority in accordance with Clause 37.4.4(b) or latent defects which the Contractor can show could not reasonably have been discovered by means of the activities described at Clause 37.4.4(b);
 - (iii) defects, deficiencies or discrepancies notified to the Authority in accordance with Clause 37.4.5(a) which the Contractor can show could not reasonably have been mitigated by it;
 - (iv) fair wear and tear in respect of Issued Property resulting from its normal and proper use in the provision of the Services (except insofar as the deterioration is contributed to by any misuse, lack of care or want of upkeep by the Contractor or its Sub-Contractors or any Contractor Personnel); and
 - (v) Issued Property rendered unserviceable as a direct result of ordinary and proper performance of the Contractor's obligations under this Contract.
- (d) The Contractor shall not be relieved from liability under Clauses 37.4.4(a), 37.4.4(b) or 37.4.5(c) where any such defects, deficiencies or discrepancies are present as a result of a Contractor Group Member or a Sub-contractor of such Contractor Group Member providing such Issued Property to the Authority pursuant to a separate contract with the Authority and with such defects, deficiencies or discrepancies present.

37.4.6 Ownership of GFA

- (a) Issued Property that is provided to the Contractor or other plant and equipment which is acquired for use by the Contractor or its Sub-Contractors in connection with provision of the Services but at the cost of the Authority and in accordance with this Clause 37 shall be owned by the Authority and, where appropriate, licensed for use by the Contractor under the provisions set out in Schedule 15 (*GFA and Issued Property*).
- (b) Neither the Contractor, nor its Sub-Contractors nor any other person, shall have a lien on Issued Property for any sum due to them, and the Contractor shall take all such steps as may be necessary to ensure that the title of the Authority, and the exclusion of any such lien, are brought to the notice of all Sub-Contractors and other persons dealing with any Issued Property.

38 Not used

39 Accounting for Property of the Authority

39.1 Contractor Obligations

39.1.1 The Contractor shall:

- (a) with effect from the Service Delivery Date, maintain one or more electronic registers which shall be compatible with MOD IT Systems, and when taken together, contain a list of all Property of the Authority, as defined in Clause 39.2.1 (*Definition and*

Application), as required to reasonably satisfy the Authority's asset accounting centre (the **Asset Registers**);

- (b) comply in all regards with DEF STAN 05-099 Part 1 & 2, Issue 01 (Edition 07/17) which shall include maintenance of a Public Stores Account in accordance with the DEF STAN;
- (c) in each twelve-month accounting period supply the Authority with an electronic copy of the Asset Registers (which shall demonstrate any change from the preceding twelve (12) months and include the frequency of issue and location of each item of GFA). In addition, upon the request of the Authority (which request shall be made no more than three times in any twelve month period), submit additional copies of the Asset Registers to the Authority in electronic form. The submission by the Contractor and receipt by the Authority of any such copies shall not prejudice any rights or obligations of the Authority or the Contractor under this Contract;
- (d) ensure that the Asset Registers are available for inspection by the Authority at any reasonable time;
- (e) on being given twenty (20) Business Days' notice (or any other period as has been stated in this Contract) permit, and co-operate with, the Authority to conduct audits of the Asset Registers in a manner to be determined by the Authority; where the Authority has reasonable grounds to doubt the integrity of the Asset Registers to the extent that the Authority is not satisfied of the proper use of Property of the Authority, an audit may be conducted without notice; and
- (f) if the Authority agrees that a Sub-Contractor at whatever level of sub-contracting shall have responsibility in the Sub-Contractor's public store account for Property of the Authority issued in aid of this Contract, the Contractor shall include in any Sub-Contract with those Sub-Contractors only the provisions corresponding to those set out in this Clause 39 that apply to Property of the Authority issued in aid of the Sub-Contract, in particular this Clause 39.1 and Clauses 39.2 (*Definition and Application*), 39.3 (*Post-completion effect*) and 39.4 (*Amendments to the requirement for Accounting for Property of the Authority*).

39.2 Definition and Application

39.2.1 For the purposes of this Clause 39, **Property of the Authority** means GFA and fixed assets and property of the Authority issued to the Contractor under any other authorising document, in each case as such property is:

- (a) detailed in Paragraph **Error! Reference source not found.** of Schedule 15 (*GFA and Issued Property*); and
- (b) listed in the Contractor GFA List.

39.2.2 This Clause 39 shall apply to all Property of the Authority issued to the Contractor under this Contract, whether or not in aid of this Contract and regardless of whether this is used by the Contractor. Without prejudice to the foregoing, Property of the Authority issued prior to the Effective Date or pursuant to other contracts or agreements with the Authority may be subject to separate contractual arrangements.

39.3 Post-completion effect

39.3.1 The obligations of the Contractor arising under this Clause 39 in respect of Property of the Authority issued in aid of this Contract shall survive completion of this Contract and shall not be completed until all such obligations are fulfilled.

39.4 Amendments to the requirement for Accounting for Property of the Authority

39.4.1 The Authority reserves the right to request amendment to the requirement for Accounting for the Property of the Authority where the amendments arise from the Authority's proper and reasonable accounting requirements. For the purposes of this Clause, the Asset Registers shall be regarded as a part of Schedule 2 (*Requirements*) and if the Authority exercises this right:

- (a) the Authority shall raise an Authority Change Proposal in respect of its revised requirements and the Parties shall process that Authority Change Proposal through (and in accordance with) Schedule 30 (*Change Procedure*); and
- (b) the Contractor shall implement the agreed Change at the beginning of each Contract Year provided that Notice of six (6) months or such other period as may expressly be agreed between the Authority and the Contractor is given to the Contractor. These amendments shall not have retrospective effect.

40 Redundant Materiel

40.1 All items of all kinds including equipment, stores, supplies and spares which are, in the opinion of the Contractor, are considered to be unserviceable and which cannot be economically repaired or are otherwise considered to be scrap or are otherwise no longer required by the Contractor and:

- (a) result from work carried out under this Contract; and/or
- (b) are procured for the purposes of this Contract whether or not made available to the Contractor, the costs of which have been paid by the Authority (whether directly or indirectly); and/or
- (c) are in the ownership of the Authority,

(each being **Redundant Materiel**) shall only be disposed of by the Contractor with the prior approval of the Authority (such approval to be copied to the local FMSP Hard Facilities Management provider).

40.2 The Contractor shall prepare:

- (a) a list of those items which are considered to be serviceable or repairable which shall record the condition of each item, and, in the case of repairable items, the estimated price of repair; and
- (b) a list of Redundant Materiel.

40.3 Such lists shall be prepared when considered necessary by the Contractor, but in any event the Contractor shall prepare lists on the first anniversary of the Service Delivery Date and on every anniversary of the Service Delivery Date thereafter and six (6) months prior to the Expiry Date.

- 40.4 The lists referred to in Clause 40.2 above shall be countersigned by the Authority Representative and shall be sent to the Authority.
- 40.5 Within ten (10) Business Days of the date of receipt of the lists, the Authority shall issue disposal instructions to the Contractor, requiring that the items of Redundant Materiel are either:
- (a) retained by the Contractor for use in the performance of future contracts with the Authority; or
 - (b) repaired by the Contractor under a separate contract with the Authority; or
 - (c) disposed of via the Defence Equipment Sales Authority; or
 - (d) sold by the Contractor, acting on behalf of the Authority, for the best price reasonably obtainable provided that Redundant Materiel sold in accordance with this Clause 40.5(d) shall, if so specified by the Authority, be dismantled and disposed of in such a manner as to preclude the possibility of resale in its existing form.
- 40.6 The proceeds of the sale of items of Redundant Materiel sold pursuant to Clause 40.5(d) above shall, subject to any agreed Contractor costs associated with such sale of items, be credited to the Authority in accordance with arrangements made between the Contractor and the Authority. A list of the items sold by the Contractor in accordance with Clause 40.5(d) shall be sent to the Authority together with a statement of the proceeds of sale.

Part 13 – Liabilities, Indemnities, Insurance and Conduct of Claims

41 Liabilities, Indemnities, Insurance and Conduct of Claims

The provisions of Schedule 12 (*Liabilities, Indemnities, Insurance and Conduct of Claims*) shall apply.

Part 14 – Delivery

42 Not used

43 Not used

44 Delivery

44.1 This Clause sets out the agreed arrangements that will apply for delivery of Goods by the Contractor if no specific arrangement for delivery of those Goods has been agreed between the Parties in accordance with Schedule 3 (*Lot Specific Conditions*) or the relevant Task Approval Form.

44.2 The Contractor shall deliver any and all Goods produced, acquired or allotted in its provision of the Services, in accordance with the Requirements.

44.3 The Contractor shall ensure that any Goods are packaged in accordance with the Requirements.

44.4 Where, after delivery, Goods are rejected by the Authority those Goods shall, for the purposes of this Contract, be considered as not having been delivered under this Contract.

45 Acceptance and Approval

45.1 Acceptance of Items

45.1.1 Subject to Clause 45.1.2, acceptance of an item of Goods occurs at the time and in accordance with the procedure specified in the Contract, Schedule 2 (*Requirements*) or, any Task Approval Form or, if none is so specified:

- (a) where the Contract specifies a time limit within which to reject, when that time has elapsed;
- (b) where the Contract specifies no time limit within which to reject, when a reasonable time has elapsed since delivery has occurred in accordance with Clause 44 (*Delivery*); or
- (c) when it has been delivered and the Authority does any act in relation to it which is inconsistent with the Contractor's ownership.

45.1.2 The Authority shall not have accepted an item of Goods:

- (a) merely because the Authority asks for, or agrees to, its repair by or under an arrangement with the Contractor; or
- (b) unless otherwise specified in the Contract, merely because the Article has been delivered to a third party.

45.1.3 Unless otherwise specified in the Contract, the Authority shall not be deemed to have accepted an Article unless it has had a reasonable opportunity to examine it after delivery for the purpose:

- (a) of ascertaining whether it is in conformity with the Contract; or

- (b) in the case of a contract for sale by sample, of comparing the bulk with the sample.

45.1.4 Acceptance shall be governed by this Clause 45 to the exclusion of any common law or Statutory provision relating to acceptance of goods to the extent that such exclusion is permitted by Law.

45.1.5 Where software is to be supplied as a requirement of the Contract it will be subject to the provisions of this Condition as if it were an item of Goods.

45.2 Effect of Acceptance

Neither the submission by the Contractor or acceptance by the Authority of any item of Goods, document or report (including under Clause 45.1 (*Acceptance of Items*)), or of the performance of a Service, shall:

- (a) release, diminish or in any way affect the obligations of the Contractor under the Contract;
- (b) constitute a waiver of the rights of the Authority under the Contract;
- (c) relieve the Contractor from any liability to the Authority arising out of or connected with the performance of the Contractor's obligations; or
- (d) denote, or be evidence of, performance by the Contractor of any of its obligations,

and nor shall it result in the Authority assuming any responsibility for the adequacy, completeness, condition or performance of any item of Goods, document or report or performance of a Service.

45.3 No liability for Review or Approval

45.3.1 The Contractor shall rely entirely on its own skill and judgement in the performance of its duties and obligations under this Contract. Without prejudice to the generality of that requirement:

- (a) the giving or making of any approval, consent, comment, examination, or acknowledgment, the knowledge of the terms of any report, agreement or document, or the review of any report, agreement or document or course of action by or on behalf of the Authority, or the failure of the same shall not, unless expressly stated in this Contract, relieve the Contractor of any of its obligations under this Contract, or of any duty which it may have under this Contract to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgement, knowledge, review or course of action; and
- (b) the Contractor shall not be entitled to make any claim against the Authority or to seek any relief or remedy of any nature by reason of any such action by or on behalf of the Authority.

Part 15 – Intellectual Property Rights, IT, Shared Data Environment and Business Continuity Planning

46 Intellectual Property Rights

The provisions of Schedule 8 (*Intellectual Property Rights*) shall apply.

47 Software

47.1 Software Warranties: The Contractor represents and warrants to the Authority that as at the Commencement Date and for the duration of the Contract Period:

- (a) **IPR and other rights:** the Contractor:
 - (i) has authority to grant the Authority any rights granted under this Contract; and
 - (ii) to the extent that the Intellectual Property in the Delivered Software or Software Documentation are not owned by the Authority, has and shall continue to have the right to license to the Authority all Intellectual Property in and to the Delivered Software and Software Documentation;
- (b) **IPR Infringement:** the receipt and any use of the Delivered Software and Software Documentation by the Authority shall not infringe the Intellectual Property or any other rights of any third party;
- (c) **Requirements:** the Delivered Software will conform in all material respects with all applicable Requirements and the Software Documentation, and shall be free from material errors and defects, on and from the Software Acceptance Date until:
 - (i) with respect to Delivered Software which is within the scope of a Support Service, the Termination Date; or
 - (ii) with respect to Delivered Software which is not within the scope of a Support Service twenty-four (24) months after the Software Acceptance Date;
- (d) **Viruses:** the Contractor shall:
 - (i) not wilfully or deliberately create a Virus which is introduced into the Delivered Software, Delivered Hardware, Authority Data or any other Software or hardware owned by or under the control of the Authority; and
 - (ii) act in accordance with Good Industry Practice in the provision of the Services to prevent any Virus being introduced into the Delivered Software, Delivered Hardware, Authority Data or any other Software or hardware owned by or under the control of the Authority, including testing all Software provided by the Contractor (and the media on which it is delivered) prior to its delivery or installation as part of the Services, using up-to-date anti-virus checking Software;
- (e) **Corruption:** the Contractor's provision of the Services, including the Delivered Software, will not degrade, corrupt or otherwise adversely impact any other Delivered Software, or the Delivered Hardware, Authority Data or any other Software or hardware owned by or under the control of the Authority;

- (f) **Documentation:** Software Documentation shall be delivered to the Authority at the same time as the Delivered Software which shall be sufficient to enable an appropriately qualified person to operate and use the Delivered Software;
- (g) **Open Source:** the Delivered Software does not include or use any Open Source Software or any libraries or code licensed under the General Public Licence (as those terms are defined by the Open Source Initiative or the Free Software Foundation) or anything similar, nor do the Services operate in such a way that they are compiled with or linked to any of the foregoing, unless otherwise agreed between the Parties in the Task Approval Form or otherwise in writing;
- (h) **Testing:** the Delivered Software has been successfully tested by the Contractor in accordance with Good Industry Practice prior to submission to the Authority or incorporation by the Contractor in the Services;
- (i) **Versions:** all Delivered Software and all other Software used by or on behalf of the Contractor in the provision of the Services shall be currently supported versions of that Software, unless otherwise agreed between the Parties in the Task Approval Form or in writing;
- (j) **Support Services:**
 - (i) the Contractor will perform the Support Services in a timely, reliable and professional manner, in conformity with Good Industry Practice and the Requirements, by a sufficient number of competent Contractor Personnel with appropriate SQEP;
 - (ii) the Contractor will issue Maintenance Releases and New Versions in accordance with the Requirements applicable to the Support Services;
 - (iii) no Maintenance Release or New Version issued by the Contractor in accordance with the Support Services will adversely and materially affect the performance or functionality of the Delivered Software;
 - (iv) each Maintenance Release and New Version so issued will be compatible with the Delivered Hardware, the Software and any other hardware, software and equipment used by the Authority which needs to interface in any way with such Maintenance Release or New Version; and
 - (v) unless expressly agreed with the Authority in advance, the implementation of each Maintenance Release and New Version will not necessitate the upgrading or replacement of any of the Delivered Hardware, or such other hardware, Software and equipment which at the date of issue of the Maintenance Release or New Version is interfacing with the earlier release or version;
- (k) **Third Party Software:** the Third Party Software will:
 - (i) be licensed in accordance with Schedule 8 (*Intellectual Property Rights*) on terms which shall be sufficient to enable the Contractor to meet the Requirements and the Authority to receive and fully use the Services; and

- (ii) be compatible with all other Software to be provided to the Authority under this Contract such as to enable the Software to perform in accordance with the Requirements and the Software Documentation;
- (l) **Hardware:** the Delivered Hardware will:
 - (i) comply with the Requirements and this Contract;
 - (ii) be compatible with the Delivered Software such as to enable the Delivered Software to perform in accordance with the Requirements and Software Documentation; and
 - (iii) continue to be capable of being used with the Delivered Software for the Contract Period or five (5) years from the installation of the Delivered Hardware, whichever is later, assuming usage and transaction levels remain constant with those at the date on which the Delivered Hardware is installed.

47.2 Viruses

47.2.1 If the Contractor is in breach of Clause 47.1(d) then it shall notify the Authority without delay and, at its own expense, promptly take all reasonable efforts to remove the Virus (to the extent such removal is within the control of the Contractor) and promptly remedy any condition caused by the Virus (to the extent that a remedy is within the control of the Contractor). The Contractor will (at its own cost) use all commercially reasonable efforts to assist the Authority in its efforts to remove the Virus.

47.3 Delivered Code:

47.3.1 Unless the Parties have agreed otherwise in writing, the Contractor shall deliver to the Authority the object code and Source Code for any Delivered Software which is:

- (a) Foreground IP; or
- (b) Embedded Background IP,

(the **Delivered Code**) on media that is reasonably acceptable to the Authority, on the date specified in the relevant Task Approval Form, or if no date is specified within twenty (20) Business Days of a request from the Authority.

47.3.2 The Contractor shall deliver to the Authority any modifications or enhancements made to the Delivered Code during the Contract Period on each Maintenance Release and New Version of the Delivered Software.

47.3.3 To the extent that the Authority does not own the Intellectual Property in the Delivered Code the Authority shall be granted a licence to use the Delivered Code on the same terms as the licence set out in Paragraph 2 (*Background IP*) (as applicable) of Schedule 8 (*Intellectual Property Rights*).

47.4 Escrow Code:

47.4.1 The Contractor shall deposit the object code and Source Code in the Delivered Software, other than the Delivered Code and any COTS Software (the **Escrow Code**) in escrow with the NCC Group on the NCC Group's most up to date standard terms or such other terms as may be agreed between the Parties.

- 47.4.2 The Contractor shall ensure that the deposited version of the Escrow Code is the current version of the Escrow Code and that the deposited version is kept up to date as the Software is modified or upgraded, including on each Maintenance Release and New Version of the Software. The Authority shall pay the deposit and maintenance fees under the Escrow Agreement and the Contractor shall pay the release fees under the Escrow Agreement.
- 47.4.3 Where the Contractor is unable to procure compliance with the provisions of Clause 47.4.1 in respect of any Third Party Software, it shall provide the Authority with written evidence of its inability to comply with these provisions and shall agree with the Authority a suitable alternative to escrow that affords the Authority the nearest equivalent protection. The Contractor shall be excused from its obligations under Clause 47.4.1 only to the extent that the Parties have agreed on a suitable alternative.
- 47.4.4 In circumstances where the Authority obtains the release of the Escrow Code from escrow, the Contractor hereby grants to the Authority a perpetual, assignable, royalty-free and non-exclusive, sub-licensable licence to use, copy, support, store, modify, enhance, adapt, translate and otherwise deal with the Escrow Code to receive the benefit of, and fully enjoy, the Software.

48 Cyber

48.1 Authority Obligations

The Authority shall:

- (a) at its sole discretion, determine the Cyber Risk Level appropriate to this Contract and, where the Contractor has not already been notified of the Cyber Risk Level prior to the Effective Date, 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
- (b) notify the Contractor as soon as reasonably practicable where the Authority reassesses the Cyber Risk Level relating to this Contract.

48.2 Contractor Obligations

Subject to Clause 48.3, the Contractor shall, and shall procure that its Sub-Contractors shall:

- (a) comply with DEF STAN 05-138 Issue 02 (Edition 09/17);
- (b) without prejudice to the Contractor's obligations under Schedule 14 (*Supply Chain and Sub-Contracting Strategy*), 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 Process 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 Contract or on receipt of any reasonable request by the Authority;
- (c) carry out the CSM Supplier Assurance Questionnaire no less than once in each year of this Contract commencing on the first anniversary of completion of the CSM Supplier Assurance Questionnaire;

- (d) having regard to the state of technological development, implement and maintain all appropriate technical and organisational security measures to discharge its obligations under this Clause 48 in accordance with Good Industry Practice provided always that where there is a conflict between the Contractor's obligations under sub-Clause (c) above and this sub-Clause (d) the Contractor shall notify the Authority in accordance with the notification provisions in DEF STAN 05-138 Issue 02 (Edition 09/17) as soon as it becomes aware of the conflict and the Authority shall determine which standard or measure shall take precedence;
- (e) comply with all obligations imposed under the Cyber Security Implementation Plan in accordance with the timescales set out therein;
- (f) comply with all Cyber Security Instructions notified to it by the Authority as soon as reasonably practicable;
- (g) notify the MOD Defence Industry Warning, Advice and Reporting Point, within the Joint Security Coordination Centre (or any successor body notified by way of ISN) in accordance with ISN 2014/02 as amended or updated from time to time and the Contractor's 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;
- (h) 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 Contractor's NSA/DSA in the circumstances and taking into account the Cyber Risk Level;
- (i) consent to the Authority recording and using information obtained in relation to the Contract 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
- (j) include provisions in all Sub-Contracts imposing provisions equivalent to this Clause 48 (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:
 - (i) immediately 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
 - (ii) have regard to the Equivalent Provisions.

48.3 Cyber Security Implementation Plan

48.3.1 In the event of a conflict in or between the provisions of the Cyber Security Implementation Plan and the obligations set out at Clause 48.2 above then, without prejudice to the generality of Clause 48.2, the provisions of the Cyber Security Implementation Plan shall prevail and Clause 48.2 shall be deemed to be amended to the minimum extent necessary to eliminate such conflict.

48.3.2 Where:

- (a) the Contractor has notified the Authority that it or one or more of its Sub-Contractors cannot comply with any of sub-Clauses 48.2(a) to 48.2(j) above, or
- (b) the Authority has notified the Contractor that the Contractors' response to a CSM Supplier Assurance Questionnaire has revealed a failure of the Contractor or one or more of its Sub-Contractors to comply with sub-Clauses 48.2(a) to 48.2(j) above,

the Contractor shall prepare and deliver to the Authority for review and comment as soon as practicable (and in any event within five (5) Business Days of such notification) an updated Cyber Security Implementation Plan describing its proposed methodologies for rectifying said Sub-Contractor non-compliance (an "**Updated Cyber Plan**").

48.3.3 After the delivery of the Updated Cyber Plan, the Authority shall either approve the revised Updated Cyber Plan, or provide the Contractor with written comments. The Contractor shall give due consideration to the Authority's comments and shall provide a revised Updated Cyber Plan to the Authority within five (5) Business Days of receiving the Authority's comments. The Authority shall either approve the revised Updated Cyber Plan, or provide further written comments in which case the process set out in this Clause shall be repeated until the Authority approves the Updated Cyber Plan.

48.3.4 Where the Authority has approved an Updated Cyber Plan, this shall supersede all previous Cyber Security Implementation Plans and the Contractor shall, and shall procure that its Sub-Contractors shall, comply with such Updated Cyber Plan until implementation is agreed to have been achieved whereupon sub-Clauses 48.2(a) to 48.2(j) above shall apply in full. In the event that no Updated Cyber Plan has been approved by the Authority within thirty (30) Business Days of the Contractor's initial notification, the provisions of Clause 24 (*Dispute Resolution*) shall apply.

48.4 Management of Sub-Contractors

48.4.1 Where the Contractor becomes aware that a Sub-Contractor is not complying with its obligations, the Contractor shall immediately 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 the agreement of a remedial plan or termination of the Sub-Contract having regard to Clause 48.2(j) and without prejudice to the Authority's rights under Clause 58 (*Step-In Rights*).

48.4.2 Having regard to the Authority's views, the Contractor shall take all reasonable measures to address any non-compliance of a Sub-Contractor within the reasonable timescales required by the Authority. Where the Contractor fails to do so, this shall amount to a breach of this Clause 48 and the provisions of Clause 48.7 as appropriate shall apply.

48.5 Records

48.5.1 Without prejudice to the Contractor's obligations under Part 7 (*Reviews, Performance Management, Records and Reporting*) and Clause 28 (*Security*), the Contractor shall keep and maintain, and shall ensure that any Sub-Contractor shall keep and maintain, until six (6) years after termination or expiry of this Contract, or as long a period as may be agreed between the Parties, full and accurate records including:

- (a) details of all Authority Identifiable Information relating to the Contractor Deliverables provided under this Contract; and
- (b) copies of all documents required to demonstrate compliance with DEF STAN 05-138 Issue 02 (Edition 09/17) and this Clause 48, including any information used to inform the CSM Risk Assessment Process and to carry out the CSM Supplier Assurance Questionnaire, together with any certificates issued to the Contractor and/or Sub-Contractor.

48.5.2 The Contractor shall, and shall ensure that any Sub-Contractor shall on request provide the Authority, the Authority's representatives and/or the Contractor's NSA/DSA such access to those records as may be required in connection with this Contract.

48.6 Audit

48.6.1 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 Contractor's 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 Contractor's NSA/DSA may, not more than twice in any calendar year and for a period of six (6) years following the termination or expiry of this Contract, whichever is the later, conduct an audit for the following purposes:

- (a) to review and verify the integrity, confidentiality and security of any Authority Identifiable Information;
- (b) to review the Contractor's and/or any Sub-Contractor's compliance with its obligations under this Clause 48; and
- (c) to review any records created during the provision of the Contractor Deliverables, including any documents, reports and minutes which refer or relate to the Contractor Deliverables for the purposes of sub-Clauses 48.6.1(a) and 48.6.1(b) above.

48.6.2 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's performance of the Services 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.

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

- (a) all information requested by the Authority within the permitted scope of the audit;
- (b) reasonable access to any Sites controlled by any Contractor Group Member and any Sub-Contractor and to any equipment used (whether exclusively or non-exclusively) in the performance of the Contract 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
- (c) access to any relevant staff.

48.6.4 The Authority shall endeavour to (but is not obliged to) provide at least fifteen (15) Business Days' Notice of its intention to conduct an audit.

48.6.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 48, unless the audit identifies a material breach of the terms of this Clause 48 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.

48.7 Breach of Obligations

48.7.1 Where the Cyber Risk Level of this Contract is assessed to be a moderate or high, and the Contractor breaches any of the terms of this Clause 48, the Authority shall be entitled:

- (a) to terminate the Contract (whether in whole or in part) and to claim damages in accordance with Clause 59 (*Contractor Default*) as though such breach is a material breach; and
- (b) where the Contract has not been terminated, to recover from the Contractor any loss sustained in consequence of any breach of this Clause 48.

48.7.2 Where the Cyber Risk Level of this Contract is assessed to be very low or low, and the Contractor breaches the terms of this Clause 48, the Authority shall be entitled:

- (a) to recover from the Contractor the amount of any loss sustained in consequence of any breach of this Clause 48, subject to any provision which is agreed elsewhere in this Contract; and
- (b) where the Contractor does not comply with any reasonable instructions issued by the Authority or the Contractor's NSA/DSA within the time period specified to remedy such breach or prevent further breaches, the Authority shall be entitled to terminate this Contract (whether in whole or in part) and to claim damages as though such breach is a material breach.

48.7.3 Where the Contractor commits an act of fraud, negligence or wilful misconduct in respect of its obligations under this Clause 48 the Authority shall be entitled to terminate this Contract (whether in whole or in part) and to claim damages in accordance with Clause 59.1.8 (*Material Breach*) as though such breach is a material breach.

48.8 General

48.8.1 On termination or expiry of this Contract the provisions of this Clause excepting sub-Clauses 48.2(b) and 48.2(c) (*Contractor Obligations*) above shall continue in force so

long as the Contractor and/or and Sub-Contractor holds any Authority Identifiable Information relating to this Contract.

48.8.2 Termination or expiry of this Contract 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 the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

48.8.3

(a) The Contractor agrees that the Authority has absolute discretion to determine changes to DEF STAN 05-138 Issue 02 (Edition 09/17) and/or the Cyber Risk Level. In the event that there is such a change to DEF STAN 05-138 Issue 02 (Edition 09/17) or the Cyber Risk Level, then either Party may seek an adjustment to the Total 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 DEF STAN 05-138 Issue 02 (Edition 09/17) or Cyber Risk Level in accordance with Schedule 30 (*Change Procedure*) provided always that the Contractor shall seek to mitigate the impact on time and cost to the extent which it is reasonably practicable to do so and further provided that such costs shall not be allowed unless they are considered to be appropriate, attributable to the Contract and reasonable in all the circumstances.

(b) Subject to sub-Clause 48.8.3(a) above, where the Contractor seeks such adjustment or extension, the Authority will proceed in accordance with Schedule 30 (*Change Procedure*) to determine the request for adjustment or extension. The Contractor must deliver a Contractor Change Proposal to the Authority within eight (8) weeks of the occurrence of the change in DEF STAN 05-138 Issue 02 (Edition 09/17) 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 DEF STAN 05-138 Issue 02 (Edition 09/17) 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 24 (*Dispute Resolution*) shall apply.

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

49 Provision of a Shared Data Environment Service

[REDACTED]

50 Shared Data Environment System Transfer Arrangements

50.1 In the event that the Authority wishes to appoint an Incoming Contractor to provide a SDE Service on expiry or termination of the Contract, the Contractor shall grant (or, where applicable, procure the granting of) an irrevocable, non-exclusive, worldwide, transferable, royalty-free licence, with the right to sub-licence, for the Authority and the Incoming Contractor to use, copy, support, store, modify, enhance, adapt, translate and otherwise deal with all Intellectual Property in the SDE System to continue to provide the Services (or part thereof) or substantially similar services (or part thereof).

50.2 Without prejudice to the Authority's other rights under this Contract, the licence to be granted under Clause 50.1 shall not:

- (a) require the Contractor to permit retention by the Authority, Incoming Contractor or any other User, or the transfer by the Contractor, of any computer hardware or network infrastructure owned by it or a third party;
- (b) extend to any COTS forming part of the SDE System.

50.3 The licence under Clause 50.1 shall be free of payment.

51 Use of a Shared Data Environment Service

[REDACTED]

52 Management of the SDE System

52.1.1 The Authority shall, in accordance with due regard to his obligations under the EISA:

- (a) provide the Contractor with controlled Access;
- (b) ensure, as far as is reasonably practical, that all Information, including associated marks and legends, is Accessible only by Users authorised to have Access and is not altered, lost or destroyed;
- (c) monitor the Access and usage of the SDE to detect any instances of misuse, malicious attack, unauthorised Access and any other threat to its Integrity;
- (d) implement and maintain a virus control policy and make details thereof available to the Contractor, in accordance with the EISA;
- (e) operate an EISA Data configuration management control system in accordance with the EISA;
- (f) implement and maintain an EISA Data back-up policy; and
- (g) ensure that, if any part of the SDE System is changed, the Contractor's ability to Access Information and the levels of Fidelity and Integrity are not adversely affected.

52.2 Storage and Archiving

52.2.1 For the duration of the Contract the Authority shall arrange that:

- (a) the Contractor's EISA Data, when stored in the SDE System, is maintained from the date of being loaded into the SDE for the Contract Period, after which time (following reasonable Notice to the Contractor) it shall be Expunged unless:
 - (i) a specific request for its retention in the SDE System is made by the Contractor;
 - (ii) it is withdrawn by the Contractor in accordance with the EISA; or
 - (iii) it is Archived.
- (b) the Contractor's EISA Data on the SDE System can be Archived when it is no longer required by the Contractor; and
- (c) when requested by the Contractor, the Contractor's Archived EISA Data is reinstated on the SDE System.

52.2.2 At the end of the Contract, the Authority shall arrange that:

- (a) all the Contractor's Information in the SDE is Archived and retained in a useable format for a period of not less than [REDACTED]; and
- (b) during the period to which Clause 52.2.2(a) applies, and within [REDACTED], the Contractor's retained EISA Data is made available to the Contractor on a medium to be agreed between the Authority and the Contractor. A fair and reasonable price shall be agreed for satisfying each request.

52.2.3 At the expiry or termination of his obligations under the Contract the Contractor shall, on the direction of the Authority, either Expunge or surrender to the Authority all EISA Data stored in the SDE System and any Archive, always provided that the Log shall not be Expunged or destroyed.

52.3 The Log

52.3.1 The Authority shall establish a Log and ensure that all instances of Access to the SDE System (except where the User Protocol provides otherwise) are automatically logged therein, recording as a minimum:

- (a) details of any Information Accessed;
- (b) identity of the User; and
- (c) date and time of the Access.

52.3.2 The Authority shall also record the details of any unauthorised or denied Access attempts, including the identity of the user or, insofar as it can be ascertained, any other third party making the attempt, the information system into which the attempt was made and the date and time of the attempt.

52.3.3 The Authority shall maintain the Log during the term of the Contract and thereafter for a period of no less than two (2) years and shall make available to the Contractor relevant certified extracts relating to the Contractor's Information, in accordance with the EISA. The Contractor shall fulfil any request for visibility of an extract of the Log under this Clause 52.3.3 within seventy-two (72) hours.

52.4 Availability of System

- 52.4.1 The Authority shall use reasonable endeavours make the SDE System available.
- 52.4.2 At least [REDACTED] before the commencement of any scheduled maintenance requiring system down time or degradation, all Users shall be notified by the Authority of the time of commencement of such down time or degradation and its expected duration.
- 52.4.3 The Authority shall give as much warning as is reasonably practicable to the Contractor of periods where the SDE System is required to be interrupted for unscheduled maintenance.
- 52.4.4 Following any interruption, the Authority shall use reasonable endeavours to ensure that the SDE System is restored in a timely manner.
- 52.4.5 The Authority does not warrant that the Contractor's use of the SDE System will be uninterrupted or error-free. The Authority shall not be responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Contractor acknowledges that use of the SDE System may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

53 Business Continuity and Disaster Recovery Planning

- 53.1 The Contractor shall maintain an ISO 22301 certification throughout the Contract Period.
- 53.2 The Contractor shall develop and maintain a business continuity and Disaster recovery plan in accordance with Good Industry Practice (the **BCDR Plan**). The BCDR Plan shall be provided to the Authority on request.
- 53.3 The Contractor shall ensure that it is able to implement the provisions of the BCDR Plan at any time in accordance with its terms. If an event occurs which requires the BCDR Plan to be implemented under the terms of the BCDR Plan, the Contractor shall immediately implement the BCDR Plan.
- 53.4 The Contractor shall test the BCDR Plan on a regular basis (and, in any event, not less than once in every twelve (12) month period). The Authority shall be entitled to participate in such tests as it may reasonably require.
- 53.5 Following each test, the Contractor shall send to the Authority a written report summarising the results of the test and shall promptly implement any actions or remedial measures which the Authority considers to be necessary as a result of those tests.
- 53.6 The Contractor shall proactively contribute to and engage in the planning, execution and delivery of any Naval Base business continuity plan, as required by the Authority. As part of this obligation, the Contractor shall nominate key Contractor Personnel to be called upon in the event of an incident that is the subject of such Naval Base business continuity plan.

Part 16 - Supervening Events

54 Force Majeure Events

54.1 Definitions

54.1.1 For the purpose of this Contract, but subject to Clauses 54.1.3 to 54.1.5, a Force Majeure Event means one of the events or circumstances listed in Clause 54.1.2.

54.1.2 The list of events or circumstances referred to in Clause 54.1.1 are:

- (a) nuclear, chemical or biological contamination caused other than by the Contractor or the Authority or any persons over whom the Contractor or the Authority exercises control;
- (b) war, civil war, armed conflict or terrorism in each case arising within or affecting the United Kingdom to the extent that this is not an event under Clause 57.3 (*Trigger Events*); and
- (c) pressure waves caused by devices travelling at supersonic speeds.

54.1.3 Where a Force Majeure Event directly causes or results in the Contractor or the Authority (the **Affected Party**) failing to perform, or being delayed in performing any of its obligations owed to the other Party (the **Other Party**) under this Contract, the remaining provisions of this Clause 54 shall apply.

54.1.4 The inability (however caused) of a Party to pay shall not be a Force Majeure Event.

54.1.5 Brexit and any event arising as a result of Brexit (excluding any of the events specified in Clause 54.1.2) shall not constitute a Force Majeure Event.

54.2 Giving of Notice

The Affected Party shall give Notice to the Authority or the Contractor (as appropriate, the **Other Party**) as soon as possible and in any event within two (2) Business Days of its Contract Manager becoming aware of a Force Majeure Event. Such Notice shall contain an estimate of the period of time required to overcome the Force Majeure Event and its effects, and details of the obligations under this Contract in respect of which the Affected Party is claiming relief.

54.3 Contractor as Affected Party

54.3.1 Where the Contractor is the Affected Party:

- (a) the Contractor must use and continue to use all reasonable endeavours to avert or prevent the occurrence of the relevant Force Majeure Event and/or to minimise and mitigate the effects of such Force Majeure Event on the performance of the Services as soon as reasonably practicable after the onset of the event, acting in accordance with Good Industry Practice;
- (b) the Contractor must, within five (5) Business Days (or by the end of such longer period as the Contractor and the Authority shall agree) of receipt by the Authority of the Notice referred to in Clause 54.2 (*Giving of Notice*), confirm and provide supporting evidence to the Authority's satisfaction that:

- (i) neither it nor any Sub-Contractor could reasonably have foreseen the occurrence or consequences of the relevant Force Majeure Event and could not have avoided such occurrence or consequences by taking steps which they might reasonably be expected to have taken, without incurring material additional expenditure;
- (ii) the Force Majeure Event has given rise to a need for the relief specified by the Contractor; and
- (iii) it has complied with Clause 54.3.1(a).

54.3.2 For so long as and to the extent that the Force Majeure Event directly causes or results in the Contractor failing to comply with any of its obligations under this Contract and provided it has complied with Clauses 54.3.1(a) and 54.3.1(b), the Contractor shall be relieved from any action for failure to comply with such obligations.

54.4 Authority as Affected Party

Where the Authority is the Affected Party:

- (a) the Authority must, within ten (10) Business Days (or by the end of such longer period as the Contractor and the Authority shall agree) of receipt by the Contractor of the Notice referred to in Clause 54.2 (*Giving of Notice*), confirm and provide supporting evidence to the Contractor that the Force Majeure Event has given rise to a need for relief from the obligations under this Contract specified by the Authority; and
- (b) the Authority shall for the period of the Force Majeure Event be entitled to such relief as the Parties agree (or as is determined via the Fast Track Procedure) in relation to performance of any adversely affected obligation of the Authority under this Contract (which may include, to the extent appropriate, an extension of time to perform the obligation).

54.5 Other Provisions

54.5.1 Subject to Clause 62 (*Termination for Prolonged Force Majeure Events*), this Contract may not be terminated by the Other Party under any provision where the grounds for such termination are the result of a Force Majeure Event.

54.5.2 The Affected Party shall notify the Other Party within forty-eight (48) hours of the cessation of the Force Majeure Event, and shall resume performance of any affected obligations as soon as possible after giving such Notice.

54.5.3 If the parties disagree that a Force Majeure Event has occurred and/or the extent of relief claimed by the Affected Party, the matter shall be resolved in accordance with the provisions of the Fast Track Procedure of the Dispute Resolution Procedure.

54.5.4 Nothing in this Clause 54 or in this Contract as a whole shall constitute grounds for relief or an extension of time to the Contractor or a Contractor Group Member under any other contract which the Contractor or Contractor Group Member may have with the Authority.

54.5.5 Not used.

54.5.6 Where a Force Majeure Event results in any delay to the Planned Service Delivery Date, the Expiry Date shall be extended by a period equivalent to the length of any such delay.

54.6 Costs

54.6.1 If a Force Majeure Event directly causes or results in the Contractor failing to perform any Services pursuant to its obligations under this Contract, then the Authority shall not be obliged to pay for any such Services to the extent that they have not been performed.

54.6.2 If a Force Majeure Event directly causes or results in the Contractor failing to perform any Services pursuant to its obligations under this Contract, then at the end of each Contract Year in which the Force Majeure Event subsisted (or is continuing to subsist), the Parties shall identify appropriate, attributable and reasonable costs (if any), taking account of the extent to which the Contractor has complied with its obligations under Clause 54.3 (*Contractor as an Affected Party*) which:

- (a) were anticipated to be incurred and so were included in the Annual Service Price at the beginning of that Contract Year; and
- (b) were not incurred as a direct result of the Force Majeure Event,

(the **FM Impacted Costs**). The Parties shall reduce the Annual Service Price in respect of the following Contract Year (on a pro-rata monthly basis) by an amount equal to the value of the FM Impacted Costs.

54.6.3 Nothing in Clause 54 (*Force Majeure Events*) shall affect any entitlement to make deductions or any deductions made as a result of Schedule 5 (*Performance Management and Measurement*), in respect of: (i) any Services, the performance of which, are not directly affected by a Force Majeure Event; and/or (ii) any Services that are not capable of being performed as a direct result of such Force Majeure Event but the Contractor has in the reasonable opinion of the Authority failed to comply with its obligations to mitigate and minimise the effect of such Force Majeure Event in accordance with Clause 54.3.1(a) during the period in which the Force Majeure Event is subsisting.

55 Relief Events and Compensation Events

55.1 Relief Events

55.1.1 For the purposes of this Contract, a Relief Event means one of the events or circumstances listed in Clause 55.1.2, provided that Brexit and any event arising as a result of Brexit (excluding any of the events specified in Clause 55.1.2) shall not constitute a Relief Event.

55.1.2 The events or circumstances referred to in Clause 55.1.1 are:

- (a) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation (to the extent it does not constitute a Force Majeure Event), earthquakes, riot and civil commotion;
- (b) failure by any statutory undertaker, utility company, local authority or other like body to carry out works or provide services;
- (c) any failure or shortage of power, fuel or transport;
- (d) any blockade or embargo which does not constitute a Force Majeure Event;
- (e) any strike occurring within the United Kingdom;

- (i) which has been called by the national or other principal executive committee of an independent trade union (within the meaning of Section 5 of the Trade Union and Labour Relations (Consolidation) Act 1992) which is a recognised trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992; and
- (ii) which has been endorsed by a properly conducted ballot of the members affected; and
- (iii) in which all or selected members of such a union, whether or not employed by the Contractor or any of its Sub-Contractors, have been invited by its national or other principal executive committee, to withdraw their labour as part of a national campaign of industrial action

(a **National Strike**); and

- (f) any pandemic declared by the UK Government and the World Health Organisation.

55.1.3 If, as a direct result of a Relief Event:

- (a) there is a delay to the Planned Service Delivery Date; or
- (b) the Authority's or the Contractor's ability to perform any of its obligations under this Contract is adversely affected,

then the Authority will be relieved from its relevant obligations and the Contractor is entitled to apply for relief from any rights of the Authority arising under Schedule 5 (*Performance Management and Measurement*) and its obligations under this Contract.

55.1.4 Subject to Clause 55.1.8, to obtain relief from its obligations under the Contract, the Contractor must:

- (a) use and continue to use all reasonable endeavours to avert or prevent the occurrence of the relevant Relief Event and to minimise and mitigate the effects of such Relief Event on the performance of the Services as soon as reasonably practicable after the onset of the Relief Event, acting in accordance with Good Industry Practice;
- (b) as soon as practicable, and in any event within five (5) Business Days after it became aware that the Relief Event has caused or is likely to cause delay and/or adversely affect the ability of the Contractor to perform its other obligations, give to the Authority a Notice of its claim for relief from its obligations under this Contract, including full details of the nature of the Relief Event, the date of occurrence and its likely duration;
- (c) within five (5) Business Days of receipt by the Authority of the Notice referred to in Clause 55.1.4(b) above, give full details of the relief claimed; and
- (d) demonstrate to the reasonable satisfaction of the Authority that:
 - (i) the Contractor and its Sub-Contractors could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken, without incurring material expenditure;
 - (ii) the Relief Event directly caused the delay to the Planned Service Delivery Date or need for relief from performance of obligations under this Contract;

- (iii) it has complied and is continuing to comply with Clause 55.1.4(a).

55.1.5 Following service of a Notice by the Contractor pursuant to Clause 55.1.4(b) above, the Contractor shall promptly supply to the Authority any further information relating to the delay which is received by the Contractor or is reasonably requested by the Authority.

55.1.6 Subject to Clause 55.1.12 below, in the event that the Contractor has complied with its obligations under Clause 55.1.4 above, then:

- (a) the Planned Service Delivery Date shall be postponed by such time as shall be reasonable for such a Relief Event, taking into account the likely effect of the delay;
- (b) the Expiry Date shall be extended by a period equivalent to the length of any such delay in (a) above; and
- (c) the Authority shall not be entitled to exercise its rights to terminate the Contract under Clause 59 (*Contractor Default*) and, subject to Clause 55.1.7(a), shall give such other relief as has been requested by the Contractor.

55.1.7

- (a) Subject to Clause 55.1.12 below and Clause 55.1.7(b), where:
 - (i) the Contractor is entitled to apply for relief in accordance with Clause 55.1.3 above; and
 - (ii) the Contractor has complied with its obligations under Clause 55.1.4 above; and
 - (iii) the Authority has confirmed the relief requested by the Contractor under Clause 55.1.6(c) by Notice to the Contractor, such Notice to set out the Services which are agreed to be subject to the Relief Event (the **Authority Relief Event Notice**),

the Authority shall not make deductions pursuant to Schedule 5 (*Performance Management and Measurement*) in respect of the Services not capable of being performed as a direct result of such Relief Event and confirmed by the Authority Relief Event Notice, during the period in which the Relief Event is subsisting.

- (b) In respect of any Services which are not directly affected by such Relief Event and not set out in the Authority Relief Event Notice, nothing in Clause 55.1.4 shall affect any entitlement to make deductions or any deductions made as a result of Schedule 5 (*Performance Management and Measurement*) during the period in which the Relief Event is subsisting.

55.1.8 In the event that information required by Clause 55.1.4 is provided after the dates referred to in that Clause, then the Contractor shall not be entitled to any relief during the period for which the information is delayed.

55.1.9 The Contractor shall notify the Authority if at any time it receives or becomes aware of any further information relating to the Relief Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.

55.1.10 If the Parties disagree that a Relief Event has occurred and/or the extent of relief claimed by the Contractor, the matter shall be resolved in accordance with the provisions of the Fast Track Procedure of the Dispute Resolution Procedure.

55.1.11 Costs

- (a) If a Relief Event directly causes or results in the Contractor failing to perform any Services pursuant to its obligations under this Contract, then the Authority shall not be obliged to pay for any such Services to the extent that they have not been performed.
- (b) If a Relief Event directly causes or results in the Contractor failing to perform any Services pursuant to its obligations under this Contract, then at the end of each Contract Year in which the Relief Event subsisted (or is continuing to subsist), the Parties shall identify appropriate, attributable and reasonable costs (if any), taking account of the extent to which the Contractor has complied with its obligations under Clause 55.1.4 which:
 - (i) were anticipated to be incurred and so were included in the Annual Service Price at the beginning of that Contract Year; and
 - (ii) were not incurred as a direct result of the Relief Event,

(the **RE Impacted Costs**). The Parties shall reduce the Annual Service Price in respect of the following Contract Year (on a pro-rata monthly basis) by an amount equal to the value of the RE Impacted Costs.

55.1.12 Subject to Clause 55.1.4, in the event that any of the Services set out in the Authority Relief Event Notice are not capable of performance for longer than thirty (30) days (a "**Prolonged Relief Event**"), the Authority or the Contractor may submit a Change Proposal in accordance with the terms of Schedule 30 (*Change Procedure*) under which the Parties shall agree:

- (a) a set of interim services which the Contractor can reasonably perform while the Prolonged Relief Event subsists;
- (b) associated payment for the performance of the interim services; and
- (c) and KPIs which shall apply to the interim services and against which the Authority may make retentions and/or deductions,

and the Parties shall counter sign a Change Notice in accordance with Schedule 30 (*Change Procedure*) to implement the Change. For the avoidance of doubt, upon the applicable Relief Event ceasing to subsist, either Party may give notice to the other and, following such notice, the Change Notice in respect of the Prolonged Relief Event shall no longer apply and the Contractor shall immediately resume the performance in full of the Services set out in the Authority Relief Event Notice and Schedule 5 (*Performance Management and Measurement*) shall apply to those Services.

55.2 Compensation Events

55.2.1 For the purposes of this Contract, a Compensation Event means any material failure (including where such failure is due to Brexit) by the Authority, its employees or agents to meet the Authority Responsibilities, provided that a Force Majeure Event and Brexit shall not constitute a Compensation Event.

55.2.2 If, as a direct result of the occurrence of a Compensation Event, the Contractor is unable to:

- (a) provide the Services with effect from the Planned Service Delivery Date; or
- (b) comply with its obligations under this Contract,

then the Contractor is entitled to:

- (i) apply for relief from and/or an extension of time for performance of its obligations under this Contract; and
- (ii) claim compensation in respect of appropriate, attributable and reasonable Actual Costs which have resulted from such Compensation Event,

in each case subject to and in accordance with this Clause 55.2.

55.2.3 Subject to Clause 55.2.7 to obtain relief, an extension of time and/or claim compensation the Contractor must:

- (a) use and continue to use all reasonable endeavours to avert or prevent the occurrence of the relevant Compensation Event and to minimise and mitigate the effects of such Compensation Event on the performance of the Services as soon as reasonably practicable after the onset of the Compensation Event, acting in accordance with Good Industry Practice;
- (b) as soon as practicable, and in any event within five (5) Business Days after it became aware that the Compensation Event has caused or is likely to cause delay or a breach of an obligation under this Contract, give to the Authority a Notice of its claim for relief from its obligations under the Contract, an extension of time, and/or payment of compensation;
- (c) within five (5) Business Days of receipt by the Authority of the Notice referred to in Clause 55.2.3(a) above, provide the Authority full details of the Compensation Event and the relief, extension of time and/or additional Actual Costs claimed; and
- (d) demonstrate to the reasonable satisfaction of the Authority that:
 - (i) the Compensation Event directly caused the delay to the Planned Service Delivery Date, additional Actual Costs and/or breach of the Contractor's obligations under this Contract; and
 - (ii) it has complied and is continuing to comply with Clause 55.2.3(a).

55.2.4 Following service of a Notice by the Contractor pursuant to Clause 55.2.3, the Contractor shall promptly supply to the Authority any further information relating to the delay which is:

- (a) received by the Contractor; or
- (b) is reasonably requested by the Authority.

55.2.5 If the Contractor has complied with its obligations under Clause 55.2.3, then:

- (a) in the case of a delay to the Planned Service Delivery Date, such date shall be postponed by such time as shall be reasonable for such a Compensation Event, taking into account the likely effect of the delay;
- (b) where the Planned Service Delivery Date is postponed, the Expiry Date shall be extended by a period equivalent to the length of any such postponement;
- (c) in the case of additional cost the Authority will, in accordance with Clause 55.2.6, compensate the Contractor in respect of additional Actual Costs reasonably and properly incurred by the Contractor as a direct result of the Compensation Event (subject to the Contractor mitigating the impact of the relevant event in accordance with this Clause 55.2) including any additional Actual Costs resulting from an increase in the reasonably and properly incurred costs of the Contractor's Sub-Contractors; and
- (d) the Authority shall give the Contractor such relief from its obligations under the Contract and / or extension of time, as is reasonable for such a Compensation Event.

55.2.6 Those additional Actual Costs that the Contractor is entitled (under Clause 55.2.5) to be compensated for that:

- (a) Not used;
- (b) Not used;
- (c) relate to performance of any Services in a Firm Price Service Category (the Relevant Firm Price Service Category) shall be a Firm Price Compensation Amount;
- (d) relate to performance of any Services in a Fixed Price Service Category (the Relevant Fixed Price Service Category) shall be a Fixed Price Compensation Amount,
- (e) and the Contractor shall be compensated for:
 - (i) Not used;
 - (ii) Not used;
 - (iii) each Firm Price Compensation Amount (if any) by an increase to the Firm Price Cost Amount for the Relevant Firm Price Service Category, such increase to be equal to the Firm Price Compensation Amount; and
 - (iv) each Fixed Price Compensation Amount (if any) by an increase to the Fixed Price Service Indexable Cost Amount for the Relevant Fixed Price Service Category, such increase to be equal to the Fixed Price Compensation Amount converted into Base Year Terms.

55.2.7 In the event that information is provided after the dates referred to in Clause 55.2.3, then the Contractor shall not be entitled to any extension of time, compensation, or relief from its obligations under the Contract in respect of the period for which the information is delayed.

55.2.8 The Contractor shall notify the Authority if at any time it receives or becomes aware of any further information relating to the Compensation Event, giving details of that information to the

extent that such information is new or renders information previously submitted materially inaccurate or misleading.

55.2.9 If the parties disagree that a Compensation Event has occurred and/or the extent of relief claimed by the Contractor, the matter shall be resolved in accordance with the provisions of the Fast Track Procedure of the Dispute Resolution Procedure.

55.2.10 Not used.

55.3 No relief for Contractor Group Member failures

The Contractor shall not be entitled to relief or compensation under this Clause 55 where the Relief Event or Compensation Event occurs due to a failure by a Contractor Group Member to comply with its obligations under any contract or arrangement between that Contractor Group Member and the Authority or any Authority Contractor.

Part 17 – Service Continuity

56 Transition to War

- 56.1 The Contractor shall continue to provide the Services in peacetime and during periods of crisis, tension, emergencies, and surge, in transition to war and during hostilities.
- 56.2 In the event of crisis, tensions, emergencies, surge or hostilities affecting the Services the Authority shall be entitled (but not obliged) to exercise its rights under Clause 57 (*Measures in a Crisis*).

57 Measures in a Crisis

57.1 Not used

57.2 Notice of Events

If, at any time, the Authority believes, in its sole opinion, that there exist circumstances to which Clause 57.3 (*Trigger Events*) below applies, it may issue a Notice to the Contractor of such belief.

57.3 Trigger Events

The circumstances referred to in Clause 57.2 (*Notice of Events*) above are, where in view of:

- (a) a material threat to the national security and defence, or a material adverse effect on the national interests, of the United Kingdom, or the occurrence of a state of war, crisis, state of tension or other emergency (whether or not involving hostilities); or
- (b) a request to the Authority by a local authority, public body, or statutory corporation for assistance in relation to the occurrence or possible occurrence of a major accident, crisis or natural disaster; or
- (c) a request by NATO, the EU or the United Nations for support or assistance in relation to international obligations; or
- (d) the existence of an emergency or the occurrence of an unforeseen event affecting the Portsmouth Naval Base or its operations or the performance by the Parties or the provision of the Services by the Contractor, whether directly or indirectly, and which causes or has the potential to cause an immediate and imminent threat to the long term integrity of any part of the Portsmouth Naval Base or to land adjacent to, or likely to be affected by events on, any part of the Portsmouth Naval Base or the viability of the relevant Portsmouth Naval Base, the performance of this Contract or the provision of Services by the Contractor,

it is necessary, appropriate, or desirable for the Authority to take all or any of the measures described in Clauses 57.4 (*Effect of Implementation of Measures in a Crisis*) to 57.7 (*Notice of Cessation*) (inclusive) below. Any event described in this Clause 57.3 arising as a result of Brexit shall constitute a valid trigger event.

57.4 Effect of Implementation of Measures in a Crisis

If the Authority has issued a Notice contemplated in Clause 57.2 (*Notice of Events*), the Authority may require the Contractor, within such period as may be specified by the Authority

in its sole discretion, to provide such information as the Authority may in its sole discretion require, including information relating to all or any of the following matters:

- (a) the services under this Contract being carried out by the Contractor (or due to commence being carried out by the Contractor within the period that the Authority estimates that the circumstances set out in its Notice under Clause 57.2 (*Notice of Events*) will continue) for:
 - (i) the Authority; and
 - (ii) any third parties;
- (b) the Contractor's current deployment of its employees; and
- (c) the committed and uncommitted skills, resources and personnel that the Contractor has available to assist the Authority during the period that the Authority estimates that the circumstances set out in its Notice under Clause 57.2 (*Notice of Events*) will continue.

57.5 Good faith discussion

Upon providing the Authority with the information requested pursuant to Clause 57.4 (*Effect of Implementation of Measures in a Crisis*) above, or upon expiry of the period specified by the Authority for the supply of such information, the Contractor shall, upon being so requested by the Authority, discuss in good faith with the Authority any matters which the Authority, in its sole opinion, may consider relevant or appropriate to any proposals the Authority may have for the reallocation of priorities for, or for the reorganisation of, services under this Contract carried out, or to be carried out, by the Contractor. These will be in order to deal with the circumstances which gave rise to the issuing of a Notice pursuant to Clause 57.2 (*Notice of Events*) above, including the following matters:

- (a) the revision (including the early completion or temporary suspension) of the provision of any services carried out or obligation of the Contractor under this Contract for the Authority;
- (b) the early completion or suspension of any services or any obligation of the Contractor under this Contract by the Contractor for third parties; and
- (c) the immediate implementation of new services under or any obligation of the Contractor under this Contract,

and the Parties shall endeavour, as far as reasonably possible, to reach agreement as a matter of urgency on such matters.

57.6 Authority overriding right

- (a) Notwithstanding any provision to the contrary in this Contract and notwithstanding that any of the measures described in Clauses 57.4 (*Effect of Implementation of Measures in a Crisis*) and 57.5 (*Good faith discussion*) above may not have been taken, required to be taken, or have been completed, the Authority may (where necessary due to the circumstances described in Clause 57.3 (*Trigger Events*)), at any time and in its sole discretion:

- (i) require the Contractor to use all reasonable endeavours to comply fully with any written instructions issued by the Authority during the period in which such circumstances affect the Authority; and/or
 - (ii) step in to the provision of the Services in accordance with the Authority's rights under Clause 58 (*Step-In Rights*), it being acknowledged that this would be on a no fault basis, but without prejudice to any other Authority remedies in the event of an act, omission or fault of the Contractor.
- (b) Instructions issued by the Authority in accordance with Clause 57.6(a) may include instructions issued in relation to all or any of the following matters:
- (i) to accelerate to early completion or to temporarily suspend any services or any obligation of the Contractor under this Contract carried out by the Contractor for third parties;
 - (ii) to remove temporarily the property of third parties from the facilities operated or owned by the Contractor in connection with this Contract or any obligation of the Contractor under this Contract and to use all reasonable endeavours to procure that any such action is carried out on terms with such third parties which result in the least possible loss or damage;
 - (iii) to accelerate to early completion or to temporarily suspend any of the services under any contract for third parties carried out or to be carried out by the Contractor; and
 - (iv) to deploy its employees, its stocks of materials, plant, equipment and other supplies and/or to use, or make available for use by the Authority or as directed by the Authority, the premises, plant and machinery.

57.7 Notice of Cessation

The provisions of Clauses 57.4 (*Effect of Implementation of Measures in a Crisis*) to 57.6 (*Authority overriding right*) above shall cease to apply when the Authority issues a Notice to that effect to the Contractor, which the Authority shall use its reasonable endeavours to do once the circumstances in Clause 57.3 (*Trigger Events*) cease to require that the Contractor endeavour to comply with any the Authority instructions issued under Clause 57.6 (*Authority overriding right*).

57.8 Authority Authorisation

Any action or measures which the Authority may, or is required to, take pursuant to the provision of this Clause may validly be authorised by a Authority Representative (who is at the Authority two star level (or equivalent) or above).

57.9 Indemnity for Measures in a Crisis

57.9.1 Subject to Clause 57.9.3 if the Parties agree actions pursuant to Clause 57.5 (*Good faith discussion*) or the Authority issues any instructions to the Contractor pursuant to Clause 57.6 (*Authority overriding right*) then:

- (a) for so long as such instructions prevent the Contractor from complying with any of its obligations under this Contract, the Contractor shall be relieved from any action for failure to comply with such obligations; and

- (b) the Authority shall (subject to the terms of Schedule 12 (*Liabilities, Indemnities, Insurance and Conduct of Claims*)) indemnify the Contractor and each Contractor Group Member against any and all Losses and Irrecoverable Losses reasonably incurred by such parties arising out of acting pursuant to the agreement under Clause 57.5 (*Good faith discussion*) or arising out of the instructions of the Authority pursuant to Clause 57.6 (*the Authority overriding right*). However:
- (i) there shall be no double recovery where the Contractor or any other Contractor Group Member receives any payment under an indemnity for Losses or Irrecoverable Losses under any existing Contractor Contract; and
 - (ii) this indemnity shall not apply to the extent that Losses and Irrecoverable Losses incurred by the Contractor or any other Contractor Group Member arise as a result of the breach of this Contract by such party; and
 - (iii) the Contractor shall manage all claims under the indemnity in this Clause 57 on behalf of each of the Contractor and any other relevant Contractor Group Member.

57.9.2 The Contractor shall and shall procure that all other relevant Contractor Group Companies shall be required to use all reasonable endeavours to mitigate any liabilities of the Authority arising in respect of the indemnity under this Clause 57.9.

57.9.3 The indemnity in Clause 57.9.1 (*Indemnity for Measures in a Crisis*) shall not apply to the extent the action agreed is, or the instructions issued are to continue to comply with the terms of this Contract (except this Clause 57), but without prejudice to the relevant Contractor Group Member's rights under this Contract.

58 Step-In Rights

58.1 Required Action

58.1.1 Without prejudice to any other right or remedy of the Authority, on the occurrence of a Step-In Trigger Event, if the Authority considers that steps are capable of being taken to mitigate or preclude such state of affairs (**Required Actions**) and that there is sufficient time for the Contractor to be given the opportunity of carrying out such Required Actions, the Authority may, give a Notice (a **Required Action Notice**) to the Contractor specifying which of the Step-In Trigger Events is applicable, any relevant impacted services (the **Impacted Services**), the Required Actions and the timetable for performance of the Required Actions. Any Step In-Trigger Event arising as a result of Brexit shall constitute a valid Step-In Trigger Event.

58.1.2 "**Step-In Trigger Event**" means:

- (a) any event falling within the definition of Contractor Default;
- (b) Not used;
- (c) any event that the Authority considers acting reasonably, will create (or has already created) an immediate and serious threat to health, safety or the environment;
- (d) any event that the Authority considers acting reasonably will result (or has already resulted) in a material interruption to or material disruption of the provision of the Services;

- (e) any event that the Authority considers acting reasonably will cause (or has already caused) a material breach by the Authority of its duties or obligations owed or undertaken to any third party;
- (f) any event that the Authority considers acting reasonably will cause (or has already caused) a serious nuisance or material threat to the national security and defence of, the occurrence of a state of war, crisis, state of tension or other emergency (whether or not involving hostilities) affecting, or to prevent a material adverse effect on the national interests of the United Kingdom;
- (g) any event that the Authority considers acting reasonably, constitutes an emergency despite the Contractor not being in breach of its obligations under this Contract and where the Authority has not issued a Notice pursuant to Clause 57 (*Measures in a Crisis*);
- (h) upon the Authority being advised by a regulatory body that the exercise by the Authority of its rights under this Clause 58 is necessary; or
- (i) any event that will (or has already) affected the Authority's ability to discharge a statutory duty.

58.1.3 Not used.

58.1.4 The Contractor shall either:

- (a) provide the Authority with confirmation in writing of the appropriate actions to be taken (**Required Action Plan**) and shall comply with any Required Action Notice issued under Clause 58.1.1 without delay, or
- (b) as soon as possible after receipt of the Required Action Notice (and in any event within [REDACTED]) notify the individual at the Authority who issued the Required Action Notice (with a copy to the Authority Contract Manager, if different), as to which of the Required Actions it is unable or does not agree to carry out.

58.2 Step-In Rights

58.2.1 If:

- (a)
 - (i) the Contractor fails to take any of the Required Actions within such time as the Authority shall have specified in that Required Action Notice;
 - (ii) the Contractor has served Notice pursuant to Clause 58.1.4 that the Contractor is unable or does not agree to carry out all or any of the Required Actions;
 - (iii) the Authority considered in terms of Clause 58.1.1 that there was insufficient time for the Contractor to be given the opportunity of carrying out the Required Actions;
 - (iv) the implementation of the Required Actions pursuant to the Required Action Notice is ineffective in mitigating or precluding the circumstances which gave rise to the requirement for its issue; or

- (v) the Contractor either fails to provide the Authority with a Required Action Plan or the Authority considers acting reasonably, that the Required Action Plan provided pursuant to Clause 58.1.4(a) is not capable of implementing the Required Actions within such time as set out in the Required Action Notice; and
- (b) either:
 - (i) the circumstances which gave rise to the requirement for Required Actions subsists (or the circumstances will (in the opinion of the Authority acting reasonably) occur); or
 - (ii) any of the Essential Services (as specified in Schedule 21 (*Essential Services*)) has been, is being, or is likely to be interrupted, interfered with or unavailable and that as a consequence:
 - (A) damage to, or loss of, Property of the Authority situated in the Service Delivery Location or death or injury to persons in, or in the vicinity of, the Service Delivery Location has occurred or is likely to occur; or
 - (B) the defence, operational capability or security interests of the United Kingdom have been, or are likely to be prejudiced or jeopardised,
- (c) then the Authority may so notify the Contractor by a Notice (a **Step-In Notice**) and thereafter may take the Required Actions and such other actions (including those as specified in Clauses 58.2.3 and 58.2.4) it considers appropriate itself, provided that on or as soon as practicable after giving such Step-In Notice (having regard to the urgency of the matter requiring Required Actions) the Authority shall write to the Contractor:
 - (i) giving details of the Required Actions and such other actions (including those as specified in Clauses 58.2.3 and 58.2.4) that the Authority is going to take;
 - (ii) confirming the date on which it proposes to commence the Required Actions (if the Required Action has not started); and
 - (iii) confirming the time period which it believes shall be necessary to complete the Required Actions.

58.2.2 Not used.

58.2.3 For the purpose of Clause 58.2.1, the Authority may do any one or more of the following:

- (a) enter upon the Leased and Licensed Areas at which the event giving rise to the relevant Step-In Notice occurred and, for such period as is necessary, take over any or all of the Impacted Services (where applicable); and/or
- (b) where a Step-In Notice has been served pursuant to limb (a) or (b) of Step-In Trigger Event in Clause 58.1.2, by not less than three (3) Business Days' Notice to the Contractor, expel the Contractor from the Leased and Licensed Areas at which the relevant event giving rise to the relevant Step-In Notice occurred without thereby avoiding this Contract or releasing the Contractor from any of its accrued obligations or liabilities under this Contract; and/or

- (c) Not used;
- (d) Not used; and
- (e) exercise any rights it may have under any Direct Agreement.

in each case, to gain access to any occupied area for all reasonable and necessary purposes including inspection, maintenance, repair or removal of any of its movable property, and in doing either of (a) or (b), the Authority shall suspend the obligation of the Contractor to provide the Impacted Services until the Authority issues a Step-Out Notice in accordance with Clause 58.6 (*Step Out*).

58.2.4 In circumstances where Clauses 58.2.1 and 58.2.1(b)(ii) apply, the Authority may additionally, in its absolute discretion, take all such actions or measures as it considers appropriate and necessary for all or any of the following purposes:

- (a) to maintain, or re-establish, the availability of any of the Essential Services;
- (b) to make good any damage or loss to any property situated in the Service Delivery Location caused by interruption in, interference with, or non-availability of, any of the Essential Services and to restore such property to its condition prior to the interruption in, interference with, or non-availability of such Essential Services;
- (c) to protect and preserve any property situated in the Service Delivery Location from the risk of damage or loss or further damage or loss as a result of any interruption to, interference with or non-availability of any of the Essential Services; or
- (d) to protect and preserve persons in, or in the vicinity of, the Service Delivery Location from the risk of physical injury as a direct result of any interruption to, interference with or non-availability of any of the Essential Services.

58.2.5 The Authority shall be entitled to amend the list of Essential Services and shall notify the Contractor by a notice in writing of any such amendment.

58.3 Contractor Co-operation

The Contractor shall co-operate fully with, and provide all reasonable assistance in respect of, whatever action the Authority deems it appropriate to take under this Clause 58.

58.4 Costs

58.4.1 In the event that the Authority exercises its rights under Clause 58.2.1 (*Step-In Rights*) in respect of either limb (a) or (b) of the definition of Step-In Trigger Event or in the circumstances where Step-In Action has been taken due to Relevant Industrial Action, then:

- (a) where the Contractor provides the Authority with reasonable assistance, the Authority shall, for so long as it continues to exercise such rights, pay to the Contractor:
 - (i) those elements of Actual Costs directly and properly incurred by the Contractor in performing the Impacted Services and assisting the Authority; and

- (ii) (to the extent that the same are in addition to the Actual Costs referred to in Clause 58.4.1(a)(i) all Actual Costs directly and properly incurred by the Contractor in assisting the Authority under this Clause 58.4.1; and
- (b) the Contractor shall reimburse the Authority all costs directly incurred by the Authority in taking such action, and the Authority shall be entitled to deduct any such amount (once invoiced) from any payment to the Contractor under this Contract; and
- (c) the Authority shall not be obliged to pay for:
 - (i) any Services to the extent that they have not been performed; and
 - (ii) the proportion of costs (if any) for the relevant Contract Year, identified on a fair and reasonable basis, which:
 - (A) were anticipated to be incurred and so were included in the Annual Service Price at the beginning of that Contract Year; and
 - (B) were not incurred as a direct result of the relevant event,(together the **Step-In Impacted Costs**); and
- (d) the Parties shall reduce the Annual Service Price in respect of the following Contract Year (on a pro-rata monthly basis) by an amount equal to the value of the Step-In Impacted Costs.

58.4.2 In the event that the Authority exercises its rights under Clause 58.2.1 (*Step-In Rights*) in circumstances where Clause 58.4.1 does not apply, then the provisions of Clause 57.9 (*Indemnity for Measures in a Crisis*) shall apply (with the necessary changes applied) other than the Authority shall not indemnify the Contractor and each Contractor Group Member against any Irrecoverable Losses incurred by such parties arising out of the Authority's exercise of its rights under Clause 58.2.1 (*Step-In Rights*).

58.4.3 Not used.

58.4.4 Nothing in this Clause shall require the Authority to pay the Contractor any costs or Losses not actually incurred by the Contractor due to the Services not being provided by the Contractor during a period of Step-In.

58.5 Authority responsibility

The Authority shall have no liability to the Contractor for any damage which has occurred prior to the exercise by the Authority of its Step-In rights under this Clause 58 or which results from a breach by the Contractor of any of its obligations under this Contract but shall, subject to Schedule 12 (*Liabilities, Indemnities, Insurance and Conduct of Claims*), be liable for any damage or liability caused by or attributable to the acts or omissions of the Authority or its employees, agents or contractors arising out of or in connection with the performance of any Required Actions during the period of Step-In.

58.6 Step-Out

58.6.1 Prior to ceasing to exercise its step-in rights under this Clause 58 the Authority shall deliver a Notice to the Contractor (a **Step-Out Notice**), specifying:

- (a) the Required Action it has actually taken; and
- (b) the date on which the Authority plans to end the Required Action (the **Step-Out Date**) subject to the Authority being satisfied with the Contractor's ability to resume the provision of all or part of the Impacted Services and the Contractor's plan developed in accordance with Clause 58.6.2.

58.6.2 The Contractor shall, following receipt of a Step-Out Notice and not less than twenty (20) Business Days prior to the Step-Out Date, develop for the Authority's approval a draft plan (a **Step-Out Plan**) relating to the resumption by the Contractor of the applicable Impacted Services, including any action the Contractor proposes to take to ensure that the applicable Impacted Services satisfy the requirements of this Contract.

58.6.3 If the Authority does not approve the draft Step-Out Plan, the Authority shall inform the Contractor of its reasons for not approving it. The Contractor shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Authority for the Authority's approval. The Authority shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.

58.6.4 For the avoidance of doubt, nothing in this Clause 58.6 shall prevent the Authority from issuing more than one Step-Out Notice in relation to a single exercise of its rights under Clause 58.2 (*Step-In Rights*) so as to reinstate the provision of Impacted Services by the Contractor partially or gradually.

58.7 Authority Delegation

References (however worded) in this Clause 58 to any Required Actions being taken by the Authority under this Clause 58 are references to such Required Actions being taken either by the Authority itself or by persons engaged by the Authority for that purpose.

58.8 Authority Assistance for Impacted Services

58.8.1 Without prejudice to any other right or remedy of the Authority, in the event that the Authority reasonably believes or is aware that an actual or threatened event has or is likely to lead to a Step-In Trigger Event and the right of the Authority to issue a Required Action Notice, the Authority may, as an alternative to issuing a Step-In Notice under Clause 58.1.2 (*Required Action*) or implementing measures in a crisis under Clause 57 (*Measures in a Crisis*), deliver a Notice to the Contractor (a **Authority Assistance Notice**) specifying:

- (a) the name(s) of the Authority Seconded to be seconded to the Contractor who shall have, in the view of the Authority, appropriate experience and qualifications to perform and/or assist with the Impacted Services;
- (b) the Impacted Services which the Authority Seconded shall perform and/or assist the Contractor with (Authority Assistance);
- (c) the date on which it proposes to commence the Authority Assistance; and
- (d) where reasonable to do so, the time period which it believes Authority Assistance shall be necessary.

58.8.2 Throughout the period of any Authority Assistance:

- (a) Authority Secondees shall remain employees of the Authority and subject to the terms of their employment with the Authority, save as expressly agreed otherwise between the Contractor and the Authority;
- (b) the cost of such Authority Secondee shall be met by the Contractor where the reason for the Authority Assistance arises under either Clauses 58.1.2(a), 58.1.2(d) or 58.1.2(i); and
- (c) the provision of Authority Secondees shall not serve to amend or diminish the Contractor's responsibility to provide the Services and the Contractor shall continue to be responsible and liable to the Authority at all times for the performance of its obligations under this Contract and for the acts and omissions of any Authority Secondee.

58.8.3 In the event either:

- (a) the time period specified in Clause 58.8.1(d); or
- (b) the actual elapsed time period in respect of the Authority Assistance, exceeds six (6) months,

the Authority, Contractor and the Authority Secondee shall enter into an Authority Secondee agreement on agreed terms.

58.8.4 Prior to ceasing to exercise its Authority Assistance under this Clause 58.8 the Authority shall deliver a Notice to the Contractor (a **Authority Assistance Step-Out Notice**), specifying:

- (a) the Authority Assistance it has actually provided; and
- (b) the date on which the Authority plans to end the Authority Assistance (the Authority Assistance Step-Out Date) subject to the Authority being satisfied with the Contractor's ability to resume the provision of all or part of the Impacted Services in respect of which the Authority Assistance has been provided and the Contractor's plan developed in accordance with Clause 58.8.5.

58.8.5 The Contractor shall, following receipt of a Authority Assistance Step-Out Notice and not less than twenty (20) Business Days prior to the Authority Assistance Step-Out Date, develop for the Authority's approval a draft plan (a **Authority Assistance Step-Out Plan**) relating to the resumption by the Contractor of the applicable Impacted Services which the Authority Secondee has performed and/or assisted the Contractor with, including any action the Contractor proposes to take to ensure that the applicable Impacted Services satisfy the requirements of this Contract.

58.8.6 If the Authority does not approve the draft Authority Assistance Step-Out Plan, the Authority shall inform the Contractor of its reasons for not approving it. The Contractor shall then revise the draft Authority Assistance Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Authority for the Authority's approval. The Authority shall not withhold or delay its approval of the draft Authority Assistance Step-Out Plan unnecessarily.

58.8.7 For the avoidance of doubt, nothing in this Clause 58.8 shall prevent the Authority from issuing more than one Authority Assistance Step-Out Notice in relation to a single exercise of its rights under Clause 58.8.1 so as to reinstate the provision of the applicable Impacted Services by the Contractor partially or gradually.

- 58.8.8 At any time during a period of Authority Assistance, the Contractor shall be entitled to submit for the Authority's approval a draft plan (a **Contractor Step-Out Plan**) relating to the resumption by the Contractor of the applicable Impacted Services which the Authority Secundee is performing and/or assisting the Contractor with, including any action the Contractor proposes to take to ensure that the applicable Impacted Services satisfy the requirements of this Contract.
- 58.8.9 If the Authority does not approve the draft Contractor Step-Out Plan, the Authority shall inform the Contractor of its reasons for not approving it. The Contractor shall then revise the draft Contractor Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Authority for the Authority's approval. The Authority shall not withhold or delay its approval of the draft Contractor Step-Out Plan unnecessarily.
- 58.8.10 Upon the Authority's approval of the Contractor Step-Out Plan the Parties shall agree the date on which the Authority Assistance shall end.
- 58.8.11 Notwithstanding the terms of this Clause 58.8, the Authority may, at any time during the provision of Authority Assistance, elect to issue a Required Action Notice under Clause 58.1 (*Required Action*) and the Authority Assistance Step-Out Date shall be the date of the Required Action Notice.

Part 18 – Termination

59 Contractor Default

59.1 Definition of Contractor Default

Each and any of the following shall be Contractor Defaults, and each of the events listed shall constitute a material breach of this Contract on the part of the Contractor:

59.1.1 *Insolvency*

If any of the following occurs:

- (a) a court makes an order that any Contractor Group Member or the Parent be wound up; or
- (b) a trustee, trustee in bankruptcy, liquidator, provisional liquidator, supervisor, receiver, administrator, administrative receiver or encumbrancer or person with similar powers takes possession of or is appointed over (other than for the purposes of a bona fide internal solvent reorganisation or amalgamation previously consented to by the Authority), or any distress, execution or other process is levied or enforced (and is not discharged within five (5) Business Days) upon the whole or any part of the assets of a Contractor Group Member or the Parent; or
- (c) a meeting of creditors or any class of shareholders of a Contractor Group Member or the Parent passes a resolution for the winding-up, bankruptcy or dissolution of such Contractor Group Member or the Parent (other than for the purposes of a solvent reconstruction or amalgamation previously consented to by the Authority); or
- (d)
 - (i) a Contractor Group Member or the Parent or any of their respective directors resolve that an administration order should be made in respect of it or that an administrator should be appointed to it; or
 - (ii) any application is made or notice served or filed, for the making of an administration order in respect of a Contractor Group Member or the Parent or the appointment of an administrator to a Contractor Group Member or the Parent and where (and only where) such an application is made solely by one or more creditors of such Contractor Group Member or the Parent, that application is not withdrawn or dismissed within twenty (20) Business Days; or
 - (iii) any other material steps are taken by a Contractor Group Member or the Parent (or the directors of such party) for the making of an administration order in respect of it or the appointment of an administrator over it; or
- (e) a petition is presented or other steps are taken for the purpose of the winding up of a Contractor Group Member or the Parent (other than for the purposes of a bona fide internal reorganisation or amalgamation consented to by the Authority) and such petition is not, or such other steps are not, discharged or withdrawn within twenty (20) Business Days; or

- (f) either a Contractor Group Member or the Parent makes an arrangement or composition with or for the benefit of its creditors (including any voluntary arrangement as defined in the Insolvency Act 1986 or scheme of arrangement under the Companies Act 2006); or
- (g) a Contractor Group Member or the Parent ceases to carry on business (unless it relates to an intra group reorganisation of a Contractor Group Member or the Parent on a solvent basis), or admits in writing its inability to pay or is or becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 (without in respect of Section 123(i)(e) of the Insolvency Act 1986 the need to prove any fact or matter to the satisfaction of the court) or suspends or threatens to suspend payment with respect to all or any class of its debts or becomes insolvent or bankrupt; or
- (h) a Contractor Group Member or the Parent suffers any event analogous to any of the foregoing in any jurisdiction in which it is incorporated or resident or a Contractor Group Member or the Parent takes steps in any jurisdiction for protection from its creditors or for any moratorium or stay of any creditor action.

For the purposes of this Clause 59.1.1, each or any of the event(s) set out in this Clause 59.1.1 shall only occur in relation to a Contractor Group Member (excluding the Contractor and/or the Parent) where such event(s) affects or is likely to affect the provision of the Services.

59.1.2 *Corrupts Gifts and Payments*

Where the Authority is entitled to terminate this Contract pursuant to Clause 64 (*Corrupt Gifts and Payments*).

59.1.3 *Change in Control*

Where the Authority is entitled to terminate this Contract pursuant to Clause 79 (*Change in Control*).

59.1.4 *Parent Breach*

If any of the following occurs:

- (a) a breach or breaches by the Parent of any of its obligations under the Parent Company Guarantee that is not rectified within twenty (20) Business Days of the date the Authority demanded payment under the Parent Company Guarantee, provided such demand is made on or after the due date of payment or the rating of the Parent falls below the Required Rating; or
- (b) the Parent Company Guarantee becomes void or unenforceable and is not otherwise replaced.

59.1.5 *Not used*

59.1.6 *Breach of Security*

Where the Authority is entitled to terminate this Contract pursuant to Clause 28 (*Security*) or Clause 48 (*Cyber*).

59.1.7 *Not used*

59.1.8 *Material Breach*

Where the Contractor commits one of the following:

- (a) a failure to pay any sum (being a single amount or aggregate) greater than one hundred thousand pounds (£100,000) which is due and payable to the Authority under this Contract (being a sum which is not in Dispute) and such failure continues for twenty (20) Business Days after service of a formal written demand by the Authority stating that the sum is unpaid; or
- (b) any other material breach of its obligations under this Contract, which materially adversely affects the provision of the Services,

(each, a **Material Breach**).

59.1.9 *Assignment Breach*

Where the Contractor commits a material breach of any of its obligations under Clause 80 (*Assignment and Transfer*);

59.1.10 *Breach of Warranty or Undertaking*

Where the Contractor has breached any representation, warranty or undertaking under Clause 4 (*Representations, Warranties and Undertakings*).

59.1.11 *Failure of Performance*

Where the Authority is entitled to terminate this Contract pursuant to Paragraph 3 of Part 2 (*Performance Management*) of Schedule 5 (*Performance Management and Measurement*).

59.1.12 *Persistent Breach*

Where the Contractor commits a persistent breach of any of its obligations under this Contract.

59.1.13 *Admission Agreement*

The Authority may terminate this Contract at any time before the Expiry Date in the following circumstances:

- (a) subject to the Authority providing the Contractor with reasonable assistance, failure by the Contractor to enter into the Admission Agreement prior to the Relevant Transfer Date;
- (b) if the Contractor breaches the provisions of the Admission Agreement provided that where the breach is remediable the right to terminate shall only arise where the Contractor fails to remedy the breach within twenty eight (28) days of service of a notice from the Minister for the Cabinet Office setting out particulars of the breach and requiring the Contractor to remedy it;
- (c) if the Contractor breaches the provisions of Part 4 (*Pensions*) Schedule 10 (*Personnel*) provided that where the breach is remediable the right to terminate shall only arise where the Contractor fails to remedy the breach within twenty eight (28) days of service of a notice from the Authority setting out particulars of the breach and requiring the Contractor to remedy it; or

- (d) where notice to terminate the Admission Agreement has been served under clause 13.1 of the Admission Agreement.

59.1.14 *Contractor Procurement Breach*

The Authority has become aware that the Contractor should have been excluded under Regulation 23 of the Defence and Security Public Contracts Regulations 2011 from the procurement procedure leading to the award of this Contract.

59.1.15 *Financial Distress*

Any of the events in Paragraph **Error! Reference source not found.** (*Termination Rights*) of Schedule 24 (*Financial Distress*) occurs.

59.1.16 *Sub-Contracting*

The Contractor is in breach of its obligations under Part 3 (*Sub-Contracting Obligations*) of Schedule 14 (*Supply Chain and Sub-Contracting Strategy*).

59.1.17 *Not used*

59.2 Notice of Contractor Default

59.2.1 The Contractor shall notify the Authority of the occurrence and details of any Contractor Default and of any event which to the best of its knowledge and belief would, with the passage of time or otherwise, constitute or give rise to a Contractor Default, in either case promptly upon the Contractor becoming aware of the occurrence concerned.

59.2.2 Promptly after the Authority becomes aware of the occurrence of a Contractor Default about which the Contractor has not notified the Authority under Clause 59.2.1, and where the same is subsisting unremedied, the Authority shall notify the Contractor in writing of such occurrence.

59.3 Consequences of Contractor Default: Authority Termination Rights

59.3.1 The nature of the Authority's rights to terminate this Contract (whether in whole or in part) depends upon the nature of the Contractor Default which has arisen. The Authority's rights fall into the following categories:

- (a) the right to terminate this Contract without the need to go through any remediation process beyond that which may be included in the steps, if any, leading up to the occurrence of the Contractor Default; and
- (b) the right to terminate this Contract, but subject to the requirement to follow the remediation process in respect of that the Contractor Default, as set out in Clause 59.6 (*Remediation Process*).

59.4 Authority right to terminate Contract without further remediation

59.4.1 In the case of Contractor Default pursuant to Clause:

- (a) 59.1.1 (*Insolvency*);
- (b) 59.1.2 (*Corrupt Gifts and Payments*);

- (c) 59.1.3 (*Change in Control*);
- (d) 59.1.4 (*Parent Breach*);
- (e) Not used;
- (f) 59.1.6 (*Breach of Security*);
- (g) 59.1.9 (*Assignment Breach*);
- (h) 59.1.10 (*Breach of Warranty or Undertaking*);
- (i) 59.1.13 (*Admission Agreement*);
- (j) 59.1.14 (*Contractor Procurement Breach*);
- (k) 59.1.15 (*Financial Distress*),

the Authority will be entitled to terminate this Contract or any of the Services affected by the relevant Contractor Default (the **Terminable Services**) without being required to observe the remediation process set out in Clause 59.6 (*Remediation Process*). Such termination shall be effected by the Authority serving a Notice under Clause 59.6.7 (a **Termination Notice**) on the Contractor within sixty (60) Business Days of the Authority Representative becoming aware of the Contractor Default.

59.5 Authority right to terminate Contract subject to remediation

59.5.1 In the case of a Contractor Default pursuant to Clause:

- (a) 59.1.8 (*Material Breach*);
- (b) 59.1.11 (*Failure of Performance*);
- (c) 59.1.12 (*Persistent Breach*); or
- (d) 59.1.16 (*Sub-Contracting*).

the Authority will be entitled to terminate this Contract or any of the Terminable Services (as applicable), but such right shall be subject to the remediation process set out in Clause 59.6 (*Remediation Process*).

59.6 Remediation Process

Requirement to implement a rectification programme

59.6.1 Where in this Clause 59 there is a requirement to observe the remediation process set out in this Clause 59.6, the Contractor, upon receipt or service of a Notice of Contractor Default under Clause 59.2 (*Notice of Contractor Default*), shall within the time specified in that Notice (or, if no time is specified, as soon as reasonably practicable), either:

- (a) prepare and thereafter implement a rectification programme acceptable to the Authority (acting reasonably and proportionately) to rectify such Contractor Default; or
- (b) rectify such Contractor Default.

- 59.6.2 Any rectification programme to be prepared by the Contractor shall represent a reasonable programme for the remedying of the breach or breaches or other circumstances constituting the Contractor Default, and specify in reasonable detail the manner in which such breach, breaches or circumstances is or are proposed to be remedied and the latest date by which it is proposed that the breach, breaches or circumstances shall be remedied.
- 59.6.3 Where the Contractor puts forward a rectification programme in accordance with Clause 59.6.1, the Authority shall have thirty (30) Business Days within which to notify the Contractor in writing (citing this Clause) that it does not accept the rectification programme as meeting the requirements of Clause 59.6.2, stating the reasons why in reasonable detail, failing which the Authority shall be deemed to have accepted the rectification programme. Where the Authority notifies the Contractor that it does not accept the rectification programme as meeting the requirements of Clause 59.6.2, the Authority and the Contractor shall endeavour within the following ten (10) Business Days to agree any necessary amendments to the rectification programme put forward. In the event that the Authority and the Contractor cannot agree on the necessary amendments to the rectification programme put forward, such disagreement shall be determined by the Fast Track Procedure.

Remedy of Contractor Default

- 59.6.4 Subject to Clause 59.6.5, if, in the case of Clause 59.6.1, the Contractor either rectifies the Contractor Default within the time specified in the Notice of Contractor Default, or implements the rectification programme (if applicable) which has been accepted by the Authority in accordance with its terms, this Contract will continue in full and the Authority's right to terminate in respect of the matter giving rise to the Contractor Default in question will lapse.
- 59.6.5 Where a rectification programme does not remedy a Contractor Default after it has been agreed by the parties and accepted by the Authority, the Authority's right to terminate shall not lapse and the Parties shall agree an amendment to the rectification programme within ten (10) Business Days or such other period as the Parties shall agree. In the event that the Authority and the Contractor cannot agree on the amendments to the rectification programme, such disagreement shall be determined by the Fast Track Procedure. If, following amendment:
- (a) the amended rectification programme rectifies the default, then this Contract will continue in full and the Authority's right to terminate in respect of the matter giving rise to the Contractor Default in question will lapse; or
 - (b) the amended rectification programme does not rectify the default, then Clause 59.6.6 shall apply.

Termination rights if rectification programme fails

- 59.6.6 If, in the case of this Clause 59.6:
- (a) no rectification programme acceptable to the Authority is put forward and implemented pursuant to Clauses 59.6.1 (*Requirement to implement a rectification programme*) to 59.6.4 (*Remedy of Contractor Default*); and/or
 - (b) the Contractor fails to rectify the Contractor Default within any time period specified in the rectification programme (or any amended rectification programme in accordance with Clause 59.6.5 (*Remedy of Contractor Default*)), or, if no rectification programme has been agreed, within the time period to rectify which is specified in the Notice

issued in accordance with Clause 59.6.1 (*Requirement to implement a rectification programme*),

the Authority may terminate (in whole or in part) this Contract or the Terminable Services (in accordance with the rights flowing from the relevant Contractor Default, as set out in Clauses 59.5 (*Authority right to terminate Contract subject to remediation*) on the date specified by the Authority. Any termination shall be effected by the Authority serving a notice under Clause 59.6.7 (a **Termination Notice**) on the Contractor within sixty (60) Business Days of the date on which the right of termination arose in accordance with this Clause 59.6.6 the Authority Representative becoming aware of the Contractor Default (and provided that at the time of such service the event of Contractor Default is still subsisting).

59.6.7 Any Termination Notice shall specify:

- (a) the type and nature of Contractor Default that has occurred, giving reasonable details; and
- (b) that this Contract will, subject to Clause 65 (*Exit Strategy*) terminate on the date specified in the Termination Notice and such Termination Notice shall have that effect unless the Contractor has referred the matter to Dispute Resolution Procedure (in the case of any dispute as to the entitlement of the Authority to serve the Notice).

59.6.8 The exercise of the Authority's rights of termination under this Clause 59 following the occurrence of a Contractor Default shall represent the Authority's sole and exclusive right to terminate this Contract (or the Terminable Services, as applicable) for any act, omission or breach of contract by the Contractor.

59.6.9 In the event that the Authority terminates this Contract or the Terminable Services for Contractor Default, no compensation for termination or other compensation shall be payable to the Contractor.

59.6.10 If this Contract is terminated for a Contractor Default, the Contractor shall pay to the Authority:

- (a) the reasonable and substantiated costs and expenses incurred and/or to be incurred by the Authority in carrying out a tender process, including requesting tenders from any parties interested in entering into a new contract to provide services that are equivalent to any part (or the whole) of the Services, evaluating the responses from those interested parties and entering into a new contract (or contracts) with any new service provider(s);
- (b) the reasonable and proper costs incurred by the Authority in performing any rectification work and/or ensuring that the Services are performed; and
- (c) any other reasonable and substantiated costs, expenses, losses or damage incurred and/or to be incurred by the Authority as a result of termination of this Contract.

59.6.11 If this Contract is terminated for Contractor Default then such termination shall be without prejudice to and shall not affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Authority or the Contractor (including in respect of any amounts due to the Contractor up to the Termination Date).

59.6.12 Without prejudice to the provisions of Schedule 12 (*Liabilities, Indemnities, Insurance and Conduct of Claims*), the rights of the Authority under this Clause 59 are in addition and without prejudice to any other right the Authority may have to Claim the amount of any loss or

damage suffered by the Authority on account of the acts or omissions of the Contractor, whether pursuant to any guarantee given in accordance with the requirements of this Contract or otherwise.

60 Voluntary Termination by the Authority

60.1 The Authority shall, in addition to its power under any other provisions of this Contract, have power to terminate this Contract at any time by giving to the Contractor Notice to that effect, to expire at the end of a period of six (6) months or (where the Authority certifies that the national interest or the essential security interest of the United Kingdom so requires) such shorter period as the Authority may specify in such Notice, and, upon the expiration of the period of Notice, this Contract shall be terminated without prejudice to the rights of the Parties accrued to the date of termination but subject to the operation of the following provisions of this Clause 60.

60.2 Without prejudice to the foregoing the Authority shall have the power to terminate the Contract in the following circumstances:

- (a) where it is determined that this Contract should not have been entered into in view of a serious infringement of obligations under European Law declared by the Court of Justice of the European Union under Article 258 of the Treaty on the Functioning of the EU;
- (b) there is a Declaration of Ineffectiveness; or
- (c) if this Contract has been substantially amended to the extent that the Defence and Security Public Contracts Regulations 2011 require a new procurement procedure.

The provisions of Clause 62.4 to 62.7 (excluding Clause 62.5) (*Termination for Prolonged Force Majeure Events*) shall apply, with the necessary changes applied, to any termination effected by the Contractor under Clause 60.2 other than where, in the case of limbs (a) and/or (b), such termination is directly attributable to any act or omission of the Authority in which case the provisions of Clause 60.5 will apply.

60.3 A Declaration of Ineffectiveness shall not prejudice or affect any right, liability or remedy which has accrued or which shall accrue to either party prior to or after such Declaration of Ineffectiveness.

60.4 In the event of such Notice being given under Clause 60.1 the terms of:

- (a) Clause 65 (*Exit Strategy*) shall apply; and
- (b) Clause 63 (*Consequences of Termination or Expiry*) shall apply in relation to Goods and Services.

60.5 Where the Authority terminates this Contract in accordance with Clause 60.1 then the Authority shall (subject to Clause 60.6 and without double counting):

- (a) **Breakage fees/costs** – indemnify the Contractor against any commitments, liabilities or expenditure which were reasonably and properly incurred by the Contractor on the basis that this Contract would have been continuing, but only to the extent to which the said commitments, liabilities or expenditure would otherwise represent an unavoidable loss by the Contractor by reason of the determination of this Contract and only to the extent that:

- (i) in relation to:
 - (A) existing contracts, such commitments, liabilities or expenditure are incurred under arrangements and/or contracts that are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms; or
 - (B) contracts entered into after the Contractor has first been put on notice that the Authority is considering exercising its right to voluntarily terminate this Contract under Clause 60.1, the Contractor has notified the Authority of any material commitments, liabilities or expenditure and requested the Authority's consent in advance of entering into or incurring (as applicable) them and either the Authority has given its consent (such consent not to be unreasonably withheld and to be given or denied within twenty-five (25) Business Days of such request) or has failed to respond within such twenty-five (25) Business Day period; and
- (ii) the Contractor has used its reasonable endeavours to minimise and mitigate such commitments, liabilities and expenditure.

The Contractor shall provide any information reasonably available and reasonably requested by the Authority in order to verify the Contractor's commitments, liabilities or expenditure in relation to this Clause. Any amounts to be paid under this Clause shall be paid within thirty (30) Business Days of such information being provided;

- (b) Not used.
- (c) **Loss of Profits** – pay the Contractor an amount, if any, equal to the profit which the Contractor can demonstrate, to the Authority's reasonable satisfaction, it would have made following termination, provided that:
 - (i) such amount shall be limited to the lesser of the profit it would have made in respect of:
 - (A) where the date of termination falls in the Initial Period, the balance of the Initial Period;
 - (B) where the date of termination falls on a date after the Initial Period due to the Contract having been extended, the balance of the Contract Period; or
 - (C) a period of twenty-four (24) months; and
 - (ii) such amount shall be adjusted on a net present value basis to reflect early payment.
 - (iii) Not used.

60.6 For the purposes of Clause 60.5 above, the Parties shall adjust the values on a "**net present value basis**" by agreeing a fair and reasonable reduction that reflects payment at the point of termination of money which would otherwise have been payable during the period from the date of voluntary termination until the Expiry Date.

60.7 The following provisions shall apply to reduce the amount of any payment to be made by the Authority and/or mitigate the extent that the Authority is required to give relief pursuant to Clause 60.5:

- (a) if the Authority and the Contractor (or any Contractor Group Member) enter into a contract in relation to some or all of the services which are the same or substantially the same as some or all of the Services that are subject to voluntary termination:
 - (i) prior to the voluntary termination having taken effect, any payments to be made by the Authority and any relief to be granted to the Authority shall be reduced proportionately; and
 - (ii) after the voluntary termination has taken effect but before the Expiry Date, then the Parties shall negotiate a fair and reasonable reimbursement and reduction in relief that was granted by the Authority,
- (b) such that:
 - (i) the Contractor shall not be paid under this Clause 60 where and to the extent it may receive the same or substantially the same payment for the same or substantially the same services under the replacement contract;
 - (ii) the Contractor shall not be relieved under this Contract where it should appropriately and reasonably be bound under the replacement contract; and
 - (iii) the Contractor shall not be required to refund any amount nor reduce any relief to which it is entitled to the extent that such amount will not be recovered through the entry into a subsequent contract, or the requirement for relief will not be abated by the placing of that subsequent contract.
- (c) there shall be no double recovery or double payment in relation to the same or similar rights and obligations in relation to:
 - (i) the voluntary termination of this Contract and any new or replacement contract entered into between the Authority and the Contractor (or any Contractor Group Member);
 - (ii) Not used; and/or
 - (iii) any other payments made or relief given to the Contractor pursuant to this Contract.

60.8 The Contractor shall in any Sub-Contract, the value of which is:

- (a) ten thousand pounds (£10,000) or over; and
- (b) is made or placed by it on or after the Commencement Date with any one Sub-Contractor or supplier in connection with or for the purpose of this Contract,

include terms equivalent to the terms of Clauses 60.1 to 60.6 to terminate such Sub-Contract or order save only that:

- (i) the name of the Contractor shall be substituted for the Authority (and the name of each Sub-Contractor shall be substituted for the Contractor) throughout except for Clauses 60.5 and 60.6;
- (ii) the period of the notice of determination shall be three (3) months from the date of service of a termination notice;
- (iii) the Contractor shall not exercise the power taken in those Sub-Contracts until the Authority has exercised its power under Clause 60.1; and
- (iv) each of those Sub-Contracts shall restrict the Contractor's right to exercise that power in the manner described in Clause 60.8(iii) by including in the power "*Provided that this power is not exercised unless the main contract has been terminated by the Authority pursuant to the provisions of the contract*",

provided that, so long as the Contractor is complying with its obligations in relation to Sub-Contracts in this Contract (including Schedule 14 (*Supply Chain and Sub-Contracting Strategy*)), nothing in this Clause 60.8 shall prevent the Contractor agreeing any other voluntary termination rights with its Sub-Contractors provided that the Authority may reject any claim by the Contractor for payment made by the Contractor to any Sub-Contractor exercising such rights if any such voluntary termination rights and making of such payment is executed without the Authority's prior written consent.

60.9 The provisions of Clauses 65.12 (*Removal of Property*) and Clause 65.10 (*Right to purchase assets and equipment*) shall apply in the event this Contract is terminated pursuant to this Clause 60.

60.10 Claims for payment under this Clause 60 shall be made in accordance with the procedure set out in Part 5 (*Miscellaneous Provisions*) of Schedule 4 (*Pricing and Payment*).

61 Termination by the Contractor

61.1 Notwithstanding any other provision of this Contract, the Contractor shall have the power to terminate this Contract if the Authority fails to pay any sum greater than £2,000,000 due and payable to the Contractor under this Contract being a sum which is not in Dispute and such failure continues for thirty (30) calendar days after service of a formal written demand by the Contractor, where that amount fell due and payable two (2) (or more) months prior to the date of service of the written demand (an **Authority Default**).

61.2 The provisions of Clause 60 (*Voluntary Termination by the Authority*) shall apply, with the necessary changes applied, to any termination effected by the Contractor under Clause 61.1.

61.3 Without prejudice to any common law rights, the exercise of the Contractor's rights of termination under this Clause 61 following the occurrence of an Authority Default shall represent the Contractor's sole and exclusive right to terminate this Contract for any act, omission or breach of contract by the Authority.

62 Termination for Prolonged Force Majeure Events

62.1 If a Force Majeure Event (as set out in Clause 54 (*Force Majeure Events*)) continues for a period of [REDACTED] or more from the date upon which the Affected Party serves Notice on the Other Party of its occurrence in accordance with Clause 54.2 (*Giving of Notice*) the Authority may by [REDACTED] Notice to the Contractor:

- (a) terminate any Services affected by the Force Majeure Event; or
- (b) if substantially all of the Parties' obligations have been affected by the Force Majeure Event, terminate this Contract as a whole,

and this Contract (or the part of this Contract related to the affected Services) shall be terminated providing that the circumstances comprising the Force Majeure Event still subsist at the date when the period of Notice has expired.

62.2 In determining whether to terminate (in whole or in part) the obligations of the Contractor and the Authority in respect of the Services affected by the Force Majeure Event or, indeed, whether to terminate this Contract as a whole, the Authority shall act reasonably in all the circumstances, having regard to the interests of both the Authority and the Contractor.

62.3 On termination in accordance with Clause 62.1 the Annual Service Price will be adjusted in respect of any of the Services which are affected by such termination, as a Mandatory Change.

62.4 In the event of this Contract being terminated by the Authority pursuant to this Clause 62 then:

- (a) the terms of Clause 63 (*Consequences of Termination or Expiry*) shall apply in relation to Goods and Services; and
- (b) the costs of termination incurred by the Parties shall lie where they fall.

62.5 The Contractor shall in any Sub-Contract, the value of which is ten thousand pounds (£10,000) or over placed by it on or after the Commencement Date with any one Sub-Contractor or supplier in connection with or for the purpose of this Contract, include terms equivalent to the terms of Clauses 62.1 to 62.4 to terminate such Sub-Contract or order save only that:

- (a) the name of the Contractor shall be substituted for the Authority throughout;
- (b) the period of the Notice of termination shall be ten (10) Business Days from the date of service of a Termination Notice;
- (c) subject to Clause 62.5(e), the Contractor shall not exercise the equivalent terms in those Sub-Contracts until the Authority has exercised its power to terminate this Contract for a prolonged Force Majeure Event under Clause 62.1;
- (d) subject to Clause 62.5(e), each of those Sub-Contracts shall restrict the Contractor's right to exercise that power in the manner described in this Clause 62.5(d) by including in the power "Provided that this power is not exercised unless the main contract has been terminated by the Authority pursuant to the provisions of the contract"; and
- (e) Clauses 62.5(c) and (d) shall not apply in circumstances where the Force Majeure Event affects a Sub-Contractor (rather than the Contractor directly) and the Contractor is able to source the services or materials provided by the relevant Sub-Contractor from a third party. In such event, the Contractor shall be free to exercise its rights of termination for a continuing Force Majeure Event and procure the relevant services or materials from a third party (subject to the Authority's written consent in accordance with Clause 66 (*Supply Chain and Sub-Contracting Strategy*)).

62.6 The provisions of Clauses 65.12 (*Removal of Property*) and 65.10 (*Right to purchase assets and equipment*) shall apply in the event this Contract is terminated pursuant to this Clause 62.

62.7 Claims for payment under this Clause 62 shall be made in accordance with the procedure set out in Part 5 (*Miscellaneous Provisions*) of Schedule 4 (*Pricing and Payment*).

63 Consequences of Termination or Expiry

63.1 Continued Performance

Subject to any exercise by the Authority of its rights to perform, or to procure a third party to perform, the obligations of the Contractor, the Parties shall continue to perform their obligations under this Contract, notwithstanding the giving of any Termination Notice until the Termination Date.

63.2 Termination and Exit Management

The Parties shall comply with the provisions of Clause 65 (*Exit Strategy*) and any current Exit Plan in relation to the orderly transfer of Services to the Authority or an Incoming Contractor.

63.3 Not used

63.4 Preservation of Rights

The expiry or termination of this Contract shall be without prejudice to:

- (a) the provisions of any other contract entered into between the Parties which terminates automatically on the termination or expiry of this Contract;
- (b) (for the avoidance of doubt) any provisions of the Leases or Licences which are expressed to apply to the consequences of termination of the Leases or Licences (to the extent that the relevant termination includes a termination of the Leases or Licences);
- (c) any accrued rights and obligations of the Parties under this Contract as at the Termination Date of such termination or expiry both for antecedent breaches and otherwise provided that the sole remedy for the Contractor for compensation on termination shall be as set out in Clause 61 (*Termination by the Contractor*); and
- (d) the continuing rights and obligations of the Parties under this Clause 63 and Clause 65 (*Exit Strategy*) or under any other provision of this Contract (including, for the avoidance of doubt, the Licences or Leases) which are expressed to survive termination or expiry or which do not form part of the Services which are the subject of the termination or which is required to give effect to such termination or expiry or the consequences of such termination or expiry.

63.5 Capital Expenditure

63.5.1 For the purposes of this Clause 63.5, the term "the **Investment**" means the assets set out in Schedule 17 (*Contract Pricing Statement*), purchased and provided by the Contractor in order to provide the Services as more fully described at (i) PSF 2.7.1 (excluding "Core services"); and PSF 2.7.2, **Error! Reference source not found.** (*Requirements Table*) Schedule 2 (*Requirements*), in the maximum sum of [REDACTED].

- 63.5.2 The Contractor shall provide evidence, in a form satisfactory to the Authority, of the (i) purchase of; and (ii) price(s) paid for, the Investment when requested to do so by the Authority.
- 63.5.3 The Contractor shall:
- (a) keep the Investment safe, secure and in suitable storage where appropriate;
 - (b) use reasonable endeavours to ensure that any guarantee given in respect of the Investment is maintained; and
 - (c) carry out maintenance and repair of the Investment as is appropriate and reasonable so as to ensure that the Investment is, at all times, fit for purpose and available for its intended use.
- 63.5.4 The value of the Investment shall be depreciated on an annual, straight-line basis from the Commencement Date to the Initial Expiry Date (so that it has a nil value at the Initial Expiry Date).
- 63.5.5 In the event of termination of the Contract in accordance with Clauses 59 (*Contractor Default*), 60 (*Voluntary Termination by the Authority*), 61 (*Termination by the Contractor*) or 62 (*Termination for Prolonged Force Majeure Events*), the Authority shall purchase the Investment.
- 63.5.6 The Contractor and the Authority shall do all necessary acts (including entering into contracts) to ensure that on the Termination Date beneficial title to and ownership of the Investment is transferred to the Authority.
- 63.5.7 Within thirty (30) days of effective transfer of the Investment to the Authority, the Authority shall pay the Contractor the depreciated value of the Investment (provided that this does not result in double counting in respect of any other sums payable to the Contractor on termination, and, if it does, the amount payable under this Clause 63.5.7 shall then be reduced accordingly to eliminate any such double counting).
- 63.5.8 Notwithstanding any other provision in the Contract, if, in the opinion of the Authority, the Contractor fails to comply with Clause 63.5.3 and the value of the Investment is lower than the value of the Investment as contemplated by Clause 63.5.4, then the Parties shall use reasonable endeavours to agree the actual value of the Investment. Upon such agreement, the Authority is entitled to the option, but shall not be obliged, to purchase the Investment at the agreed value and the Parties shall proceed in accordance with Clause 63.5.6 and 63.5.7.

64 Corrupt Gifts and Payments

- 64.1 The Contractor shall not do any of the following:
- (a) offer, give or agree to give to any Crown servant any gift or financial or other advantage of any kind as an inducement or reward:
 - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this or any other contract with the Crown; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to this or any other contract with the Crown;

- (b) enter into this or any other contract with the Crown in connection with which commission has been paid or has been agreed to be paid by the Contractor, the Parent or any Contractor Group Member on their behalf, or to their 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 the Authority;
- (c) commit any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under Laws creating offences in respect of fraudulent acts;
 - (iii) at common law in respect of fraudulent acts; or
 - (iv) in relation to this Contract or any other contract with the Crown; or
- (d) defraud or attempt to defraud or conspire to defraud the Crown,

(the circumstances identified in Clauses 64.1(a) to (d) above being **Prohibited Acts**).

64.2 If the Contractor, the Parent, any other Contractor Group Member or any Sub-Contractor (or anyone employed by or acting on behalf of any of them) or any of its or their agents or shareholders commits any Prohibited Act, then the Authority shall be entitled to act in accordance with Clauses 64.2(a) to 64.2(d) below:

- (a) if a Prohibited Act is committed by the Contractor, the Parent, any other Contractor Group Member or by an employee not acting independently of the Contractor, then this shall be treated as a Contractor Default and the Authority shall be entitled to terminate this Contract in its entirety in accordance with (and subject to) Clause 59.4 (*Authority right to terminate Contract without further remediation*);
- (b) if the Prohibited Act is committed by an employee of the Contractor acting independently of the Contractor, then this shall be treated as a Contractor and the Authority shall be entitled to terminate this Contract in its entirety in accordance with Clause 59.4 (*Authority right to terminate Contract without further remediation*), unless within forty (40) Business Days of receipt of a Termination Notice under Clause 59.4 (*Authority right to terminate Contract without further remediation*) the Contractor terminates (or procures that the Parent or any other Contractor Group Member (as applicable) terminates) the employee's employment;
- (c) if the Prohibited Act is committed by a Sub-Contractor or by an employee of that Sub-Contractor not acting independently of that Sub-Contractor, then this shall be treated as a Contractor Default and the Authority shall be entitled to terminate this Contract in its entirety in accordance with Clause 59.4 (*Authority right to terminate Contract without further remediation*), unless within forty (40) Business Days of receipt of a Termination Notice under Clause 59.4 (*Authority right to terminate Contract without further remediation*) the Contractor terminates the relevant Sub-Contract and procures the performance of the relevant part of the Services by another person; and
- (d) if the Prohibited Act is committed by an employee of a Sub-Contractor acting independently of that Sub-Contractor, then this shall be treated as a Contractor Default and the Authority shall be entitled to terminate this Contract in its entirety in accordance with Clause 59.4 (*Authority right to terminate Contract without further*

remediation), unless within forty (40) Business Days of receipt of a Termination Notice under Clause 59.4 (*Authority right to terminate Contract without further remediation*) the Sub-Contractor terminates the employee's employment.

- 64.3 Any Termination Notice served under Clause 59 (*Contractor Default*) in relation to a breach of this Clause 64 shall specify:
- (a) the nature of the Prohibited Act;
 - (b) the identity of the party whom the Authority believes has committed the Prohibited Act; and
 - (c) the date on which this Contract shall terminate, in accordance with the applicable provision of this Clause.
- 64.4 For the avoidance of doubt, upon a termination of this Contract in accordance with Clause 59 (*Contractor Default*) for breach of this Clause 64, no compensation shall be payable to the Contractor (but without prejudice to any amounts due to the Contractor at the Termination Date).
- 64.5 In exercising its rights or remedies under this Clause 64 and Clause 59 (*Contractor Default*), the Authority shall:
- (a) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the Prohibited Act; and
 - (b) give all due consideration, where appropriate, to action other than termination of this Contract, including:
 - (i) requiring the Contractor to procure the termination of a Sub-Contract where the Prohibited Act is that of a Sub-Contractor or anyone acting on its or their behalf; and
 - (ii) requiring the Contractor to procure the dismissal of an employee (whether its own or that of a Sub-Contractor or anyone acting on its behalf) where the Prohibited Act is that of such employee.
- 64.6 Recovery action taken against any person in Her Majesty's service shall be without prejudice to any recovery action taken against the Contractor pursuant to this Clause 64.

Part 19 – Exit Provisions

65 Exit Strategy

65.1 Acknowledgements

65.1.1 The Parties acknowledge that upon the termination or expiry of this Contract the Authority may, in its discretion, decide to perform the Services (in whole or in part) itself or to transfer the right and obligation to provide the Services, in whole or in part, from the Contractor to one or more third parties who will provide all or part of the relevant Services, or services similar to the relevant Services.

65.1.2 In order to exercise its rights under Clause 65.1.1 any Incoming Contractor or the Authority (as appropriate) will be required to obtain a detailed understanding of the operation, management and provision of the relevant Services before it is required to take over the performance of the relevant Services, or services similar to the relevant Services. Accordingly:

- (a) the Parties shall co-operate fully in good faith with regard to the procedure for the transfer of the right and obligation to provide the relevant Services from the Contractor to any Incoming Contractor or to the Authority (as appropriate);
- (b) the Contractor shall comply with the provisions of this Clause 65 and any current Exit Plan, in relation to the orderly transition of the relevant Services to the Authority or an Incoming Contractor;
- (c) the Contractor shall use all reasonable endeavours to promptly comply with all reasonable requests from the Authority and/or an Incoming Contractor for information concerning the Services to be transferred; and
- (d) the Contractor shall ensure the orderly transition of Services and transfer of assets to an Incoming Contractor or the Authority to the extent within its reasonable control.

65.2 Asset Registers

65.2.1 During the Contract Period, the Contractor shall create and maintain:

- (a) a register of all Assets (separately listing Contractor Assets and (as required pursuant to Clause 39 (*Accounting for Property of the Authority*))), detailing their:
 - (i) make, model and asset number;
 - (ii) ownership;
 - (iii) Net Book Value;
 - (iv) condition and physical location; and
 - (v) use (including technical specifications);
- (b) a register of all Sub-Contracts and other relevant agreements (including relevant Software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services, detailing their key terms, and

- (c) a configuration database detailing the technical infrastructure and operating procedures through which the Contractor provides the relevant Services, which shall contain sufficient detail to permit the Authority and/or Incoming Contractor to understand how the Contractor provides the Services and to enable the smooth transition of the Services with the minimum of disruption.

65.2.2 The Contractor shall:

- (a) produce and maintain the Registers in the format directed by the Authority; and
- (b) at all times keep the Registers up to date, in particular in the event that Assets, Sub-Contracts or other relevant agreements are added to, varied, or removed from the Services; and
- (c) procure that all Exclusive Assets listed in the Registers are clearly marked to identify that they are used exclusively for the provision of the Services.

65.3 Access to Data

65.3.1 On reasonable Notice at any point during the Contract Period, the Contractor shall provide to the Authority and/or (subject to the Authority procuring appropriate confidentiality undertakings) any Incoming Contractor, the following information and materials in order to facilitate a re-tender of the Services and/or the preparation by the Authority of an invitation to tender and/or any potential tenderers or Incoming Contractor to undertake due diligence:

- (a) details of the Services (in such detail as to enable a potential Incoming Contractor to have a full understanding of the nature and extent of the Services and of how the Services are provided);
- (b) a copy of the Registers, updated by the Contractor up to the date of delivery of such Registers;
- (c) to the extent not contained in the Registers, details of all Assets (including technical specifications, manuals, maintenance schedules and agreements, and materials) and details of all GFA (including condition and physical location);
- (d) details of all technical infrastructure and equipment, software and hardware used to provide the Services (including ownership and licensing details);
- (e) details of any key terms of any Sub-Contracts and third party contracts and licences, particularly as regards service scope, charges, termination, assignment and novation;
- (f) details of all licences, consents, authorisations and approvals required to provide the Services;
- (g) details of all sites and property from which the Service is provided, including details and copies of all leases and licences relevant to such sites and property;
- (h) an inventory of Authority Data in the Contractor's possession or control;
- (i) details of all Intellectual Property used in connection with the Services;
- (j) details of work volumes and staffing requirements over the previous twelve (12) months;

- (k) with respect to work in progress, details of current status and work required to complete;
- (l) a list of legal proceedings;
- (m) to the extent permitted by applicable Law, all information relating to transferring Contractor Employees required to be provided by the Contractor under this Contract; and
- (n) any other data, records (including title documents, invoices, service and maintenance records, technical manuals and specifications and user guides), reports, accounts, and such other financial, operational, management or other information as the Authority or any tenderer or Incoming Contractor shall reasonably require,

(together, the **Exit Information**).

The Contractor confirms and agrees that the Exit Information may contain Contractor Confidential Information, and that it may be disclosed for the purposes stated above notwithstanding the terms of Clause 75 (*Confidentiality and Freedom of Information*) (except that the Authority may not under this Clause 65.3.1 disclose Contractor Confidential Information which is information relating to the Contractor's prices or costs).

65.3.2 The Contractor shall:

- (a) notify the Authority within five (5) Business Days of any material change to the Exit Information which may adversely impact upon the potential transfer and/or continuance of any Services and shall consult with the Authority regarding such proposed material changes; and
- (b) provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Business Days of a request in writing from the Authority.

65.3.3 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Contractor shall be such as would be reasonably necessary to:

- (a) facilitate a re-tender of the Services and/or the preparation by the Authority of any invitation to tender and/or to facilitate any tenderer (including its advisors) undertaking due diligence; and
- (b) enable any tenderer to obtain a reasonably informed view of the Service (including how it is performed and the Assets required for the Service) and to prepare an informed offer for those Services and not be disadvantaged in any subsequent procurement process compared to the Contractor (if the Contractor is invited to participate).

65.3.4 The Contractor authorises the Authority, at any point during the Contract Period (subject to the Authority procuring appropriate confidentiality undertakings), to release any information held by the Authority or provided by the Contractor to the Authority relating to the Services, to be transferred to third parties whom the Authority has invited to tender to provide the relevant Services but who have not yet entered into an agreement with the Authority to provide the relevant Services. The Authority shall use its reasonable endeavours to obtain from any Incoming Contractor an appropriate confidentiality undertaking whereby the Incoming

Contractor will agree only to use such information for the purposes of progressing its bid for the provision of the relevant Services by the Incoming Contractor.

65.3.5 The Exit Information shall be made available and provided to the Authority in such format as the Authority shall reasonably require.

65.4 Exit Plan

65.4.1 Within six (6) months of the Commencement Date, the Contractor shall prepare and deliver to the Authority an Exit Plan which:

- (a) sets out the Contractor's proposed methodology for achieving an orderly transition of the Services from the Contractor to the Authority and/or an Incoming Contractor on the expiry or termination of this Contract; and
- (b) is otherwise reasonably satisfactory to the Authority.

65.4.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Business Days of its submission to the Authority, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

65.4.3 The Exit Plan, shall include, as a minimum, the following:

- (a) how the Exit Information is obtained and provided to the Authority;
- (b) the Assets which will be required to continue the provision of the Services;
- (c) the management structure to be employed during the Transfer Period;
- (d) a detailed description of both the transfer and cessation processes, including a timetable;
- (e) how the Services will transfer to the Incoming Contractor and/or the Authority, including details of the processes, documentation, data transfer (including data format), systems migration, security and the segregation of the Authority's technology components from any technology components operated by the Contractor or its Sub-Contractors (where applicable), and details of all hardware and Software required to provide the Services;
- (f) provisions for the transfer to the Authority and/or any Incoming Contractor of all knowledge reasonably required for the provision of the Services which may, as appropriate, include information, records and documents;
- (g) a timetable and critical issues for transferring the Services;
- (h) procedures to deal with requests made by the Authority and/or an Incoming Contractor for information relevant to the Services;
- (i) having regard to Clause 65.5.2, the scope of the Core Transfer Services that may be required for the benefit of the Authority and/or an Incoming Contractor;
- (j) how the Transfer Services would be provided (if required) during the Transfer Period; and

- (k) how each of the issues set out in this Clause 65 will be addressed to facilitate the transition of the Services from the Contractor to the Incoming Contractor and/or the Authority with the aim of ensuring that there is no disruption to or degradation of the Services during the Transfer Period.

65.4.4 Unless otherwise agreed, the Exit Plan shall not include the Enhanced Transfer Services. If the Authority elects to procure any Enhanced Transfer Services these will be added to the Exit Plan following a request from the Authority.

65.4.5 The Parties acknowledge that the migration of the Services from the Contractor to the Authority and/or any Incoming Contractor may be phased, such that certain of the Services are handed over before others.

65.4.6 The Contractor shall review and (if appropriate) update the Exit Plan on a basis consistent with the principles set out in this Clause 65 in the first (1st) month of each Contract Year (commencing with the second Contract Year) to reflect any changes in the Services that have occurred since the Exit Plan was last agreed. Following such update the Contractor shall submit the revised Exit Plan to the Authority for review. Within twenty (20) Business Days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan. If the Parties are unable to agree the contents of the revised Exit Plan within that twenty (20) Business Day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

65.4.7 Within twenty (20) Business Days after service of a Termination Notice by either Party or no later than twelve (12) months prior to the Termination Date, the Contractor will submit for the Authority's approval the Exit Plan in a final form that could be implemented immediately. The final form of the Exit Plan shall be prepared on a basis consistent with the principles set out in this Clause 65 and shall reflect any changes in the Services that have occurred since the Exit Plan was last agreed.

65.4.8 The Parties will meet and use their respective reasonable endeavours to agree the contents of the final form of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Business Days following its submission to the Authority then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure. Until the agreement of the final form of the Exit Plan, the Contractor shall provide the Core Transfer Services in accordance with the principles set out in this Clause 65 and the last approved version of the Exit Plan (insofar as relevant).

65.5 Transfer Notice and Transfer Services

65.5.1 The Authority shall be entitled to require the provision of Transfer Services at any stage prior to expiry of the Contract Period or, in the context of termination of this Contract (or part thereof), as soon as reasonably practicable following the service of a Termination Notice or a Notice pursuant to Clause 59.6.6 (*Termination rights if rectification programme fails*), by serving a Transfer Notice on the Contractor. The Authority may serve one or more Transfer Notices.

Transfer Services

65.5.2 Unless the Authority notifies the Contractor otherwise, the Core Transfer Services to be provided by the Contractor are such services as may reasonably be expected to be provided

by an outgoing contractor to the Authority and/or any Incoming Contractor to ensure an orderly and efficient transfer of services, including (without limitation):

- (a) the provision of an information pack listing and describing the Services;
- (b) the provision of the services agreed and specified in the Exit Plan;
- (c) the provision of information to enable the Authority to create a data room suitable to give replacement service providers a full and detailed knowledge of the Services;
- (d) the provision of up-to-date copies of operations manuals and details of all operational and business processes (including supporting documentation) in place, such that they may be suitable for use by the Authority and/or any Incoming Contractor;
- (e) providing details of all operational and business processes (including supporting documentation) in place;
- (f) delivering to the Authority the existing systems support profiles, monitoring or systems logs, and documentation and status reports relating to the twelve (12) month period prior to the commencement of the Transfer Services;
- (g) providing details of work volumes and staffing requirements over the previous twelve (12) months;
- (h) with respect to work in progress as at the Termination Date and end of the Transfer Period, providing details of current status and work required to complete;
- (i) providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Services;
- (j) providing all assistance and expertise as necessary to examine relevant roles and responsibilities in place for the provision of the Services;
- (k) identifying and transferring all existing training material;
- (l) providing appropriate training, including holding an agreed number of workshops and training sessions for the Authority and/or any Incoming Contractor;
- (m) making senior and key employees available and answering all reasonable questions from the Authority and/or any Incoming Contractor in relation to the Services;
- (n) allowing a reasonable number of Authority and/or any Incoming Contractor staff to shadow Contractor personnel engaged in the performance of the Services for reasonable periods, including allowing staff to observe day-to-day activities and to gain practical exposure to the performance of the Services;
- (o) providing information about capacity and performance requirements and planned requirements for growth;
- (p) agreeing a handover plan for all security (logical and physical) matters and a security management control procedures manual;
- (q) delivering copies of Service related databases to the Authority and/or any Incoming Contractor;

- (r) providing assistance and expertise as necessary to support the Authority and/or any Incoming Contractor to develop a migration plan for the business operations and data; and
- (s) providing such other information services and assistance as may reasonably be requested by the Authority.

65.5.3 The Core Transfer Services shall also include providing access (on reasonable prior Notice) to the Authority and/or any Incoming Contractor, for a period not exceeding six (6) months after the Contract Period, to information and documentation retained by the Contractor and which relates to the Services.

65.5.4 The Enhanced Transfer Services to be provided by the Contractor may include such of the following as the Authority may specify in the Transfer Notice or may request at any time:

- (a) making available to the Authority and/or any Incoming Contractor any training related activity beyond that set out in Clause 65.5.2;
- (b) assisting any Incoming Contractor in the execution of any parallel operation or implementation activity until the Termination Date; and
- (c) such other services as the Authority may reasonably require to ensure the smooth transition of the Services and not contemplated by the Core Transfer Services or Exit Plan.

65.5.5 The Authority shall pay the Contractor for the provision of the Enhanced Transfer Services. The charge for providing the Enhanced Transfer Services shall be agreed between the parties based on the methodology that would apply if such services were being treated as a Change, together with the provision of fixed charges where practicable, or estimates updated on a regular basis. No additional payment shall be made for the Core Transfer Services.

Transfer Notice

65.5.6 A Transfer Notice shall contain the following details (to the extent practicable):

- (a) the expected duration of the Transfer Period (which shall continue no longer than twelve (12) months after the date on which the Contractor ceases to provide the Services, unless extended pursuant to Clause 65.5.7);
- (b) to the extent not included in the Exit Information, or already requested, any information the Authority requires the Contractor to provide in relation to the Services;
- (c) details of the Core Transfer Services and any Enhanced Transfer Services required;
- (d) confirmation of implementation of the Exit Plan (in whole or in part);
- (e) details of any Incoming Contractor (if relevant and if any Incoming Contractor has been identified at that stage); and
- (f) such other matters as the Authority, in the circumstances, considers appropriate.

65.5.7 The Authority shall have an option to extend the Transfer Period beyond the period specified in the Transfer Notice provided that such extension shall not extend for more than six (6) months beyond the date specified in the Transfer Notice. The Authority shall notify the

Contractor to such effect no later than twenty (20) Business Days prior to the date on which the provision of Transfer Services is otherwise due to expire.

65.5.8 The Authority shall have the right to terminate its requirement for Transfer Services, at any time, by serving not less than twenty (20) Business Days' Notice upon the Contractor to such effect.

65.5.9 Within ten (10) Business Days of the issue of the Transfer Notice, the Parties shall meet to discuss:

- (a) the process for implementing the Exit Plan;
- (b) the details of the Services and Assets to be transferred;
- (c) the details of any shared assets which are to be segregated before or at the expiry of the Contract Period or expiry of the Transfer Period and the timing of any segregation of such assets;
- (d) the details of any required Transfer Services;
- (e) the terms of any required Transition Services Agreement;
- (f) the terms on which senior management of the Contractor will be engaged on the exit arrangements;
- (g) the information the Authority requires the Contractor to provide in relation to the Services; and
- (h) which services or work (if any) will be carried out by the Contractor after the Transfer Period.

65.5.10 The Parties shall use their best endeavours to agree these provisions within one (1) month of the issue of the Transfer Notice.

65.5.11 Where the Parties fail to reach agreement within the time period set out in Clause 65.5.10, then the Authority shall be entitled to direct the Contractor in relation to the matters specified in Clause 65.5.9 to the extent reasonably required to ensure an orderly and efficient handover to the Authority or to any Incoming Contractor (as relevant) and provided that the Contractor may refer the matter to the Dispute Resolution Procedure (with the Parties complying with such direction until otherwise determined under the Dispute Resolution Procedure).

65.6 Transfer Period

65.6.1 Throughout the Transfer Period or such shorter period as the Authority may require, the Contractor shall:

- (a) continue to provide the Services and, if required, perform the Transfer Services in accordance with the requirements set out in the Transfer Notice with a view to ensuring an orderly and efficient handover of Services to the Authority or to the Incoming Contractor (as relevant);
- (b) continue to provide the Services with no detriment to the Performance Standards;

- (c) perform the Transfer Services, and/or ensure that the Transfer Services, are performed at all times:
 - (i) in accordance with any specific performance standards or obligations applicable to them contained in this Contract;
 - (ii) (in the absence of any specific performance standards or obligations applicable to it contained in this Contract) in accordance with Law, Regulations, Required Consents and Good Industry Practice; and
 - (iii) in a manner that is not likely to be injurious to health or to cause damage to property;
- (d) use all reasonable endeavours to reallocate resources to provide the Transfer Services without additional cost to the Authority; and
- (e) assist the Authority by providing all (or any) Incoming Contractor with access to the Service Delivery Location and any Leased and Licensed Areas.

65.7 Personnel

65.7.1 Within ten (10) Business Days of the issue of the Transfer Notice, the Authority and the Contractor shall meet to identify key employees of the Contractor who are involved in the performance of the Services with a view to agreeing that such key employees shall remain on the Leased and Licensed Areas at which the Services to be transferred are performed and shall continue to be engaged in the provision of the relevant Services during the Transfer Period.

65.7.2 If requested to do so by the Authority, the Contractor shall provide familiarisation training for any employees of any Incoming Contractor in order assist the employees of the Incoming Contractor to obtain a sound knowledge and understanding of the Services to be transferred and an understanding of the Service Delivery Location and any Leased and Licensed Areas at which the Services are performed.

65.8 Access to facilities

65.8.1 If, during the Contract Period, the Contractor has performed any part of the Services to be transferred at facilities other than the Service Delivery Locations, and the Authority, acting reasonably, considers that it is necessary that such of the relevant Services should continue to be performed at facilities other than the Service Delivery Locations, then:

- (a) the Contractor shall, following the Termination Date, make such facilities available to the Authority or the Incoming Contractor free of charge for the use thereof for such temporary period as the Authority deems necessary in order to secure the provision of the Services by the Authority or the Incoming Contractor, provided that such period shall not exceed six (6) months unless otherwise agreed; or
- (b) if such period shall exceed six (6) months the Contractor shall continue to provide such facilities on such terms as may be agreed between the Authority and the Contractor. In default of such agreement, those terms shall be determined in accordance with the Dispute Resolution Procedure. Such discussions shall be conducted in good faith with a view to ensuring that the Authority or the Incoming Contractor is able to reallocate resources in an efficient manner in order to provide

that element of the relevant Services which were being provided at such facilities at the Termination Date.

65.9 Termination Obligations

65.9.1 The Contractor shall comply with all of its obligations contained in the Exit Plan and Transfer Notice.

65.9.2 Upon the Termination Date of this Contract, the Contractor shall:

- (a) cease to use the Authority Data and at the Authority's discretion either erase from any computers, storage devices and storage media retained by the Contractor all Authority Data or transfer all Authority Data in its possession or control to the Authority;
- (b) vacate the Leased and Licensed Areas, leaving same in a safe, clean and orderly condition;
- (c) return all Property of the Authority (in compliance with the terms of this Contract), and all other property, information and records belonging to the Authority (including any security passwords and access codes);
- (d) comply with all provisions of this Contract relating to termination and/or expiry; and
- (e) if required by the Authority, enter into an Asset Transfer Agreement and/or Transition Services Agreement with the Incoming Contractor or the Authority (or its nominee).

65.9.3 Following the issue of a Termination Notice or during the Transfer Period, the Contractor shall not, without the Authority's prior written consent (save in the ordinary course of business):

- (a) terminate, enter into or vary any Sub-Contractor;
- (b) make any material modifications to, or dispose of, any Contractor Assets or acquire any additional Contractor Assets; or
- (c) terminate, enter into or vary any licence for software in connection with the Services.

65.10 Right to purchase assets and equipment

65.10.1 In the event of termination or expiry of this Contract (but without prejudice to the provisions of the Licence or Lease and the provisions of Schedule 8 (*Intellectual Property Rights*) the Authority shall have the option (exercisable by Notice to be given not later than one (1) month after termination or one (1) month prior to expiry) to purchase (or procure the purchase by an Incoming Contractor of):

- (a) any or all of the Exclusive Assets; and
- (b) any other assets, vehicles, property, goods, materials, stores, apparatus or equipment of any description belonging to the Contractor or Key Sub-Contractor and used for the purposes of performing any Services which are the subject of such termination or expiry (except such goods, materials, stores, apparatus or equipment of any description in course of preparation as the Contractor shall, with the concurrence of the Authority, elect to retain);

for the purposes of ensuring a smooth and orderly transition of the Services.

65.10.2 The price to be paid by the Authority (or other purchaser) for the assets under Clause 65.10.1 shall (save where the price is included in any other termination payment or other payments made to the Contractor including the Annual Service Price) be the lesser of:

- (a) the market value of the items in question at the Termination Date; and
- (b) the Net Book Value of the items in question at the Termination Date,

which market value and/or Net Book Value shall, in default of agreement between the Authority and the Contractor, be determined by an independent person to be appointed (in default of nomination by agreement) by the President for the time being of the Royal Institution of Chartered Surveyors.

65.10.3 The independent person under Clause 65.10.2 shall act as an expert and not as an arbiter and, accordingly, its decisions (both as to market and residual value and to questions of procedure) shall be final and binding on the Contractor and the Authority and not subject to any form of review or appeal and its costs shall be paid by such party as he may decide or by both the Authority and the Contractor in such proportion as he may direct. Each Party shall be responsible for the costs of presenting its own case.

65.10.4 For the avoidance of doubt the Dispute Resolution Procedure shall not apply in relation to any dispute as to market or residual value falling to be determined pursuant to this Clause 65.10.

65.10.5 The Parties shall enter into the Asset Transfer Agreement in relation to any assets to be purchased under Clause 65.10.1.

65.11 Not used

65.12 Removal of Property

Subject to Clause 65.10 (*Right to purchase assets and equipment*), in the event of termination (in whole or in part) or expiry of this Contract or expiry of the Transfer Period, the Authority may at any time require the Contractor to remove from the Leased and Licensed Areas or any other part of the Service Delivery Location affected by such termination or expiry, any property of the Contractor or of third parties which is located at the Leased and Licensed Areas or the Service Delivery Location in connection with:

- (a) the performance of the Services;
- (b) Not Used; or
- (c) the performance of any other obligations by the Contractor under any other contract entered into with the Authority, unless the requirement for such services continues following termination,

and if the Contractor fails to comply within a reasonable period the Authority may take any action, acting with reasonable care, which in the Authority's sole opinion is necessary to remove any such property. The Authority shall not be liable for any losses or liabilities incurred by the Contractor or any third party as a result, directly or indirectly, of any removal of property or of any action taken by the Authority pursuant to this Clause 65.12, and the Contractor shall indemnify the Authority on the terms set out in Schedule 12 (*Liabilities, Indemnities, Insurance and Conduct of Claims*) against any claim or action for damages by

any third party in respect of any Losses of the Authority (which may include direct or indirect losses of third parties) which that third party has suffered or incurred and which results from, or arises out of any such action.

65.13 Transfer of Sub-Contracts

65.13.1 The Contractor shall, if required by the Authority, and with effect from the Termination Date, assign the benefit of or novate in favour of the Authority or any Incoming Contractor any Sub-Contract:

- (a) under which, as at the date of service of the Termination Notice, a material part of the Services to be transferred are being performed by a Sub-Contractor; and/or
- (b) which is necessary (in the reasonable opinion of the Authority) to enable the Authority or any Incoming Contractor to perform the Services or services substantially similar to the Services.

65.13.2 The Contractor shall ensure that its Sub-Contracts contain a provision giving effect to this Clause 65.13.

65.13.3 The Contractor shall use all reasonable endeavours to procure that any such Sub-Contractor co-operates with the Authority and any Incoming Contractor with a view to continuing to provide the relevant sub-contracted Services notwithstanding termination or expiry.

65.13.4 The Parties shall execute such documents and provide such other assistance as the Authority reasonably requires to give effect to this Clause 65.13. The Contractor shall hold such Sub-Contracts on trust for the Authority or any Incoming Contractor until such time as the relevant Sub-Contract has been transferred.

65.13.5 The Contractor shall indemnify the Authority and any Incoming Contractor against all losses, liabilities and costs arising out of any claims made by a counterparty to a transferring Sub-Contract both:

- (a) in relation to matters arising prior to the date of assignment or novation; and
- (b) in relation to any matters arising after the date of assignment or novation and which arise as a result of any act, neglect or default of the Contractor.

65.14 Return or Destruction of Classified Documents

The provisions of Clause **Error! Reference source not found.** (*Return or Destruction of Classified Documents*) shall apply to the extent relevant.

65.15 Not used

Part 20 – Sub-Contracting of the Services

66 Supply Chain and Sub-Contracting Strategy

The provisions of Schedule 14 (*Supply Chain and Sub-Contracting Strategy*) shall apply.

Part 21 – Financial Security

67 Financial Distress

67.1 Financial Distress

The Contractor shall comply with the provisions of Schedule 24 (*Financial Distress*).

68 Financial Security

68.1 Parent Company Guarantee

68.1.1 The Contractor shall on or prior to the Commencement Date, procure the provision of an executed Parent Company Guarantee in the form set out in Schedule 25 (*Form of Parent Company Guarantee*) issued by the Parent as security to the Authority for the performance by the Contractor of all of its obligations under this Contract.

68.1.2 The Contractor shall maintain the continuing validity and effectiveness of the Parent Company Guarantee from the date that such security is provided to the Authority in executed form, for the duration of the Contract Period and, following the end of the Contract Period, for the period that obligations or liabilities of the Contractor in connection with this Contract remain outstanding or unperformed.

68.1.3 If a Financial Distress Event occurs in relation to the Parent, the Authority may require the Contractor to procure a replacement Parent Company Guarantee on the same terms from any alternative parent of the Contractor meeting the requirements of Schedule 24 (*Financial Distress*).

68.1.4 Any reference in this Contract to circumstances in which the Authority may take any action under the Parent Company Guarantee shall be without prejudice to the generality of Clause 68.1.2.

68.2 Not used

69 Any New Parent of the Contractor to accede to the Parent Company Guarantee

69.1 Subject to Clauses 69.2 and 69.3, if a Change in Control occurs, as contemplated under Clause 79 (*Change in Control*) in relation to a Contractor, the Parent shall (except if a right of termination has arisen under Clause 79 (*Change in Control*)) be released from liability under the Parent Company Guarantee in respect of any liability of that Contractor accrued under this Contract on and from the effective date of the New Owner's accession to the Parent Company Guarantee in accordance with Clause 69.2(a), provided always that the Parent shall not be relieved or released from any accrued liabilities as at such date. The terms of the release and accession shall be as set out in the deed of accession delivered under Clause 69.2(a).

69.2 The release of the Parent from its obligations under the Parent Company Guarantee under Clause 69.1 shall be conditional on:

- (a) the Contractor procuring that the New Owner enters into a deed of accession with the Authority in a form acceptable to the Authority and the Parent under which the New Owner agrees to be bound by the provisions of the Parent Company Guarantee in relation to the relevant obligations (including any warranties and other obligations

therein) as if reference to the Parent in the Parent Company Guarantee was to that New Owner;

- (b) the Authority being satisfied that the New Owner is of a standing satisfactory to the Authority, which may include a requirement that the proposed New Owner is acceptable to the Authority in relation to any national security considerations and has:
 - (i) the legal capacity, power and authority to become a party to and perform the relevant obligations under the Parent Company Guarantee, including the Guaranteed Obligations;
 - (ii) the appropriate managerial competence and financial resources sufficient to carry out the relevant obligations under the Parent Company Guarantee;
 - (iii) satisfied such other criteria necessary to ensure the New Owner is capable of fully performing the relevant obligations under the Parent Company Guarantee as may be reasonably specified by the Authority; and
 - (iv) met (and continues to meet) the tests set out in Schedule 24 (*Financial Distress*).
- (c) the Authority being satisfied that the accession of the New Owner will not prejudice the Authority in terms of its ability to make a claim under the Parent Company Guarantee in respect of any breach of the Guaranteed Obligations (as defined in the Parent Company Guarantee) on and from the commencement of the Parent Company Guarantee.

69.3 This Clause 69 shall not apply in respect of a Change in Control of any Contractor as part of any internal reorganisation of the Contractor Group, provided that the relevant Contractor remains a wholly owned subsidiary (whether direct or indirect) of the Parent following any such reorganisation.

Part 22 – Change

70 Change Procedure

Subject to Clause 71 (*Qualifications to the Change Procedure*) the Change Procedure set out in Schedule 30 (*Change Procedure*) shall apply to changes to this Contract.

71 Qualifications to the Change Procedure

71.1 Clause 72 (*Change in Law*) shall apply in relation to a Change in Law.

71.2 The Change Procedure shall not apply to any change to a Referenced Document where a different process is set out in that Referenced Document for agreeing and documenting any change thereto.

72 Change in Law

72.1 Without prejudice to the provisions of Clause 12 (*Observance of Law and Regulations*) and Schedule 2 (*Requirements*) the Parties shall each use reasonable endeavours to monitor any planned or implemented Changes in Law throughout the Contract Period and shall notify the other Party in writing of any planned or implemented Change in Law which may affect the provision of the Services.

72.2 If either the Contractor or the Authority becomes aware that as a result of a Change in Law it is necessary that a Change or Specification Change be made, it shall give Notice to the other (regardless of whether the Change in Law has been identified in the annual report in accordance with Clauses 72.3 and 72.4) by raising an Authority Change Proposal or Contractor Change Proposal. Subject to Clause 71 (*Qualifications to the Change Procedure*) the procedure set out in Clause 69.3 (*Change Procedure*) shall apply.

72.3 In particular:

- (a) the Contractor shall use reasonable endeavours to keep the Authority informed of any planned Change in Law which, as a defence contractor in the United Kingdom it would reasonably be expected to foresee and which would, if implemented, only affect companies involved in the provision of soft facilities management services in the United Kingdom; and
- (b) the Authority shall use reasonable endeavours to keep the Contractor informed of any planned Change in Law to be issued by the Authority relevant to the provision of the Services which, if implemented, would impact upon the basis of performance of the Authority's obligations under this Contract as a U.K. Government department engaged in the procurement of services to the defence sector in the United Kingdom.

72.4 Whilst the Change Procedure detailed at Schedule 30 (*Change Procedure*) shall apply to a Change in Law; the Contractor shall not be entitled to adjust any Pricing Parameter as a result of a Change in Law other than for a Qualifying Change in Law. The Contractor shall, in any event, use all reasonable endeavours to minimise the negative impact and maximise the positive impact of the Change in Law and mitigate any detrimental consequences of such Change in Law.

72.5 The Authority may specify (in response to a Contractor Change Proposal) an alternative means by which the relevant Change in Law can be complied with, either by providing an Authority Change Proposal replacing any relevant Contractor Change Proposal or specifying

how the matter is to be addressed, including by any change in or as a result of any interpretation of the relevant Law or Regulation.

- 72.6 The Contractor shall, through the annual report submitted under Clause 17 (*Annual Report and Reviews*) include details of any potential Qualifying Change in Law if it believes that such potential Qualifying Change in Law would have an effect on the cost of providing the Services, together with an initial assessment of the financial impact of complying with the Qualifying Change in Law.
- 72.7 In respect of any potential Qualifying Change in Law detailed by the Contractor in the annual report in accordance with Clause 72.4, the Parties shall agree either:
- (a) to reflect any agreed risk re-allocation in respect of addressing the potential Qualifying Change in Law in an adjustment to any Pricing Parameter to be processed in accordance with Clause 72.1, in which case no further adjustment shall be made to any Pricing Parameter in respect of any Change which may subsequently be required as a result of such Qualifying Change in Law; or
 - (b) not to adjust any Pricing Parameter until such time as a Change or Specification Change is processed in accordance with Schedule 30 (*Change Procedure*) as a result of such Qualifying Change in Law, at which point any adjustment required to any Pricing Parameter to reflect any increase or decrease in costs arising from the implementation of the Qualifying Change in Law shall be made.
- 72.8 Not used.
- 72.9 Where the Parties have previously agreed an approach in meeting a Change in Law, and that approach is subsequently found not to have met the relevant regulatory body's requirements, the original approach to the Change in Law can be revisited as a Change in Law.

73 Brexit

- 73.1 The Contractor acknowledges that Brexit may occur during the Contract Period.
- 73.2 Without prejudice to Clause 72 (*Change in Law*), the Contractor shall not be entitled to treat Brexit or any effect of Brexit as a Change. Further, the Contractor shall bear all risk and cost associated with Brexit or the effects of Brexit save only to the extent explicitly provided for in this Contract.
- Notwithstanding Clause 73.2, if the Contractor believes that all or any part of this Contract has become impossible to perform as a direct result of Brexit the Contractor shall notify the Authority as soon as reasonably practicable. Such Notice shall contain:
- (a) a full justification of the Contractor's Notice, including the extent to which the Contract has become impossible to perform and why this is a direct consequence of Brexit; and
 - (b) full supporting evidence; and
 - (c) details of any possible mitigations or alternative actions that would enable the Contract to be performed.
- 73.3 The Authority shall, acting reasonably and taking into account all relevant circumstances, determine whether and the extent to which it accepts the Contractor's notice and, if and to the

extent that it does, consider any necessary amendments to this Contract to enable the Contractor to perform the relevant part of this Contract.

- 73.4 The Parties shall negotiate in good faith such changes as are considered necessary by the Authority with a view to ensuring that this Contract shall remain in full force and effect, subject only to such minimum changes as may be necessary to enable it to do so. Any changes so agreed shall be documented pursuant to Clause 74 (*Amendments to Contract*).
- 73.5 Without prejudice to the operation of Schedule 4 (*Pricing and Payment*), Clause 73.2 shall apply to any impact on the Contractor's costs as a result of:
- (a) foreign exchange rate fluctuations;
 - (b) any increase in import duties;
 - (c) increased employment costs;
 - (d) any other increase in the Contractor's costs, including supply chain costs; and
 - (e) Not used.
- 73.6 If the UK decides that Brexit shall not take place during the Contract Period, the Parties shall discuss in good faith and agree the reduction in the Total Contract Price that should be made to reflect any savings in the anticipated costs to be incurred by the Contractor in performing its obligations in this Contract. Any changes so agreed shall be documented pursuant to Clause 74 (*Amendments to Contract*).
- 73.7 The following provisions of this Contract shall apply in relation to Brexit:
- (a) Clause 1.2.15(c) (*Interpretation*);
 - (b) Clause 54.1.5 (*Force Majeure Events*);
 - (c) Clause 55.1.1 (*Relief Events*);
 - (d) Clause 55.2.1 (*Compensation Events*);
 - (e) Clause 57 (*Measures in a Crisis*);
 - (f) Clause 58 (*Step-In Rights*);
 - (g) Clause 72.9 (*Change in Law*); and
 - (h) this Clause 73.

74 Amendments to Contract

- 74.1 The Contract shall only be amended by the written agreement of the duly authorised representatives of the Parties.
- 74.2 The written agreement shall be the Change Notice detailed at Paragraph 1.13 of Schedule 30 (*Change Procedure*).

- 74.3 The amendment shall come into force only when the Contractor has returned the DEFFORM 10B (Edition 03/14) as an unqualified offer and the Change Notice is counter signed by each of the Parties.
- 74.4 No Contract amendment shall come into effect unless it satisfies Clauses 74.1 and 74.2.
- 74.5 Where an amendment to the Requirements results in a Total Contract Price change or a change to any Pricing Parameter (each a **Pricing Change**), that Pricing Change shall be agreed prior to any formal amendments to the Contract.
- 74.6 Where necessary the Contractor shall either confirm the existing Parent Company Guarantee is relevant or provide a revised Parent Company Guarantee when returning the counter signed Change Notice.
- 74.7 Where:
- (a) the Contract is amended on five (5) occasions since execution or the last Consolidated Version Date as applicable;
 - (b) a Change or Specification Change means that the Annual Service Price is changed by more than five per cent (5%) whether by one or more amendment; or
 - (c) otherwise in a way which the Authority considers to be a significant change the Contract,
- the Authority shall issue to the Contractor, within twenty (20) Business Days of agreeing the relevant amendment, a Consolidated Version.
- 74.8 The Consolidated Version issued in accordance with Clause 74.7 shall incorporate only Changes and amendments previously agreed between the parties in accordance with Schedule 30 (*Change Procedure*) and shall be signed on behalf of the Authority.
- 74.9 The Contractor shall, within ten (10) Business Days of receiving it:
- (a) sign and return to the Authority a copy of the Consolidated Version issued in accordance with Clause 74.7, to confirm that it properly incorporates all amendments made to the Contract; or
 - (b) notify the Authority in writing why it believes that the Consolidated Version does not properly incorporate all amendments made to the Contract.
- 74.10 Following any notification made by the Contractor under Clause 74.9(b), the Authority and the Contractor shall seek to reach agreement on the content of the Consolidated Version, in the absence of which the matter may be resolved through the appropriate dispute resolution procedure.
- 74.11 Within twenty (20) Business Days of the Parties reaching agreement or the matter being determined through the Dispute Resolution Procedure, the Authority shall reissue a signed Consolidated Version which accords with that agreement or determination and which the Contractor shall sign and return to the Authority within ten (10) Business Days of receiving it.

Part 23 – Confidentiality and Disclosure/Protection of Data

75 Confidentiality and Freedom of Information

75.1 Subject to Clause 76 (*Transparency*) and except to the extent set out in this Clause 75, each of the Authority and the Contractor agrees, for itself and its respective directors, officers, employees, servants, Sub-Contractors and agents (and in the case of the Contractor, each Contractor Group Member), to keep confidential and not to disclose to any person any of the other's Confidential Information.

75.2 Notwithstanding Clause 75.1, and subject to Clause 75.4, the following disclosures of Confidential Information shall be permitted, provided that the relationship to any other Confidential Information is not revealed and in the case of the Authority, in so far as it is able to disclose such information:

- (a) any disclosure of Confidential Information that is reasonably required by persons engaged in the performance of their obligations under this Contract or any other contract between the Parties (or the Authority and any Contractor Group Member) including disclosure to any professional advisers and insurers to the extent necessary in connection with this Contract;
- (b) any disclosure of Confidential Information by the Contractor to a Sub-Contractor where such Confidential Information is reasonably required by the Sub-Contractor for the performance of the Sub-Contractor's obligations under the Sub-Contract;
- (c) any use or disclosure of Confidential Information to the extent either party has the right to use or disclose that Confidential Information in accordance with any other provision of this Contract;
- (d) any matter which the Authority or the Contractor can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this Contract;
- (e) any disclosure to enable a determination to be made under the Dispute Resolution Procedure;
- (f) any disclosure which is required by any law (including any order of a court of competent jurisdiction), any parliamentary obligation or the rules of any relevant stock exchange or governmental or regulatory authority having the force of law;
- (g) any disclosure of Confidential Information which is already in the possession of the receiving Party and is not subject to obligations of confidentiality, prior to its disclosure by the disclosing Party;
- (h) any disclosure as may reasonably be required:
 - (i) Not used;
 - (ii) by the Authority of any Contractor Confidential Information to any person conducting an Office of Government Commerce gateway review;
 - (iii) by any Party of Confidential Information of the other Party to any other consultant engaged by that Party in connection with this Contract; and
 - (iv) by the Contractor, in respect of circulation of this Contract to a Contractor Group Member;

- (i) any disclosure of Confidential Information, that was received without restriction or further disclosure from a third party who lawfully acquired it and who is itself under no obligation restricting its disclosure;
- (j) any disclosure of Confidential Information any Party can show from their records that the same information was derived independently of that received under or in connection with this Contract;
- (k) any disclosure of Contractor Confidential Information by the Authority to any other department, office or agency of HM Government for any UK Government purpose;
- (l) any disclosure by the Authority of any document related to this Contract to which it is a Party and which the Contractor (acting reasonably) has agreed with the Authority contains no Contractor Confidential Information;
- (m) any disclosure for the purpose of:
 - (v) the examination and certification of the Authority's or the Contractor's accounts; or
 - (vi) 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;
- (n) Not used:
- (o) any disclosure of Contractor Confidential Information by the Authority:
 - (vii) to any person in connection with the preparation and analysis by that person of a review;
 - (viii) to any contractor of the Authority in relation to a Step-In under Clause 58 (*Step-In Rights*) (subject to the terms of Clause 58 (*Step-In Rights*));
 - (ix) to any proposed Incoming Contractor and its advisers for the purposes of selecting and appointing any Incoming Contractor and otherwise for the purposes of exit in accordance with Clause 65 (*Exit Strategy*) (subject to the restrictions set out in that Clause); and
- (p) subsequent use by the recipient as may be required for such purposes.

75.3 Not used.

75.4 Where disclosure is permitted under Clause 75.2, other than sub-Clauses (d), (f), (g), (i), (j), (l), (m), the relevant Party shall procure that the recipient of the information shall be subject substantially to the same obligation of confidentiality as that contained in this Clause 75 and will (in the case of recipients other than other Crown servants, departments, offices or agencies of HM Government) if necessary to achieve this obligation sign a confidentiality agreement containing at least equivalent provisions to those contained in this Clause 75.

75.5 For the purposes of the National Audit Act 1983 the Comptroller and Auditor General may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Contractor and any Sub-Contractor and may require the Contractor and any Sub-Contractor to produce such oral or written explanations as he considers necessary. For the avoidance of doubt it is hereby declared that the carrying out of an

examination under Section 6(3)(d) of the National Audit Act 1983 in relation to the Contractor is not a function exercisable under this Contract.

- 75.6 The Parties acknowledge that the National Audit Office has the right to publish details of this Contract (including Confidential Information) in its relevant reports to Parliament.
- 75.7 Clause 75.4 shall not prevent the Authority or any other department, office or agency of HM Government from using or disclosing any information about this Contract as necessary to secure improvements in value for money across HM Government and in any reports as necessary to comply with the objectives of the relevant department, office or agency.
- 75.8 The Contractor shall procure that no Contractor Group Member and no Contractor Personnel shall make use of any the Authority Confidential Information otherwise than for the purpose of this Contract and the Contractor's performance of its obligations under this Contract (or any other contract between the Parties or between the Authority and any Contractor Group Member), except with the written consent of the Authority or as permitted under Clause 75.6.
- 75.9 Neither the Parent nor any Contractor Group Member nor any employee of the Parent or any Contractor Group Member shall make use of any the Authority Confidential Information otherwise than for the purpose of this Contract and the Contractor's performance of its obligations under this Contract, except with the written consent of the Authority.
- 75.10 The Contractor acknowledges that the Authority is subject to the requirements of the Freedom of Information Act 2000 (**FOI Act**) and the Environmental Information Regulations and shall assist the Authority's compliance with its FOI Information disclosure requirements pursuant to the same in the manner provided for in Clauses 75.11 to 75.12 (inclusive) below.
- 75.11 Where the Authority receives a Request for Information in relation to FOI Information that the Contractor is holding on its behalf under this Contract, the Contractor shall at the Authority's request to the Contractor's Contract Manager and as soon as is practicable, provide an estimate of the total time for complying with the request to enable the Authority, in compliance with the FOI Act, to assess the extent to which it wishes the Contractor to provide the Authority with support as set out in this Clause 75.11. The Contractor shall then:
- (a) provide the Authority Representative with a copy of all such FOI Information in the form that the Authority Representative requires; and
 - (b) provide all necessary assistance as reasonably requested by the Authority Representative in connection with any such FOI Information, to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOI Act or Regulation 5 of the Environmental Information Regulations.
- 75.12 Following notification under Clause 75.11, and up until such time as the Contractor has provided the Authority's Representative with all the FOI Information specified in Clause 75.11(a), the Contractor may make representations to the Authority Representative as to whether or not or on what basis FOI 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:
- (a) whether any Confidential Information and/or any other FOI Information is exempt from disclosure under the FOI Act and the Environmental Information Regulations; or
 - (b) whether FOI Information is to be disclosed in response to a Request for Information,

and in no event shall the Contractor respond directly, or allow its Sub-Contractors to respond directly, to a Request for Information unless expressly authorised to do so by the Authority Representative.

75.13 Where the Authority is satisfied that any Confidential Information and/or any other FOI Information is exempt from disclosure under the FOI Act and the Environmental Information Regulations, it shall include in its response to the relevant request for information a statement that the Authority is relying on the relevant exemptions for refusing to accede to such a request.

75.14 The Contractor acknowledges that any lists provided by them listing or outlining Commercially Sensitive Information, are of indicative value only and that the Authority may nevertheless be obliged to disclose Commercially Sensitive Information in accordance with the requirements of the FOI Act and the Environmental Information Regulations.

75.15 The Contractor acknowledges that (notwithstanding the provisions of Clauses 75.6 to 75.12) the Authority may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part 1 of the FOI Act 2000 (the **Code**), be obliged under the FOI Act, or the Environmental Information Regulations to disclose FOI Information concerning the Contractor:

(a) in certain circumstances without consulting with the Contractor; or

(b) following consultation with the Contractor and having taken its views into account,

provided always that where limb (a) of this Clause 75.15 applies the Authority's Representative shall, in accordance with the recommendations of the Code, take reasonable steps, where appropriate to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

75.16 The provisions of this Clause 75 are without prejudice to the application of the Official Secrets Acts 1911 to 1989.

75.17 Not used.

76 Transparency

76.1 Publication of Transparency Information

76.1.1 Notwithstanding any other term of this Contract, including Clause 75 (*Confidentiality and Freedom of Information*), the Contractor understands that the Authority may publish the Transparency Information to the general public. The Contractor shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information.

76.1.2 Before publishing the Transparency Information to the general public in accordance with Clause 76.1.1, the Authority shall redact any information that would be exempt from disclosure if it was the subject of a request for information under the FOI Act or the Environmental Information Regulations, including the Contractor Commercially Sensitive Information.

76.1.3 The Authority shall consult with the Contractor before redacting any information from the Transparency Information in accordance with Clause 76.1.2. 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 FOI Act or the Environmental Information Regulations.

76.2 Preservation of Rights

76.2.1 Nothing in this Clause shall affect the Contractor's rights at law.

77 Data Protection

77.1 The following expressions shall have the same meanings as in the DPA 2018:

- (a) "**Processing**" (and "**Process**" and "**Processed**" shall be construed accordingly);
- (b) "**Processor**"; and
- (c) "**Data Protection Officer**".

77.2 In connection with the Personal Data Processed under the Contract, each Party undertakes to comply with its obligations under Data Protection Legislation.

77.3 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Contractor is the Processor. The only Processing that the Contractor is authorised to do is listed in Schedule 33 (*Processing Information*), or in the relevant Task Approval Form including the information set out at Schedule 33 (*Processing Information*) (the **Processing Information Form**) and may not be determined by the Contractor. The completed Processing Information Form shall form part of the Specification for the Contract.

77.4 The Contractor shall notify the Authority without undue delay if it considers that any of the Authority's instructions infringe the Data Protection Legislation. The Authority will not consider such notification to constitute formal legal advice.

77.5 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) a systematic description of the envisaged Processing operations and the purpose of the Processing;
- (b) an assessment of the necessity and proportionality of the Processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

77.6 The Contractor shall, in relation to any Personal Data Processed in connection with its obligations under the Contract:

- (a) Process that Personal Data only in accordance with Schedule 33 (*Processing Information*), unless the Contractor is required to do otherwise by European Union or member state Law (or, from the date the United Kingdom ceases to be a member state of the European Union, the Law of the United Kingdom). If it is so required the

Contractor shall promptly notify the Authority before Processing the Personal Data unless prohibited by Law;

- (b) 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:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (c) comply with the Security Policy Framework;
- (d) ensure that:
 - (i) the Contractor Personnel do not Process Personal Data except in accordance with the Contract;
 - (ii) 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:
 - (A) have the necessary probity by undertaking the HM Government's Baseline Personnel Security Standard or other standard as specified in the Contract;
 - (B) are aware of and comply with the Contractor's duties under this Clause 77;
 - (C) 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 the Contract; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (e) not transfer Personal Data outside of the United Kingdom or European Economic Area, unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
 - (i) the Authority or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Authority;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) 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

- (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Authority with respect to the Processing of the Personal Data; and
- (f) at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Contract unless the Contractor is required by European Union or member state Law (or, from the date the United Kingdom ceases to be a member state of the European Union, the Law of the United Kingdom) to retain the Personal Data.

77.7 Subject to Clause 77.9, the Contractor shall notify the Authority without undue delay if, in connection with Personal Data Processed under the Contract, it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other Supervisory Authority;
- (e) 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
- (f) becomes aware of a Data Loss Event,

and the Contractor shall not respond to any complaint, communication or other request from Data Subjects or a Supervisory Authority or make any notifications to Data Subjects or Supervisory Authorities following a Data Loss Event without the prior written consent of the Authority, unless required by Law.

77.8 The notification of a Data Loss Event under Clause 77.7(f) shall be notified by the Contractor to the Authority without undue delay and, in any event, within seventy-two (72) hours of the Contractor becoming aware of the Data Loss Event. Any notification shall include as much detail relating to the Data Loss Event as are available to the Contractor at the time of notification.

77.9 The Contractor's obligation to notify under Clause 77.7 shall include the provision of further information to the Authority in phases, as details become available.

77.10 Taking into account the nature of the Processing, the Contractor shall provide the Authority with assistance, insofar as possible, in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 77.7 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:

- (a) the Authority with full details and copies of the complaint, communication or request;

- (b) 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;
- (c) the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Authority following any Data Loss Event; and
- (e) assistance as requested by the Authority with respect to any request from the Information Commissioner's Office or other Supervisory Authority, or any consultation by the Authority with the Information Commissioner's Office or other Supervisory Authority.

The Contractor shall maintain complete and accurate records and information as necessary to fulfil its obligations under this Clause 77.10.

- 77.11 The Contractor shall allow for audits of its Processing activity by the Authority or the Authority's designated auditor as required to demonstrate the Authority's compliance with its obligations as a Controller. Such audits will be conducted in accordance with general audit conditions contained in the Contract.
- 77.12 The Contractor shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 77.13 Before allowing any Sub-processor to Process any Personal Data related to the Contract, the Contractor must:
- (a) notify the Authority in writing of the intended Sub-processor and Processing;
 - (b) obtain the written consent of the Authority;
 - (c) enter into a written Contract 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
 - (d) provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.
- 77.14 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- 77.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office and to amend the Contract in accordance with Clause 72 (*Change in Law*) to ensure that it complies with any guidance issued by the Information Commissioner's Office.

78 Authority Data

- 78.1 Subject to Clause 78.2, the Authority hereby grants to the Contractor, so far as it is able to do so, a royalty-free, non-exclusive, revocable, non-transferable licence during the Contract Period to use the Authority Data.
- 78.2 The licence granted in Clause 78.1:
- (a) includes (so far as the Authority is able to do so) the right to grant sub-licences to Contractor Group Members, provided that any relevant Contractor Group Member has entered into a confidentiality undertaking with the Contractor on the same terms as set out in Clause 75 (*Confidentiality and Freedom of Information*); and

- (b) is granted solely to the extent necessary for the purposes of this Contract and any other work to be carried out by the Contractor for the Authority. The Contractor shall not, and shall procure that Contractor Group Members do not, use the Authority Data for any other purpose or for the benefit of any person other than the Authority.
- 78.3 Save for the licence granted in Clause 78.1, the Contractor shall not acquire any right, title or interest in or to the Intellectual Property in the Authority Data and where any Contractor Group Member acquires, by operation of law, title to Intellectual Property that is inconsistent with this allocation of title, the Contractor shall procure that the relevant Contractor Group Member shall assign in writing such Intellectual Property as it has acquired to the Authority on the request of the Authority (whenever made).
- 78.4 The Contractor shall not (and shall procure that no Affiliate of the Contractor shall) delete or remove any proprietary notices contained within or relating to the Authority Data.
- 78.5 The Contractor shall not (and shall procure that no Affiliate of the Contractor shall) store, copy, disclose, or use the Authority Data except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.
- 78.6 The Contractor shall ensure that any system on which any Affiliate of the Contractor holds any Authority Data, including back-up data, is a secure system that complies with the Authority's security requirements, including the Security Policy Framework.
- 78.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Contractor's default so as to be unusable, the Authority may:
 - (a) require the Contractor (at the Contractor's expense) to restore or procure the restoration of the Authority Data and the Contractor shall do so as soon as practicable; and/or
 - (b) itself restore or procure the restoration of the Authority Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so.
- 78.8 If at any time the Contractor suspects or has reason to believe that the Authority Data (that is held by or on behalf of the Contractor or any Contractor Group Member) has or may become corrupted, lost or degraded in any way for any reason, then the Contractor shall notify the Authority immediately.

Part 24 – Miscellaneous

79 Change in Control

79.1 The Contractor shall inform the Authority in writing, as soon as practicable, but in any event not less than thirty (30) Business Days in advance, of any proposed change in control (as defined in Clause 79.2 below) of any Contractor Group Member or Key Sub-Contractor. The Authority shall be entitled to object to a proposed Change in Control of a Contractor Group Member or Key Sub-Contractor in accordance with this Clause 79.

79.2 For the purposes of this Clause 79, control, means the power of a person or a group of persons acting in concert (within the meaning of the City Code on Takeovers and Mergers) (**New Owner(s)**) to secure that the affairs of a Contractor Group Member or Key Sub-Contractor (as applicable) are conducted in accordance with the wishes of that person or group of persons (as applicable):

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

and a **Change in Control** occurs if a person or group of persons (as applicable) that control a Contractor Group Member or Key Sub-Contractor cease to do so or if another person or group of persons acquires control of a Contractor Group Member or Key Sub-Contractor.

79.3 The notification referred to in Clause 79.1 shall be submitted to the Authority Representative and to: Mergers and Acquisitions Section, Supplier Relations Team, Poplar 1 # 2119, MOD Abbeywood, Bristol, BS34 8JH.

79.4 Advice by the Contractor of any Change in Control shall not prejudice the existing rights of the Authority under this Contract nor create or imply any rights of the Authority additional to the Authority's right to receive that information.

79.5 Where the Authority objects to the proposed Change in Control of a Contractor Group Member or Key Sub-Contractor (or where it objects to a proposed or actual Change in Control of a Contractor Group Member or Key Sub-Contractor that it was not informed about in accordance with Clause 79.1) it shall promptly notify the Contractor and shall without delay, engage with the Contractor in detailed discussions to enable the Contractor to seek to address the Authority's concerns. Where the Authority considers that its concerns have been addressed to its satisfaction it shall notify the Contractor of this fact and withdraw its objection.

79.6 In the event that there is a Change in Control of a Contractor Group Member or Key Sub-Contractor notwithstanding the objection of the Authority as set out in Clause 79.5 above (or in the event that the Authority's concerns about an actual Change in Control that it was not informed about in accordance with Clause 79.1 are not addressed to the Authority's satisfaction) the Authority shall be entitled to terminate this Contract immediately in accordance with Clause 59.4 (*Authority right to terminate Contract without further remediation*) (other than in connection with a Change in Control of the Parent, unless the Authority acting on grounds of national security considers that it is inappropriate for the new owner(s) of the Parent to become involved or interested in Contractor Group) if:

- (a) the Authority, acting in the national interests or on grounds of defence, national security or national interest considers that it is inappropriate for the New Owner(s) to become involved or interested in Contractor Group; or
- (b) in the opinion of the Authority, it is inappropriate for the New Owner(s) to become involved or interested in Contractor Group and its business because the Authority has received specific information from the Serious Fraud Office or the Crown Prosecution Service or any successor to either body about the suitability of the New Owner(s) to act in such capacity in relation to Contractor Group; or
- (c) any New Owner(s) has within the previous two (2) years:
 - (i) been convicted of a criminal offence relating to the conduct of its business or profession;
 - (ii) been determined by a governmental or regulatory authority to have materially failed to comply with any obligations relating to the payment of any taxes or social security contributions; or
 - (iii) made any serious negligent or fraudulent misrepresentations in the tendering process for any project or matter in which the public sector has or had a significant participation; or
- (d) any New Owner is currently involved in a Material Dispute with any part of HM Government.

79.7 For the purposes of this Clause:

Material Dispute means a dispute that satisfies the following criteria:

- (a) the dispute has been referred to a court, arbitration or adjudication process;
- (b) the court, arbitrator or adjudicator has not given their final decision in determination of the dispute; and
- (c) the value of the dispute is at least thirty million pounds (£30 million) (such value to be indexed from the Commencement Date).

79.8 Not used.

80 Assignment and Transfer

80.1 This Contract is binding on and shall enure for the benefit of the Parties and their respective successors and permitted assignees.

80.2 No Party to this Contract may transfer, sell, assign, novate, create any encumbrance or otherwise dispose of this Contract or any part thereof, or any benefit, interest or advantage of this Contract or any part thereof without the prior written consent of the other Parties.

81 Contract Managers

81.1 Authority Contract Manager

The Authority shall appoint the person designated as "Commercial Officer" whose name, address and telephone number is set out in DEFFORM 111 (Edition 03/21) as the Authority Contract Manager.

81.2 Change in Authority Contract Manager

- 81.2.1 The Authority may, at any time by Notice to the Contractor change the Authority Contract Manager and Authority shall, as far as practicable, consult with the Contractor prior to the appointment of any replacement Authority Contract Manager, taking into account of the need for liaising and continuity in respect of this Contract. Any such Notice shall specify the date on which such change or substitution shall have effect, which date shall, other than in the case of an emergency, be such as will not cause serious inconvenience to the Contractor in the execution of its obligations under this Contract.
- 81.2.2 During any period when the Authority Contract Manager is unable through illness, incapacity, holidays or any other reason to carry out or exercise its functions under this Contract, the Authority Contract Manager may delegate his functions to another person by giving the Contractor Contract Manager Notice of the identity of such person and the extent of its authority.

81.3 Contractor Contract Manager

- 81.3.1 The Contractor shall appoint the person whose name, address and telephone number is set out in Clause 84 (*Notices*) as the Contractor Contract Manager to act as the Contractor's representative generally in connection with this Contract.

81.4 Change in the Contractor Contract Manager

- 81.4.1 The Contractor may, by Notice to Authority and with Authority's approval, (such approval not to be unreasonably withheld or delayed) change the Contractor Contract Manager or appoint more than one Contractor Contract Manager (provided that if more than one the Contractor Contract Manager is proposed, the Contractor shall provide written confirmation to the Authority Contract Manager of the extent of each person's authority). Where the Contractor wishes to do so it shall by Notice to the Authority propose a substitute for approval, taking into account the need for liaison and continuity in relation to the performance of the Contractor's obligations under this Contract. If the Authority approves the change to the Contractor Contract Manager, Clause 84 (*Notices*) shall be updated accordingly.
- 81.4.2 During any period when the Contractor Contract Manager is unable through illness, incapacity, holidays or any other reason to carry out or exercise its functions under this Contract, the Contractor Contract Manager may, with the Authority Contract Manager's approval delegate its functions to another person by giving the Authority Contract Manager Notice of the identity of such person and the extent of its authority. The Authority Contract Manager shall not unreasonably withhold or delay its approval of the delegate under this Clause 81.4.2.

81.5 Notices to Contract Managers

Subject to Clause 84 (*Notices*) and the Appendix, any Notice, information, instructions or public communication given to:

- (a) the Contractor Contract Manager shall be given in writing and shall be deemed to have been given to the Contractor; and
- (b) the Authority Contract Manager shall be given in writing and shall be deemed to have been given to the Authority.

82 Public relations and publicity

The Contractor shall not (and shall procure that each relevant Contractor Group Member and the employees, agents or Sub-Contractors of the Contractor and each relevant Contractor Group Member shall not):

- (a) communicate with representatives of the press, television, radio or other communications media on any matter concerning this Contract; or
- (b) photograph or film in or upon any Authority sites; or
- (c) erect or exhibit on any part of the Authority sites any notice or advertisement,

unless:

- (i) the Authority's Representative has given its prior written consent;
- (ii) as otherwise required to comply with Law or stock exchange requirements; or
- (iii) in accordance with a written communication protocol agreed by the Parties.

83 Severability

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

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

84 Notices

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

- (a) be given in writing;
- (b) be authenticated by signature or by such other method as agreed between the Parties;
- (c) be marked for the attention of the appropriate department or officer; and
- (d) be marked in a prominent position with the relevant Contract number.

84.2 Notices should be delivered by:

- (a) hand or recorded delivery; or
- (b) first-class prepaid post (or airmail, in the case of Notices to or from overseas); or
- (c) electronic mail, where such a means of communication is agreed for the purposes of this Contract.

84.3 Notices shall be deemed to have been received:

- (a) if delivered by hand or recorded delivery, on the day of delivery if it is the recipient's Business Day and otherwise on the first (1st) Business Day of the recipient immediately following the day of delivery;
- (b) if sent by first-class prepaid post (or airmail, if appropriate), on the third (3rd) Business Day (or on the tenth (10th) Business Day, in the case of airmail) after the day of posting; or
- (c) if sent by electronic means:
 - (i) if transmitted between 09:00 and 17:00 hours on a Business Day (recipient's time) on completion of receipt by the sender of verification of the transmission from the receiving instrument; or
 - (ii) if transmitted at any other time, at 09:00 on the first (1st) Business Day (recipient's time) following the completion of receipt by the sender of verification of the transmission from the receiving instrument.

84.4 The addresses (including electronic addresses) of each Party to which all Notices shall be sent are those specified in this Contract, or such other address as any party may by written Notice specify to the others for the purpose of this Clause 84:

(a) Authority

[REDACTED]

Attention: **[REDACTED]**

Email: **[REDACTED]**

(b) Sodexo Limited

[REDACTED]

Attention: **[REDACTED]**

Email: **[REDACTED]**

84.5 Where any Party requests written confirmation of any communication, which does not constitute a Notice, such request shall not unreasonably be refused.

84.6 Not used.

85 Entire Agreement and Decoupling

85.1 Entire agreement

85.1.1 This Contract together with the Parent Company Guarantee, the Transition Services Agreement, the Leases and Licences and the Admission Agreement set out the entire agreement between the Parties as to the subject matter of this Contract. Save as agreed in writing between the Parties, this Contract supersedes all previous agreements between the Parties on the subject matter of this Contract.

85.1.2 No other term, express or implied, forms part of this Contract. Save as expressly agreed in this Contract, no usage, custom or course of dealing forms part of or affects this Contract.

85.2 Decoupling

If the Contractor enters into any other contract with the Crown relating in any way to the subject matter of this Contract, then, no breach by the Crown of that other contract nor any other act or omission nor any written or oral statement nor any representation whatsoever of or by the Crown its servants or agents or other contractor relating to or connected with any other contracts as aforesaid shall regardless of any negligence on its part or their part:

- (a) give the Contractor any right under this Contract to an extension of time or additional payment or damages or any other relief or remedy whatsoever against the Authority; or
- (b) affect, modify, reduce or extinguish either the obligations of the Contractor or the rights or remedies of the Authority (including the right to liquidated damages under this Contract); or
- (c) be taken to amend, add to, delete or waive any term or condition of this Contract.

85.3 Representations and reliance

Waiver in relation to pre-Contract representations

85.3.1 Each Party waives all Claims, rights and remedies for all representations:

- (a) made to it by any person before entering into this Contract; and
- (b) not set out in this Contract.

85.3.2 Each Party acknowledges that, save as set out in Clause 4.1 (*Contractor Representations, Warranties and Undertakings*) in deciding to enter into this Contract, it has not relied on any such representation.

Authority Disclosed Data

85.3.3 Subject to Clause 85.4 (*Fraudulent Statements*) the Authority does not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any of the data and information disclosed by it to the Contractor in connection with the ITN and subsequent negotiations leading up to the entry of this Contract (**Authority Pre-Contract Disclosed Data**) and neither the Authority nor any of its agents or employees shall be liable to the Contractor in contract, tort (including negligence or breach of statutory duty), misrepresentation, statute or otherwise as a result of:

- (a) any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the Authority Pre-Contract Disclosed Data; or
- (b) any failure to make available to the Contractor any materials, documents, drawings, plans or other information relating to this Contract and its subject matter subject to Schedule 20 (*Authority Responsibilities*).

85.3.4 Subject to Clause 85.4 (*Fraudulent Statements*) and without prejudice to the Contractor's rights and remedies under this Contract, the Contractor shall not in any way be relieved from any obligation under this Contract nor shall it be entitled to 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 and shall make its own enquiries as to the accuracy and adequacy of that information.

85.4 Fraudulent Statements

This Clause 85 does not exclude or restrict liability for fraudulent misrepresentation or fraudulent concealment.

86 Rights of third parties

86.1 Except as provided in Clause 86.2 and notwithstanding anything to the contrary elsewhere in this Contract, no right is granted to any person who is not a party to this Contract to enforce any term of this Contract in its own right and the Parties to this Contract declare that they have no intention to grant any such right.

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

- (a) the said third party shall be entitled to enforce that term in its own right but nothing in this Contract shall prevent the Parties to it from amending this Contract;
- (b) the Contractor or the Authority 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 Contract) relevant to the exercise of that right; and
- (c) the third party's rights shall be subject to any provision in this Contract:
 - (i) that provides for the submission of disputes under this Contract generally or the said rights in particular to arbitration (such as the Dispute Resolution Procedure); and
 - (ii) that stipulates the law and jurisdiction that will govern this Contract.

87 Survival

Save as otherwise expressly provided in this Contract termination or expiry of this Contract shall:

- (a) be without prejudice to any accrued rights and obligations (including liabilities) under this Contract as at the Termination Date; and
- (b) not affect any right or obligation of the Authority or the Contractor which:
 - (i) is expressed to survive termination or expiry of this Contract, including any continuing rights or obligations of the Authority or the Contractor (including as applicable under Clauses 18 (*Open Book Accounting*), 24 (*Dispute Resolution*), 28 (*Security*), 65 (*Exit Strategy*), 75 (*Confidentiality and Freedom of Information*), 86 (*Rights of third parties*), 92 (*Governing Law and Jurisdiction*), Schedule 8 (*Intellectual Property Rights*) or under any other provision of this Contract which is required to give effect to such termination or the consequences of such termination; or

- (ii) by its nature survives termination or expiry of this Contract or which by its nature is required to give effect to the termination or expiry of this Contract, or the consequences of termination.

88 Legal relationship between the Parties

88.1 No partnership

The Parties do not intend this Contract to create any partnership between them as a matter of law. Accordingly, nothing in this Contract or otherwise shall be held, implied or deemed to constitute a partnership, joint venture or other association between the Parties. Nothing in this Contract is intended to and shall not be construed or give rise to the creation or constitution of a partnership as envisaged in the Partnership Act of 1890 or a joint venture or other business organisation or agency arrangement of any kind. Neither the Authority nor the Contractor shall have the authority to bind the other without that other Party's separate prior written agreement in accordance with this Contract.

88.2 Independent Contractor

The Contractor shall at all times be an independent contractor and nothing in this Contract shall be construed as creating the relationship of employer and employee between the Authority and the Contractor or any of the Contractor's Employees. Neither the Contractor, any Contractor Group Member nor any of its Sub-Contractors nor its or their respective employees shall at any time hold itself or themselves out to be the employee of the Authority and neither the Contractor nor any of, or any Contractor Group Member its or its Sub-Contractor's employee any Contractor Group Member nor any of its Sub-Contractors nor its or their respective employees shall be entitled to any of the benefits provided by the Authority to its established or unestablished officers and staff.

88.3 No delegation

No provision of this Contract shall be construed as a delegation by the Authority of any of the Authority's statutory authority to the Contractor or any Contractor Group Member.

88.4 No Agency

Unless expressly agreed otherwise in this Contract, none of the Contractor or any other Contractor Group Member shall be or be deemed to be an agent of the Authority and the Contractor shall procure that neither itself or any other Contractor Group Member will hold itself out as having authority or power to bind the Authority in any way. Neither the Contractor nor any other Contractor Group Member shall have the benefit of any immunity of HM Government and, unless otherwise agreed by the Authority, the Contractor shall (and shall procure that all relevant Contractor Group Companies shall) apply for and obtain all consents, licences and permissions which the Contractor and any other Contractor Group Member would otherwise be obliged to obtain under any law on the basis that it does not have the benefit of any immunity of HM Government.

89 Remedies and waivers

89.1 Waiver must be in writing

If a Party breaches a term of this Contract, the rights of each other Party arising from that breach cannot be waived except:

- (a) with the express written consent of that other Party; and
- (b) to the extent set out in that consent,

and waiver of one breach does not waive or imply waiver of any further or other breach.

89.2 Limited exercise is not a waiver

This Clause 89 applies if a Party becomes entitled to exercise any right or remedy under this Contract or by law or regulation. No failure to exercise, no delay in exercise and no single or partial exercise of that right or remedy shall:

- (a) adversely affect that right or remedy;
 - (b) waive it; or
 - (c) prevent any further exercise of it or of any other right or remedy,
- except to the extent the Parties have expressly agreed otherwise in writing.

89.3 Rights and remedies are cumulative

The rights and remedies arising from this Contract are cumulative. They are not exclusive of any other rights or remedies provided by law or otherwise except to the extent this Contract expressly states otherwise.

90 Number of executed copies

The Parties shall execute two originals of this Contract, each of which when executed and delivered shall be an original but together constitute one instrument.

91 Further Assurance

Each of the Parties shall, at its own cost, do all further acts and things and execute and deliver all instruments as shall be reasonably necessary for the carrying out of their respective obligations under this Contract.

92 Governing Law and Jurisdiction

- 92.1 English law governs this Contract, its interpretation and any non-contractual obligations arising from or connected with it.
- 92.2 Subject to the Dispute Resolution Procedure, the Parties irrevocably agree that the English courts are to have jurisdiction to settle any claim or matter arising out of or in connection with this Contract. However, nothing in this Clause shall limit the right of either the Authority or the Contractor to take any suit, action or proceeding arising out of or in connection with this Contract (**Proceedings**) against the other Party in any other court of competent jurisdiction, nor shall the taking of any Proceedings in any one or more jurisdictions, prevent Proceedings being taken in any other jurisdiction, whether concurrently or not.
- 92.3 Each Party agrees that a judgment or order of an English court in a dispute falling within Clause 92.2 (without limiting any rights that such Party may have to appeal a judgment or order) is conclusive and binding on it and may be enforced against it in the courts of any other jurisdiction.

IN WITNESS whereof the **Corporate Seal of the Secretary of State for Defence** has been hereunto affixed the day and year first before written and the other Parties have executed this Deed as a deed and the Parties have delivered it on the date written at the head of this Deed

Executed as a Deed (but not delivered until)
dated) by SODEXO LIMITED acting by)
)
)

(Director) (Print name)

(Signature)

(Director/Company Secretary) (Print name)

(Signature)

The CORPORATE SEAL of the)
SECRETARY OF STATE FOR DEFENCE)
hereto affixed is hereby authenticated by: -)
)

Signature

Full Name

Post title

Authorised by the Secretary of State

Schedule 1 – Definitions

1 Definitions

1.1 In this Contract the following words and expressions shall have the meaning given to them, except as expressly provided otherwise:

Access means communication with the SDE by Users, including Loading and Retrieval of Information (and **Accessed** and **Accessible** shall be construed accordingly).

Accommodation Services means all of the services specified in Output PSF 2.6 of Schedule 2 (*Requirements*).

Actual Cost means in relation to given Services, a direct cost that is:

- (a) appropriate;
- (b) reasonably and properly incurred by the Contractor;
- (c) attributable to those Services; and
- (d) reasonable in the circumstances,

and also complies with any applicable rules and requirements set out in Part 3 of Schedule 4 (*Pricing and Payment*), and **Actual Costs** shall be construed accordingly.

Admission Agreement has the meaning given to it in Paragraph 1.2 of Part 4 of Schedule 10 (*Personnel*).

ADR means alternative dispute resolution.

Affected Party has the meaning given to it in Clause 54.1.3 (*Force Majeure Events*).

Affected Service has the meaning given to it in Clause 37.4.2(a)(ii) (*GFA*).

Affiliate(s) means in relation to any person, any holding company or subsidiary of that person or any subsidiary of such holding company, and **holding company** and **subsidiary** shall have the meaning given to them in Section 1159 of the Companies Act 2006.

Annual Contract Review means a meeting between the Parties to review an Annual Contract Report and identify actions reasonably required to be taken as a result of the contents thereof, whether to improve performance, address risks, reduce costs or otherwise.

Annual Contract Report means a report produced by the Contractor in respect of a Contract Year pursuant to Clause 17.1 (*Annual Report and Reviews*).

Annual Firm Price has the meaning given to it in Part 1 (*Definitions*) of Schedule 4 (*Pricing and Payment*).

Annual Fixed Price has the meaning given to it in Part 1 (*Definitions*) of Schedule 4 (*Pricing and Payment*).

Annual Service Price has the meaning given to it in Part 1 (*Definitions*) of Schedule 4 (*Pricing and Payment*).

AQAP means an Allied Quality Assurance Publication.

Archive means the off-line storage of EISA Data in such a manner that it is not Retrievable by Users and may include storage outside of the SDE (and **Archived** shall be construed accordingly).

Article means:

- (a) part or the whole of any article:
 - (i) which the Contractor is required to supply under this Contract; or
 - (ii) in connection with which the Contractor is required under this Contract to carry out any Service; and
- (b) any other article or part thereof to the same design as that article or any modification of that design made in the exercise of rights granted under Schedule 8 (*Intellectual Property Rights*).

Asset Register means the register setting out details of the Issued Property issued or otherwise furnished to the Contractor from time to time.

Asset Transfer Agreement means an agreement to be entered into between the Contractor and any Incoming Contractor (on terms reasonably required by the Authority prior to termination or expiry of this Contract) in substantially the form set out in Schedule 34 (*Exit Agreements*) pursuant to which the Contractor (i) agrees to transfer Contractor Assets, (ii) agrees to transfer Sub-Contracts, and (iii) warrants matters as to ownership and use of Contractor Assets, all to assist with the smooth transition of Services.

Assets means all assets and rights used by the Contractor or any Sub-Contractor to provide the Services in accordance with the terms of this Contract (including those provided by or belonging to the Authority).

Audit means an examination by the Authority to check or verify performance;

Authority Change Proposal means any Change proposed by the Authority.

Authority Confidential Information means any information received by the Contractor from the Authority in connection with this Contract, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Authority, together with all information derived from any of the above, and any other information conveyed by the Authority which is clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential.

Authority Consents has the meaning given to it in Clause 13.1(b) (*Required Consents*).

Authority Contract Manager is the person or persons appointed pursuant to Clause 81 (*Contract Managers*).

Authority Contractor means any contractor of the Authority other than the Contractor.

Authority Data means:

- (a) the 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, and which are:
 - (i) supplied to the Contractor by or on behalf of the Authority; or
 - (ii) generated by the Contractor in performing this Contract (except to the extent that any Intellectual Property in any such material is the property of the Contractor pursuant to the provisions of this Contract); and
- (b) any Personal Data which the Authority discloses to the Contractor or are generated by the Contractor in performing this Contract.

Authority Default has the meaning given to it in Clause 61.1 (*Termination by the Contractor*).

Authority Identifiable Information means all Electronic Information which is attributed to or could identify an existing or proposed Authority capability, defence activities or personnel and which the Authority requires to be protected against loss, damage, destruction, misuse, corruption, alteration and unauthorised disclosure.

Authority Pre-Contract Disclosed Data has the meaning given to it in Clause 85.3.3 (*Authority Disclosed Data*).

Authority Representative means the relevant representative of the Authority as notified to the Contractor by the Authority Contract Manager, from time to time.

Authority Responsibilities means the responsibilities of the Authority as set out or referred to in Schedule 20 (*Authority Responsibilities*).

Authority Secondees means individuals who during the Contract Period are employees of the Authority and who are from time to time seconded by the Authority to the Contractor and/or one of the Sub-Contractors for any one of the following purposes:

- (a) to perform duties, including line management responsibilities, as part of the business of the Contractor or Sub-Contractor; or
- (b) in accordance with Clause 58.8 (*Authority Assistance for Impacted Services*); or
- (c) to perform such other duties as may be agreed between the Contractor and the Authority and/or the Sub-Contractor and the Authority from time to time,

but for the avoidance of doubt this term does not include RN "in-scope" Personnel.

Background IP means Intellectual Property (other than Foreground IP): (a) owned by the Contractor before the Effective Date, or created by the Contractor other than under the terms of, or in connection with, the performance of, this Contract; (b) owned by a third party and licensed to the Contractor or which is, or will be, used to fulfil the Contractor's obligations under this Contract.

Breach of Security has the meaning given to it in Clause 28.7 (*Breach of Security*).

Brexit means any Law or international agreement that is made, or any legal consequence or factual circumstances that arise, to any substantial extent as a result of the Prime Minister of the United Kingdom having given notice to the European Council, under Article 50, Paragraph 2 of the Treaty on European Union (**Article 50**), of the United Kingdom's intention to withdraw from the European Union, including:

- (a) the EU Treaties ceasing to apply to the United Kingdom in accordance with Paragraph 3 of Article 50; and
- (b) the conclusion and ratification (or otherwise) of any agreement setting out the arrangements for the United Kingdom's withdrawal from the European Union, or of any agreement between the United Kingdom and the European Union or the United Kingdom and any other state or states that it is proposed should take effect after the EU Treaties have ceased to apply to the United Kingdom, including any modification to a World Trade Organisation agreement as it affects the United Kingdom made in consequence of the EU Treaties no longer applying to it.

Business Day means any day excluding:

- (a) Saturdays, Sundays and public and statutory holidays in England; and/or
- (b) the Contractor's Christmas shut down period as notified to the Authority Contract Manager at least ten (10) Business Days in advance,

in each case, commencing at midnight and ending at the end of 23.00 hours and fifty-nine (59) minutes.

CAAS means the Authority's Cost Assurance & Analysis Service.

Catering, Retail and Leisure Services means all of the services specified in Output PSF 2.7 of **Error! Reference source not found.** (*Requirements Table*) of Schedule 2 (*Requirements*).

Certificate(s) of Conformity means the certificate of that name, the form of which is contained in Schedule 18 (*Forms*).

Change has the meaning given to it in Paragraph 1.1 of Schedule 30 (*Change Procedure*).

Change in Control has the meaning given to it in Clause 79.2 (*Change in Control*).

Change in Law means the occurrence after the Effective Date of one of the following:

- (a) any Law comes into effect or is repealed (without re-enactment or consolidation) or is varied or amended; or
- (b) the Contractor becomes obliged pursuant to Clause 12 (*Observance of Law and Regulations*) to comply with any amendment, supplement or replacement of any Standards or Regulation; or
- (c) any change to any Required Consent under Clause 13 (*Required Consents*); or
- (d) any change to Data Protection Legislation; or

- (e) any change to rules, regulations and requirements at Government Establishments (as referred to in Clause 25.4 (*Observance of Site Regulations*)).

Change Notice has the meaning given to it in Paragraph 1.13 (*Determination of Change Proposal*) of Schedule 30 (*Change Procedure*).

Change Procedure means the procedure set out in Schedule 30 (*Change Procedure*).

Change Proposal has the meaning ascribed to the term in Paragraph 1.8 (*Change Proposal*) of Schedule 30 (*Change Procedure*);

Claim means any claim, demand, action or proceeding, howsoever arising in respect of a Loss.

Class Output Management means the party contracted to lead the delivery of agreed levels of output including, if appropriate, surface ships availability.

Collaboration Principles means the principles set out in Schedule 16 (*Collaboration and Integration*).

Commencement Date has the meaning given to it in Clause 2.2.1 (*Duration*).

Commercial Purpose has the meaning given to it in Clause 5.2 (*Commercial Purpose*).

Commercially Sensitive Information means information of a commercially sensitive nature relating to the Contractor or its business which the Contractor has indicated for the purposes of Clauses 75 (*Confidentiality and Freedom of Information*) and 76 (*Transparency*) to the Authority that, if disclosed by the Authority, would cause the Contractor significant commercial disadvantage or material financial loss.

Compensation Event means any of the events set out in Clause 55.2.1 (*Compensation Events*).

Competent Authority means:

- (a) any court with the relevant jurisdiction and any local, national or supra-national government or agency, any regulator, inspectorate, minister of the Crown, minister, ministry, official or public or statutory person of Her Majesty's Government of the United Kingdom or devolved government or of the European Union;
- (b) any private body to the extent it carries out one (1) or more public functions; or
- (c) any other body which has jurisdiction in respect of the Services or this Contract, including the Authority.

Competition Process Agreement or **CPA** means the agreement between the Authority and the Contractor in relation to the competition for this Contract.

Comptroller and Auditor General means the government official responsible for supervising the quality of public accounting and financial reporting.

Conditions Precedent means the conditions precedent set out in Clause 3.1 (*Conditions Precedent*).

Confidential Information means the Authority Confidential Information and/or the Contractor Confidential Information.

Consolidated Version means a version of the Contract which incorporates into the body of the Contract all amendments made to the Contract.

Contract means this agreement.

Contract Completion Date means:

- (a) the date on which the Contractor completes all obligations which entitle it to final payment under the Contract; or
- (b) if the Contract is terminated before either the date described in sub-Paragraph (a) above, the date the Contract is terminated.

Contract Managers means both the Authority Contract Manager and the Contractor Contract Manager.

Contract Period has the meaning given to it in Clause 2 (*Duration*).

Contract Year means means a period of twelve (12) months commencing on the first day of October during the Contract Period, with the exception of:

- (a) the first Contract Year, which shall be the period beginning on the Service Delivery Date and ending on 30 September 2022; and
- (b) the last Contract Year, which shall commence on 1 October 2025 (unless this Contract is extended pursuant to Clause 2.3 (*Contract Period Extension*)) and end on the Termination Date.

Contractor Assets means all assets and rights used by the Contractor Sub-Contractor to provide the Services in accordance with the terms of this Contract (excluding those provided by or belonging to the Authority).

Contractor Change Proposal means any Change proposed by the Contractor.

Contractor Confidential Information means any information received by the Authority from the Contractor or any member of the Contractor's Group or any Contractor Group Member (or any Sub-Contractor) in connection with this Contract, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and sub-Contractors of the Contractor, or any member of the Contractor's Group or any Contractor Group Member together with all information derived from the above, and any other information conveyed by the Contractor or any member of the Contractor's Group or any Sub-Contractor) which is clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential, including the Commercially Sensitive Information.

Contractor Contract means any third party agreement between the Authority and the Contractor.

Contractor Contract Manager means the person or persons appointed pursuant to Clause 81 (*Contract Managers*).

Contractor Default means any of the events identified in Clause 59.1 (*Contractor Default*).

Contractor Deliverables means the works, goods, Software, hardware and/or the Services, including packaging (and Certificate(s) of Conformity and supplied in accordance with any Quality Assurance requirements if specified) which the Contractor is required to provide under the Contract.

Contractor Employee means any person who is an employee, staff, director or officer of the Contractor or who occupies the position of a director or officer of the Contractor, by whatever title given.

Contractor Group means the Contractor and any Affiliate of the Contractor.

Contractor Group Member means any company within the Contractor Group.

Contractor Party has the meaning given to it in Clause 25.2 (*Contractor's Property*).

Contractor Personnel means the Contractor Employees, any individual contractor, and the employees, staff, directors or officers (or any person who occupies the position of a director or officer, by whatever title given) of any Sub-Contractor or agent of the Contractor in relation to this Contract.

Contractor Secondees means individuals who during the Contract Period are employees of the Contractor and/or Sub-Contractors and who are from time to time seconded by the Contractor and/or Sub-Contractors to the Authority for any one of the following purposes:

- (a) to perform duties as Royal Fleet Auxiliary personnel; or
- (b) to perform such other duties as may be agreed between the Contractor and the Authority from time to time.

Contractor Security Personnel means Contractor Personnel together with any employee, staff, director or officer of any Contractor Group Member that is involved with performing obligations pursuant to the fulfilment by the Contractor of its obligations under this Contract, or otherwise has access to a Secret Matter.

Controlled Information means any information in any written or tangible form which is disclosed to the Contractor by or on behalf of the Authority under or in connection with this Contract and

- (a) which is identified by the legend 'Controlled Information' or other approved legend notified to the Contractor; or
- (b) which:
 - (i) is subject to export control Law imposed by a country other than the United Kingdom and which has been received by any Contractor Group Member which is involved in the performance of the Services under the terms of an export licence to which a Contractor Group Member is a party, or
 - (ii) (the Authority has informed the Contractor in writing is subject to export control Law imposed by a country other than the United Kingdom (provided that the Contractor has also been informed by the Authority of the nature of such restrictions).

Controller has the same meaning as given to it in Article 4 of GDPR.

Core Meal means each of the three meals (breakfast, lunch and dinner) per day to be provided in accordance with the Authority's minimum specifications set out in JSP 456 Defence Catering Manual (DCM) part 2, volume 4, chapter 1, para 105 principles and chapter 6 standards.

Core Meal Price means the price for each Core Meal as specified in the CRL Meal and Supplement Charge letter issued by Defence Logistics Cat Services each quarter.

Core Transfer Services means the transition services and activities to be performed by the Contractor as part of the Exit Plan and also as set out in Clause 65.5.2 (*Transfer Notices and Transfer Services*) and otherwise in this Contract.

Cost Centre means the Authority bottom level budget.

Cost Reporting Standard means in respect of a report of costs that:

- (a) all data it contains is clearly linked to: each applicable Cost Centre, Project Account, platform, the Work Package and work breakdown structure;
- (b) it is fully supported with underlying calculations, and shows every fixed and variable cost calculation, cost driver and rate applied, and distinguishes (where applicable) between actual and forecast data;
- (c) to the extent applicable, it is calculated, set, adjusted, agreed or determined in accordance with the provisions of Schedule 4 (*Pricing and Payment*); and
- (d) it is provided in flat file Microsoft Excel format and any other agreed format.

COTS Software means any Software which a third party makes generally available commercially "off the shelf" (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by such third party save as to price (including for example, if comprised in the Contractor Deliverables).

Crown means the government of the United Kingdom (including the Northern Ireland Executive Committee and the Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including government ministers, government departments, government and particular bodies and government agencies.

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 Contract 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 Clause 48 (*Cyber*).

Customer Satisfaction Services means all of the services specified in Output PSF 3.1 of Schedule 2 (*Requirements*).

Cyber Risk means the risk of a Cyber Security Incident occurring.

Cyber Risk Level means the level of Cyber Risk relating to this Contract or any Sub-Contract assessed in accordance with the Cyber Security Model.

Cyber Security Incident means an event, act or omission which gives rise or may give rise to:

- (a) unauthorized 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 Authority Identifiable Information residing in an information system or electronic communications network;
- (d) removal or limiting the possibility to use Authority Identifiable Information residing in an information system or electronic communications network; or
- (e) the appropriation, publication, dissemination or any other use of non-public Authority Identifiable Information by persons unauthorised to do so.

Cyber Security Implementation Plan means the cyber security implementation plan agreed between the Authority and the Contractor which, as at the Effective Date is set out at Schedule 35 (*Cyber Security Implementation Plan*), and which may be varied from time to time in accordance with Clause 48.3.

Cyber Security Instructions means DEF STAN 05-138 Issue 02 (Edition 09/17), together with any relevant ISN and specific security instructions relating to this Contract issued by the Authority to the Contractor.

Cyber Security Model and **CSM** mean the process by which the Authority ensures that Authority Identifiable Information is adequately protected from Cyber Security Incident and includes the CSM Risk Assessment Process, DEF STAN 05-138 Issue 02 (Edition 09/17) and the CSM Supplier Assurance Questionnaire.

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.

Data Loss Event means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Contract, and/or loss and/or alteration and/or destruction of Personal Data, 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:

- (a) the GDPR, LED and any applicable national implementing Laws;
- (b) the DPA 2018;
- (c) the European Privacy and Electronic Communications Directive (Directive 2002/58/EC) or, on and from the date on which it becomes effective, the proposed Regulation on Privacy and Electronic Communications;

- (d) all applicable Law about the processing of Personal Data and privacy; and
- (e) any guidance, directions, decisions, determinations, codes of practise, orders, notices or demands issued by any Supervisory Authority,

each as applicable and as amended, supplemented, substituted or replaced from time to time.

Data Subject shall have the same meaning as set out in the DPA 2018.

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.

Declaration of Ineffectiveness means a declaration of ineffectiveness in relation to this Contract made by a court of competent jurisdiction in accordance under Regulation 59 of the Defence and Security Contracts Regulations 2011 (as amended) or otherwise.

Deduction has the meaning given to it in Paragraph 2.1 of Part 2 (*Performance Management*) of Schedule 5 (*Performance Management and Measurement*).

Defence Authority means the Defence Safety Authority and any authority with responsibility for safety matters within the Defence Safety Authority including the Defence Ordnance Munition and Explosives Safety Regulator, Defence Maritime Regulator and Defence Nuclear Safety Regulator.

Defence Contracts Online means Defence Contracts online accessible at <https://www.contracts.mod.uk/> or any replacement thereof for the government procurement opportunities in the defence sector.

Defence Reform Act means the Defence Reform Act 2014 as amended from time to time and **DRA** shall be construed as a reference to the Defence Reform Act.

Delivered Code has the meaning given to it in Clause 47.3 (*Delivered Code*).

Delivered Hardware means the computers and other equipment to be used by the Authority in conjunction with Software, which is to be provided to the Authority by the Contractor as a Contractor Deliverable.

Delivered Software means all Software to be provided to the Authority as a Contractor Deliverable (including all Maintenance Releases and New Versions of such Software), including:

- (a) Software to be developed by, or on behalf of, the Contractor under this Contract;
- (b) Software owned by the Contractor to be licensed to the Authority under this Contract; and
- (c) Third Party Software to be licensed to the Authority under this Contract.

Direct Agreement means an agreement to be entered into by the Authority and a Key Sub-Contractor in substantially the form set out in Schedule 27 (*Form of Direct Agreement*).

Disclosure Letter means the letter entitled as such and dated the Effective Date and in the agreed form.

Disaster means a significant unplanned event which causes the SDE to be unavailable or which causes the EISA Data to be corrupted, lost, or unavailable.

Dispersed Meal means a Core Meal appropriate to the circumstances, for example, a packed lunch, a boxed hot-meal, victuals supplied which shall as far as possible reflect the Royal Navy menu policy.

Dispute means any difference or dispute of whatever nature between the Contractor and the Authority arising under, out of or in connection with this Contract (including any question regarding its existence, validity, termination or interpretation).

Dispute Notice has the meaning given in Paragraph 4.1 (*Giving Notice of a Dispute*) of Schedule 7.

Dispute Owner has the meaning given in Paragraph 4.3 (*Giving Notice of a Dispute*) of Schedule 7.

Dispute Report has the meaning given in Paragraph 5.1 (*Dispute Reports*) of Schedule 7.

Dispute Resolution Procedure means the procedure for the resolution of disputes set out in Schedule 7 (*Dispute Resolution Procedure*).

DPA 2018 means the Data Protection Act 2018.

Effective Date has the meaning given to it in Clause 2.1 (*Provisions with immediate effect*).

EISA Data means Information represented in digital form.

Electronic Information means all information generated, processed, transferred or otherwise dealt with under or in connection with the Contract, including but not limited to Data, recorded or preserved on any information system or electronic communications network.

Electronic Information Sharing Agreement (EISA) means the agreement (in the form of DEFFORM 687C) (Edition 06/01) in respect of the Services to which each prospective User must be a party before Access is granted to that User.

Embedded Background IP has the meaning given to it in Paragraph 2.2 (*Background IP*) of Schedule 8 (*Intellectual Property Rights*).

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

Enhanced Transfer Services means the transition services required pursuant to Clause 65.5.4 (*Transfer Notices and Transfer Services*) and any other services and activities required by the Authority or pursuant to the Transfer Notice.

An **Entitled Vessel** is:

- (a) Any vessel operated by, or operated on behalf of the Authority, as notified to the Contractor by the Authority. For the avoidance of doubt this includes:

- (i) Authority vessels pre-acceptance;
 - (ii) Authority vessels undergoing trials;
 - (iii) Authority vessels in active service;
 - (iv) Authority vessels undergoing maintenance;
 - (v) Authority vessels awaiting disposal;
 - (vi) vessels used in the provision of services to the Authority,
- (b) Any non-Authority warship, submarine, military training vessel, or afloat support vessel visiting the Naval Base as notified to the Contractor by the Authority; and
- (c) Any non-Authority vessel operating out of, or visiting, the Naval Base on government business as notified to the Contractor by the Authority.

For the avoidance of doubt floating marine assets such as barges, lighters, pontoons and caissons are considered vessels in this definition.

Environment means all or any of the media of air, water, land and all or any living organisms (including man) or systems supported by any such media.

Environmental Information Regulations means the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations.

Environmental Law means all Laws relating to Environmental Matters (but excluding all such Laws as relate to the health and safety of workers in the workplace) which may from time to time be in force.

Environmental Matter means all or any matters relating to:

- (a) compliance with Environmental Law
- (b) pollution or contamination of the Environment;
- (c) the presence, disposal, release, spillage, deposit, escape, discharge, leak, migration or emission of Hazardous Substances or waste;
- (d) the storage or use of Hazardous Substances and waste, and any exposure of any person to Hazardous Substances or waste;
- (e) the creation or existence of any noise, vibration, odour, radiation, common law or statutory nuisance or other adverse impact on the Environment;
- (f) the condition, protection, maintenance, remediation, reinstatement, restoration or replacement of the Environment or any part of it;
- (g) climate change; and/or
- (h) energy efficiency.

Environmental Permits means permits issued whether by the Environment Agency or a local authority allowing activities which may have an impact on the environment and human health and says what restrictions there are to minimise damage to the environment and human health.

Escrow Code has the meaning given to it in Clause 47.4.1 (*Escrow Code*).

Essential Services means those services defined in Schedule 21 (*Essential Services*).

EU means the European Union.

Exclusive Assets means those Contractor Assets used by the Contractor or a Sub-Contractor which are used exclusively or primarily to provide the Services.

Exit Information means the information to be maintained by the Contractor pursuant to Clause 65.3.1 (*Access to Data*).

Exit Plan means the plan produced and updated by the Contractor during the Contract Period in accordance with Clause 65.4 (*Exit Plan*).

Expiry Date means the later of:

- (a) The Initial Expiry Date; and
- (b) Any other date to which this Contract is extended in accordance with Clause 2.3 (*Contract Period Extension*).

Expunge means the removal of EISA Data from the SDE whilst ensuring that a record of its existence is maintained in the Log (and **Expunged** shall be construed accordingly).

Exterior Cleaning and Ground Maintenance Services means all of the services specified in Output PSF 2.5 of Schedule 2 (*Requirements*).

Fast Track Procedure means the dispute resolution procedure for Fast Track Disputes outlined in Paragraph 7 (*Fast Track Procedure*) in Schedule 7 (*Dispute Resolution Procedure*).

Fidelity means the extent to which the SDE System maintains EISA Data without corruption or disturbance to its content as it is processed as required by the SDE SOR.

Financial Distress Event means any of the events set out in Paragraph **Error! Reference source not found.** of Schedule 24 (*Financial Distress*).

Flag Officer means a commissioned officer entitled to fly a flag to mark the position from which the officer exercises command.

FM Impacted Costs has the meaning given in Clause 54.6.2 (*Costs*).

FMSP means the Future Maritime Support Programme pursuant to which this Contract is let.

FMSP Contract means:

- (a) Lot 1 – a contract between the Authority and its contractor in respect of Naval Base Services at Devonport (Contract Reference FMSP/004);

- (b) Lot 2 – a contract between the Authority and its contractor in respect of Ships Engineering, Management and Delivery at Devonport, Clyde and Rosyth (Contract Reference FMSP/005);
- (c) Lot 3 – a contract between the Authority and its contractor in respect of Submarine Engineering at Devonport and Clyde (Contract Reference FMSP/006);
- (d) Lot 4 – a contract between the Authority and its contractor in respect of Hard Facilities Management and Alongside Services at Clyde (Contract Reference FMSP/007);
- (e) Lot 5 – a contract between the Authority and its contractor in respect of Hard Facilities Management and Alongside Services at Portsmouth (Contract Reference FMSP/008);
- (f) Lot 6 – a contract between the Authority and its contractor in respect of Soft Facilities Management Services at Clyde (Contract Reference FMSP/009);
- (g) Lot 7 – a contract between the Authority and its contractor in respect of Soft Facilities Management Services at Portsmouth (Contract Reference FMSP/010) ("this Contract");
- (h) Lot 8/9 – a contract between the Authority and its contractor in respect of Ships Engineering Management (Class Output Management, Warship Technical Authority and Design Management Services) and Delivery at Portsmouth (Contract Reference FMSP/011);
- (i) Lot 10 – a contract between the Authority and its contractor in respect of Warehousing and Distribution at Portsmouth (Contract Reference SCTX/001); and
- (j) Lot 11 – a contract between the Authority and its contractor in respect of Warehousing and Distribution at Clyde (Contract Reference SCTX/002).

FMSP Strategic Benefits has the meaning given to that term in Clause 5.2 (*Commercial Purpose*).

FOI Act has the meaning given to it in Clause 75.10 (*Confidentiality and Freedom of Information*).

FOI Information has the meaning given to "Information" under section 84 of the Freedom of Information Act 2000.

Force Majeure Event has the meaning given to it in Clause 54.1.2 (*Force Majeure Events*).

Foreground IP means Intellectual Property created under the terms of, or in connection with the performance of, this Contract, together with any developments made to Background IP under the terms of or in performance of this Contract.

Former Authority Employee means at any time any person whose employment previously transferred to a contractor or its sub-contractor pursuant to the Transfer Regulations and who has, pursuant to this Contract and the Transfer Regulations, transferred to the Contractor or any Sub-Contractor *provided that* since such person was employed by the Authority (a) he has not ceased to be eligible for membership of the Schemes; and (b) any change in his employer has been effected pursuant to the Transfer Regulations.

Forms means the forms for use in connection with the administration of this Contract set out in Schedule 18 (*Forms*).

GDPR means the General Data Protection Regulation (Regulation (EU) 2016/679).

GFA means the services, resources, facilities, information, equipment, assets and other supplies that the Authority shall supply to the Contractor for the purpose of this Contract pursuant to Clause 37 (*GFA*).

Good Industry Practice means the exercise of that degree of skill, diligence, prudence, foresight and practice which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same type of undertaking as that to which the relevant Service relates under the same or similar circumstances to those in which that Service is to be provided.

Goods means any and all articles, documentation and all other goods and equipment and related material supplied by the Contractor to the Authority pursuant to this Contract.

Government Establishment means:

- (a) any premises owned or operated by H.M. Government;
- (b) any of Her Majesty's ships or vessels and service stations operated by H.M. Government; and
- (c) any operational unit operated by H.M. Government.

Guaranteed Obligations has the meaning given to it in the form of Parent Company Guarantee.

Hazardous Substances means any natural or artificial substance (whether in solid or liquid form or in the form of a gas, vapour or ionising radiation and whether alone or in combination or in reaction with any other substance) capable of causing harm to man or any other living organism supported by the Environment or damaging the Environment or public health or welfare, including any controlled special hazardous toxic or dangerous waste or radioactive material.

Health and Safety Authority means any Competent Authority which is responsible for enforcing Health and Safety Law including without limitation the Office for Nuclear Regulation, the Health and Safety Executive, the Environment Agency and local authorities.

Health and Safety Law means all applicable Law relating to the safety of employees and non-employees who may be affected by an employer's undertaking including but not limited to the Health and Safety at Work Act 1974, all secondary legislation passed under that Act and the Nuclear Installations Act 1965 which may from time to time be in force.

Historic Contamination means:

- (d) those Hazardous Substances, pollutants or waste that were present or released prior to the Commencement Date in any soil, groundwater, surface waters, structure or building or result from any reaction or intermingling between substances which were so present or released (hereinafter referred to as **Existing Contaminants**), except in so far as such Existing Contaminants were caused by an act or omission of any Contractor Group Company; or

- (e) the presence or release of those Hazardous Substances, pollutants or waste directly caused by an act or omission of the Authority, its contractors, sub-contractors, employees or agents, other than during the Contract Period.

HMRC means Her Majesty's Revenue and Customs.

Impacted Services has the meaning given in Clause 58.1.1 (*Required Action*).

Incoming Contractor means any:

- (a) potential replacement service provider(s) or parties interested in performing; and/or
- (b) parties nominated by the Authority to provide, the Services (or part thereof) or substantially similar services (or part thereof).

Information means any information, in any form, disclosed or acquired under or in connection with the EISA.

Initial Contractor GFA List means the initial Contractor GFA List to be provided by the Authority in accordance with Clause 37.3.1 (*Verification of GFA*).

Initial Contract Period has the meaning given to it in Clause 2.2.2 (*Duration*).

Initial Expiry Date means the fifth (5th) anniversary of the Planned Service Delivery Date.

Input has the meaning given to that term in **Error! Reference source not found.** of Schedule 2 (*Requirements*).

Integrity means the extent to which the SDE System safeguards and properly processes EISA Data as required by the SDE SOR.

Interior Cleaning Services means all of the services specified in Output PSF 2.4 of Schedule 2 (*Requirements Table*).

Intellectual Property means patents, rights to inventions, trade marks, service marks, domain names, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, rights in information (including know-how and trade secrets), trade or business names and other similar rights or obligations, whether registrable or not, in any country (including the United Kingdom) for the full term of the rights together with any extensions.

IFRS means International Financial Reporting Standards.

Irrecoverable Loss means, even where the Party has been advised of it, any:

- (a) indirect, special or consequential loss;
- (b) loss of profits;
- (c) loss of use;
- (d) loss of production;
- (e) loss of business; and

- (f) loss of contract.

Issued Property means any item of GFA (excluding services) or other property issued or otherwise furnished to the Contractor by or on behalf of the Authority in connection with:

- (a) this Contract; or
- (b) a prior contract to the extent that such item of GFA (excluding services) or other property related to predecessor services to the Services.

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>

ITAR means the U.S. International Traffic in Arms Regulations (22 CFR Part 120-130).

Items means any:

- (g) goods, including articles, hardware, products or items;
- (h) Technical data (as defined in ITAR);
- (i) technology (including information comprised in software and documents such as manuals, diagrams and designs) capable of use in connection with the development, production, use or maintenance of any goods; and
- (j) products or assemblies (including vessels) utilising or incorporating any of (a) and/or (b) above,

and **Items** shall include Controlled Information for the purposes of Schedule 9 (*Standards of Conduct and Required Consents*).

JSP means a Joint Service Publication.

Junior Rates means those Authority personnel below Senior Rates (Royal Navy/Senior Non-Commissioned Officer (Royal Marine, Army, Royal Air Force) rank.

Key Performance Indicator means any one of the performance indicators detailed in the KPI Table, and **KPI** shall mean Key Performance Indicator.

Key Sub-Contract has the meaning given to it in Schedule 14 (*Supply Chain and Sub-Contracting Strategy*).

Key Sub-Contractor has the meaning given to it in Schedule 14 (*Supply Chain and Sub-Contracting Strategy*).

KPI Table means the table of KPIs set out in Annex 1 to Schedule 5 (*Performance Management and Measurement*).

Law means any applicable law, enactment, statute, proclamation, by-law, directive, decision, notice, court decree or judgment, regulation, European Union legislation, authorisation, rule, order, rule of court or delegated or subordinate legislation including directions, requirements or guidance issued pursuant to any legislation (provided such directions, requirements or guidance are derived from a valid legal authority, including any nuclear regulator), any

Government, NBC or other Authority documents or publications having the force of law in each case in force in the United Kingdom at any time or from time to time, in each case in force in the United Kingdom from time to time.

Leased and Licensed Areas means those areas in the Service Delivery Locations which are leased or licensed to the Contractor pursuant to the Leases or the Licences.

Leases means the leases entered into by the Parties as referred to in Schedule 11 (*List of Leases and Licenses*).

LED means the Law Enforcement Directive (Directive (EU) 2016/680).

Licences means the licences entered into by the Parties referred to in Schedule 11 (*List of Leases and Licenses*).

Loading means to place Information on the SDE to make it accessible to the SDE such that it can be Retrieved by one or more Users.

Longstop Date means three (3) months after the Planned Service Delivery Date as such date may be extended in accordance with this Contract.

Losses means all losses, liabilities, damages, costs and expenses (including legal fees on solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise.

Lot Delivery Board means the forum as described in Paragraph 4 (*Lot Delivery Board*) of Schedule 6 (*Governance*).

Lot Specific Conditions means the additional terms and conditions of this Contract applicable to particular Services set out in Schedule 3 (*Lot Specific Conditions*).

Maintenance Release means a release of the Software which corrects faults, adds functionality or otherwise amends or upgrades the Software, but which does not constitute a New Version.

Major Incident has the meaning given to it in Clause 25.13.1 (*Major Incidents*).

Major Incident Report has the meaning given to it in Clause 25.13.7 (*Major Incidents*).

Mandatory Change means

- (a) a change contemplated in Clause 30.5.3(a) (*Entry of Secondment and Interchange Agreements*);
- (b) a Change in Law; or
- (c) any other circumstances where this Contract expressly states that a matter shall be dealt with as a Mandatory Change.

Marine Services means waterborne and associated support activities, including tug movements, both in and out of port and maintenance of UK and overseas moorings, navigational marks and support.

Maritime Enterprise means the national and international supply chain engaged in the design, build and support of Naval Vessels.

Material Adverse Change means, in the opinion of the Authority, a material adverse change on:

- (a) the ability of the Contractor to comply with its obligations under this Contract,
- (b) the business, operations, condition (financial or otherwise), prospects, or assets of the Contractor or any Key Sub-Contractor insofar as the same affects its ability to comply with its obligations under this Contract,
- (c) the Services or their implementation or operation, or
- (d) and includes any incidences of the above which arise as a result of Brexit.

Material Breach has the meaning given to it in Clause 59.1.8 (*Material Breach*).

Material Dispute has the meaning given to it in Clause 79.7 (*Change in Control*).

Meaningful Shore Employment means the deployment of catering services Junior Rates into the Contractor's organisation to support delivery of the core catering services.

Mess means a home on base for a body of Authority military personnel of a certain rank.

Method Statements means the method statements set out in Annex **Error! Reference source not found.** of Schedule 2 (*Contractor's Solution*).

Miscellaneous Base Services means all of the services specified in Output PSF 2.9 of Schedule 2 (*Requirements*).

Mobilisation Period means the period between the Commencement Date and the Service Delivery Date.

Monthly Costs Forecast means a report complying with the Cost Reporting Standard in the format set out in Schedule 22 (*Reports*) that details in respect of each of the Services, split between the scope of Services comprised in such Services at the Service Delivery Date and the Services added since the Service Delivery Date, the expected annual Actual Costs for each of the Services:

- (a) at the time of the Service Delivery Date for each Contract Year; and
- (b) at the time of the report for each remaining Contract Year.

Monthly Service Charge has the meaning given to it in Part 1 (*Definitions*) of Schedule 4 (*Pricing and Payment*).

Motor Transport Services means all of the services specified in Output PSF 2.8 of Schedule 2 (*Requirements*).

Naval Base or **Portsmouth Naval Base** means Her Majesty's Naval Base Portsmouth being that area of Ministry of Defence land on both east and western shores of Portsmouth Harbour under the command of the Naval Base Commander for the provision of operational, material

and personnel support to the Royal Navy, including the buildings from time to time erected thereon, the Service Media and the basins, berths, quays and docks therein.

National Strikes has the meaning given to it in Clause 55.1.2(e) (*Relief Events*).

NBC or Naval Base Commander means the person holding from time to time such office in relation to the Naval Base or the officer appointed by the Authority to perform the duties of such office or any person authorised by such person.

Naval Service means the Royal Navy, Royal Marines, Queen Alexandra's Royal Naval Nursing Service, their respective reserves, the Royal Fleet Auxiliary, the Royal Maritime Auxiliary Services and members of the Civil Service under the direct management of the Navy board.

Net Book Value means the net book value of the relevant Contractor Asset(s) calculated in accordance with the usual depreciation policy of the Contractor as at Effective Date.

New Owner has the meaning given to it in Clause 79.2 (*Change in Control*).

New Version means any new version of the Software which from time to time is publicly marketed and offered for purchase by the owner of the Software in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product.

Notices means a notice as described in Clause 84 (*Notices*).

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.

Officer in Charge means, as appropriate, officers commanding service stations, ships' masters or senior officers, and heads of Government Establishments.

Open Book Data means all information to be made available to the Authority pursuant to Clause 18 (*Open Book Accounting*).

Open Source Software means any Software which is developed, tested, or improved through public collaboration and distributed with the idea or under licence terms that it must be shared with others, ensuring an open future collaboration.

Ops Co-ordination Group means the forum as described in Paragraph 3 (*Ops Co-ordination Group*) of Schedule 6 (*Governance*).

Other Party has the meaning given to it in Clause 54.1.3 (*Force Majeure Events*).

Outcome has the meaning given to that term in **Error! Reference source not found.** of Schedule 2 (*Requirements*).

Out of Hours means any period, Monday to Sunday inclusive, within the daily twenty-four (24) hour period, outside the applicable Standard Hours.

Outgoing Contractor means BAE Systems Surface Ships Limited (Company No. 06160534).

Output has the meaning given to that term in **Error! Reference source not found.** of Schedule 2 (*Requirements*).

Output Specification means the specification set out in Schedule 2 (*Requirements*) together with any sample, pattern, specification, plan, drawing or statement of work which individually or collectively is referenced or referred to in those specifications, all as may be updated or amended from time to time through the Change Procedure.

Overriding Strategic Objective has the meaning given to it in Clause 5.2 (*Commercial Purpose*)

Parent means Sodexo Holdings Limited registered in England with number 02987170 whose registered office is at One, Southampton Row, London, WC1B 5HA.

Parent Company Guarantee means the parent company guarantee and indemnity provided by the Parent in favour of the Authority under a guarantee in the form set out in Schedule 25 (*Form of Parent Company Guarantee*).

Parties means the parties to this Contract and **Party** shall be construed accordingly.

Pass Office Services means all of the services specified in Output PSF 2.1 of Schedule 2 (*Requirements*).

Pay as you Dine (PAYD) Authority means the person or persons appointed by the Authority as the PAYD Authority from time to time.

Performance Standards has the meaning given to that term in **Error! Reference source not found.** of Schedule 2 (*Requirements*).

Planned Service Delivery Date means 1 October 2021.

Personal Data shall have the same meaning as set out in the DPA 2018.

Personal Data Breach shall have the same meaning as set out in the DPA 2018.

Portsmouth Harbour means the harbour at Portsmouth bounded on the south by a line joining the easternmost point of Fort Blockhouse and Round Tower (Old Portsmouth).

Pricing Parameter means any one or more of the following:

- (a) the Total Contract Price;
- (b) each Annual Firm Price;
- (c) each Annual Fixed Price;
- (d) the Flexible Pricing Mechanism; and
- (d) any Tendered Amount.

Proceedings has the meaning given to it in Clause 92.2 (*Governing law and jurisdiction*).

Procurement Plan has the meaning given in Schedule 14 (*Supply Chain and Sub-Contracting Strategy*).

Prohibited Act means any of those acts listed in Clauses 64.1(a) to 64.1(d) (*Corrupt gifts and payments*).

Project Account means the Authority Unit Identification Number (UIN) and budget line at P9/S9 level.

Property of the Authority has the meaning given to it in Clause 39 (*Accounting for Property of the Authority*).

Protective Measures means appropriate technical and organisational measures to ensure physical, organisational and logical security of Personal Data including protection against a Data Loss Event and which includes:

- (a) pseudonymising and encrypting Personal Data;
- (b) ensuring confidentiality, integrity, availability and resilience of systems and services;
- (c) ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident; and
- (d) regularly assessing and evaluating the effectiveness of such measures adopted by it.

Qualifying Change in Law means any Change in Law the effect of which is to discriminate directly against the Contractor, as a defence contractor, providing the Services and which was not foreseeable prior to the Effective Date. A change in taxes or the introduction of a tax affecting companies generally or a change in VAT shall be deemed not to be discriminatory in any circumstances.

Radio Licence has the meaning given to it in Paragraph 1 (*Radio Transmissions*) of Schedule 3 (*Lot Specific Conditions*).

RE Impacted Costs has the meaning given to it in Clause 55.1.11 (*Costs*).

Redundant Materiel has the meaning given to it in Clause 40 (*Redundant Materiel*).

Reference Contract Year has the meaning given to that term in Clause 17.1 (*Annual Report*).

Referenced Documents means the documents listed in Schedule 19 (*Referenced Documents*).

Registers means the assets register and configuration database referred to in Clause 65.2 (*Asset Registers*).

Regulation has the meaning given to it in Clause 12 (*Observance of Law and Regulations*).

Regulatory Bodies means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence parties to and/or the matters dealt with in this Contract or any other affairs of the Authority and **Regulatory Body** shall be construed accordingly.

Reimbursable Core Meal means a Core Meal provided by the Contractor to any HM service person (as approved by the Authority) who does not pay the Contractor the Core Meal Price,

for which the Contractor shall be reimbursed in accordance with Paragraph 3 of Part 3 of Schedule 4.

Relevant Direct Agreements means any direct agreement entered into by the Authority, the Contractor and any Sub-contractor in respect of this Contract and any relevant Sub-contract, from time to time.

Relevant Industrial Action has the meaning given to it in Clause 34 (*Industrial Action*)

Relief Event means any of the events set out in Clause 55.1.2 (*Relief Events*).

Remediation means preventing, limiting, removing, remedying, cleaning up, abating, containing or ameliorating the presence or effect of Hazardous Substances at, on, in under or introduced to or originated from the Service Delivery Locations or Leased and Licensed Areas (as applicable) and **Remediate** and **Remediating** shall be interpreted accordingly.

Reports means the reports identified in Schedule 22 (*Reports*).

Request for Information shall have the meaning set out in the Freedom of Information Act 2000 or the Environmental Information Regulations, as relevant (where the meaning set out for the term "*request*" shall apply).

Required Actions has the meaning given to it in Clause 58.1.1 (*Step-In Rights*).

Required Action Notice has the meaning given to it in Clause 58.1.1 (*Step-In Rights*).

Required Action Plan has the meaning given to it in Clause 58.1.1 (*Step-In Rights*).

Required Insurances means the insurances as set out in Annex 2 (*Required Insurances*) to Schedule 12 and any insurances required by Law.

Required Rating means a rating of long term debt by Standard & Poor's Rating Services of at least A-.

Required Consents means any consent, licence, permission, authorisation, permit or approval of, or relaxation or derogation including any Nuclear Authorisation issued by or required to be issued by (as the context may require), any Competent Authority in connection with or which is necessary from time to time for the carrying out of all or any part of the Services.

Requirements means the requirements set out in the Statement of Technical Requirements together with any statement of work which individually or collectively is referenced or referred to in those requirements.

Requirements Table has the meaning given to that term in **Error! Reference source not found.** of Schedule 2 (*Requirements Table*).

Retention has the meaning given to it in Paragraph 2.1.1 of Part 2 (*Performance Management*) of Schedule 5 (*Performance Management and Measurement*).

Retrieve means retrieval of Information or other communication with the SDE other than Loading and **Retrieved** and **Retrievable** shall be construed accordingly.

RN means the Royal Navy.

RN "in-scope" Personnel has the meaning given to it in Part 5 (*RN Personnel*) of Schedule 10 (*Personnel*).

RN Personnel has the meaning given to it in Part 5 (*RN Personnel*) of Schedule 10 (*Personnel*).

Scope means the scope of this Contract as described in Clause 6 (*Scope*).

SDE SOR has the meaning given to it in Clause **Error! Reference source not found.** (*Scope*).

Secondees means the Authority Secondees, the Contractor Secondees and Sub-Contractor Secondees.

Secret Matter means any matter connected with this Contract or the performance of this Contract which is designated in writing 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.

Security Aspects Letter means the Authority executed security aspects letter to be provided by the Authority Representative pursuant to Clause 28.2 (*Security Aspects Letter*) on or before the Effective Date.

Security Policy Framework means the HMG Security Policy Framework relating to the Government Security Classification policy as published by the Cabinet Office as such framework is amended or updated from time to time.

Security Standard has the meaning given to it in Clause 25.4(a) (*Observance of Site Regulations*).

Service Delivery Date means the date on and from which the Contractor is required to provide the Services.

Service Delivery Locations means the Naval Base.

Service Delivery Location Supplier means a supplier who is party to an FMSP Contract at the Service Delivery Location.

Service Delivery Period means the period commencing on the Service Delivery Date and continuing until the Termination Date.

Service Media means all sewers, subways, drains, watercourses, pipes, wires, cables, ducts and isolator valves that are part of the relevant Service Delivery Location.

Services has the meaning given to it in Clause 7.1 (*Contract for Services*).

Ship Movement Programme means the ship movement programme which informs the Naval Base community of ship movements to understand the impact on the services (e.g. road closures, lock movements, etc).

Single Point of Contact/Helpdesk Services means all of the services specified in Output PSF 2.2 of Schedule 2 (*Requirements*), and **SPOC** means the Single Point of Contact.

Sites means any premises from which Contractor Deliverables are provided in connection with this Contract 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 Authority Identifiable Information in relation to this Contract.

Software means computer programs, whether in object code or Source Code.

Software Acceptance Date means:

- (a) the date the Authority confirms to the Contractor that the Delivered Software meets all applicable acceptance criteria and has passed all applicable acceptance tests, as such acceptance process is described in the relevant Task Approval Form; or
- (b) if no acceptance process is described in the relevant Task Approval Form, the date the Delivered Software is deployed into the production environment.

Software Documentation means the documentation relating to the Software, including any technical information, specifications and documentation necessary for the use of such Software.

Source Code means all source code in human readable form which when assembled or compiled generates object code, together with the scripts, build files, preparatory materials, specifications, and design documents which are required to compile such source code.

Specification means any document or item which individually or collectively is referenced in the Requirements.

Specification Change has the meaning given to it in Schedule 30 (*Change Procedure*).

SQEP has the meaning given to it in Clause 27 (*Qualifications and Experience*).

Standard means a standard as specified in Clause 11 (*Standards*).

Standard Hours (1) means [REDACTED].

Standard Hours (2) means [REDACTED].

Statement of Technical Requirements means the technical and other requirements set out in *Schedule 2 (Requirements)* including each Output and Input set out in the Requirements Table.

Step-In Impacted Costs has the meaning given to it in Clause 58.4.1(c) (*Costs*).

Sub-Contract has the meaning given to that term in the defined term Sub-Contractor.

Sub-Contractor means any person with whom the Contractor contracts in respect of the performance of any part of its obligations under this Contract (such sub-contracted part of the Contractor's obligations being **Sub-Contracted Scope**), and any person that contracts at any tier to perform any part of, or provide good or services in respect of, **Sub-Contracted Scope**, and **Sub-Contract** shall be construed accordingly.

Sub-processor means any third party appointed to process Personal Data on behalf of the Contractor related to the Contract.

Subsidiary means a subsidiary undertaking within the meaning of section 1159 of the Companies Act 2006.

Supervisory Authority has the same meaning as given to it in Article 4 of GDPR.

Supplier Cyber Protection Service means the CSM Risk Assessment Process and CSM Supplier Assurance Questionnaire.

Support Services means the Services to support and maintain Software, to be provided by the Contractor under this Contract to meet the applicable Requirements.

TAF or Task Approval Form means the approval form to be used by the Authority to order works and/or services in the appropriate form referred to in Schedule 3 (*Lot Specific Conditions*).

Tendered Amounts means the cost amounts (whether per item, per hour or otherwise) set out in Appendix A (*Tendered Amounts*) to Schedule 4 (*Pricing and Payment*).

Terminable Services has the meaning given to it in Clause 59.5 (*Authority right to terminate the Contract subject to remediation*).

Termination Date means the earlier of:

- (e) the Expiry Date; and
- (f) any date of early termination of this Contract (or any part thereof) in accordance with Clause 59 (*Contractor Default*), Clause 60 (*Voluntary Termination by the Authority*), Clause 61 (*Termination by the Contractor*) or Clause 62 (*Termination for prolonged Force Majeure Events*) or otherwise.

Termination Notice has the meaning given to it in Clause 59.6.6 (*Contractor Default*).

Third Party Contractor means a third party contractor (but excluding Sub-Contractors) engaged by the Authority operating at the Service Delivery Location.

Third Party Contractor Property means any property owned by a Third Party Contractor.

Third Party FMSP Contracts means an FMSP contract other than this Contract.

Third Party Software means the Software proprietary to third parties and not owned by the Authority or the Contractor.

Total Contract Price has the meaning given to it in Part 1 of Schedule 4 (*Pricing and Payment*).

Trade Control Regulations means any and all export, import and trade control Laws (including ITAR), treaties, sanctions and embargoes (as may be amended or replaced from time to time) that impose or will impose end use, end user or re-transfer or re-export restrictions, or restrictions on disclosure to individuals based upon their nationality. Trade Control Regulations may be applicable to:

- (a) Items and/or Services, or any part of them, to be provided by the Contractor to the Authority pursuant to this Contract; and/or

- (b) Items and/or Services, or any part of them, to be:
- (i) provided by the Authority to the Contractor; or
 - (ii) otherwise made available to the Contractor at the request or otherwise by or on behalf of the Authority; or
 - (iii) owned or controlled by the Authority,
- pursuant to this Contract, whether by way of individual items or higher level assemblies (including vessels); and/or
- (c) the end use or end user of any such Items and/or Services.

Transfer Notice means the Notice served by the Authority on the Contractor advising the Contractor that the Services are to be transferred to the Authority or to an Incoming Contractor and requiring the Contractor to provide assistance in accordance with Clause 65 (*Exit Strategy*).

Transfer Regulations means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time and/or the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 (as amended from time to time), as appropriate.

Transfer Period means the period, commencing with the service of the Transfer Notice by the Authority to the Contractor, and (unless otherwise notified by the Authority) ending on the date specified in the Transfer Notice or such later date as the Authority may notify in terms of Clause 65.5.7 (*Transfer Notice*).

Transfer Regulations means the means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time and/or the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 (as amended from time to time), as appropriate.

Transfer Services means the Core Transfer Services and the Enhanced Transfer Services.

Transition Services Agreement means an agreement to be entered into between the Contractor and any Incoming Contractor substantially in the form set out in Schedule 34 (*Exit Agreements*) pursuant to which the Contractor agrees to provide specified services to the Incoming Contractor to assist with the smooth transition of Services.

Transparency Information means the content of this Contract in its entirety, including from time to time agreed changes to the Contract, and details of any payments made by the Authority to the Contractor under the Contract.

TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

User means a party to the EISA.

User Protocol means the document that is appended to the EISA and which describes the overall architecture of the SDE, including the elements provided by the Contractor and those provided by other Users, the shared business processes, Information management arrangements, technical interface requirements and administrative procedures necessary for Users to operate effectively within the SDE.

Value Added Tax or **VAT** means any value added tax.

Virus means any Software intended to corrupt, disable, destroy or otherwise damage or interfere with the use of Software or Data.

Warrant Officers means a Royal Navy rating holding the Rank of Ordinary Rate 8 (Class 2) or Ordinary Rate 9 (Class 1) of the NATO Rank Structure.

Waste Management Services means all of the services specified in Output PSF 2.3 of Schedule 2 (*Requirements*).

White Fleet means the fleet of vehicles the subject of this Contract, including pool cars, passenger transport, service vehicles and log vehicles.

1.2 Not used

1.3 Not used

1.4 Not used

Schedule 2 – Requirements

[REDACTED]

Schedule 3– Lot Specific Conditions

1 RADIO TRANSMISSIONS

- 1.1 Where it is necessary for radio transmissions to be made by the Contractor and/or any Sub-Contractor for the delivery of their Services, the Contractor shall, in accordance with the Wireless Telegraphy Act 2006 as amended or re-enacted from time to time, obtain a licence (a **Radio Licence**) from the Office of Communications or its replacement from time to time as the relevant regulatory authority.
- 1.2 The Contractor shall not use any radio transmitting or receiving equipment without first seeking approval from the Authority, which may be withheld.
- 1.3 Before an application is made for a Radio Licence, the Contractor shall obtain the approval of the actual frequencies to be used from the Authority referring in the request for approval to this Contract and the equipment concerned.
- 1.4 If a Radio Licence has already been obtained, the Contractor shall ensure that it covers the particular transmissions required in all respects and the Contractor shall deliver a copy of its Radio Licence to the Authority.
- 1.5 The Contractor shall comply with all local rules and regulations regarding radio transmissions.

2 QUEEN'S HARBOUR MASTER

- 2.1 The Contractor shall co-operate with the Queen's Harbour Master in the fulfilment of his statutory duties, powers and responsibilities and shall comply with instructions given by him pursuant to those duties, powers and responsibilities.
- 2.2 Without prejudice to the generality of Paragraph 2.1, to the extent that there are any interfaces between the activities of the Contractor required or permitted to be performed pursuant to this Contract (including the provision of the Services) and the areas of responsibility of the Queen's Harbour Master, the Contractor shall perform such activities in such a manner as to avoid unnecessary disruption to and so as not to impede the Queen's Harbour Master in the fulfilment of his statutory duties, powers and responsibilities.
- 2.3 Not used.
- 2.4 Not used.
- 2.5 Not used.
- 2.6 Not used.
- 2.7 Not used.

3 CATERING SERVICES SHORE EMPLOYMENT TEAM (CCSET)

- 3.1 Meaningful Shore Employment
 - 3.1.1 The Contractor shall provide Meaningful Shore Employment to catering services Junior Rates.

- 3.1.2 The Contractor shall provide the RN Personnel made available to the Contractor pursuant to this Paragraph 3 of Schedule 3 with Meaningful Shore Employment.
- 3.1.3 Meaningful Shore Employment pursuant to this Paragraph 3 of Clause 3 can be used to assist in the delivery of many RN outputs, including:
- a. Support to the Industrial Partner (IP) in a Catering, Retail and Leisure (CRL) facility.
 - b. Support to RN events, or Flag Officer engagement activity.
 - c. Support to Captain Naval Recruiting (CNR) by providing chefs and stewards to events and expos.
 - d. Support ships alongside base-port by providing personnel to help plug gaps and deliver mealtimes during core working hours (although not to stand duties). CSSETs also have the capacity to offer leave in lieu of any work conducted over weekends or out of core working hours.
- 3.1.4 The Authority is under no obligation to provide RN Personnel to the Contractor pursuant to this Clause 3 of Schedule 3.
- 3.2 Terms and Conditions of Service of RN Personnel on Meaningful Shore Employment
- 3.2.1 RN Personnel shall continue to be subject to their Terms of Service at all times. In particular, RN Personnel shall:
- (a) continue to be bound by the provisions of the Armed Forces Act 2006, the Queens Regulations for the Royal Navy 2012 and any relevant associated disciplinary or complaint procedures, in each case as amended from time to time;
 - (b) continue to be subject to the requirements associated with force generation augmentation purposes, Military Aid to the Civil Authorities (MACA), Military Aid to the Civil Power (MACP), Emergency Relief Pool (ERP), arrangements in support of front line unit manning and Authority contingency/emergency/accident response arrangements;
 - (c) remain liable to undertake approved Royal Navy training courses ashore as required by the Authority, including the Naval Manning Agency and the Front Line Commander, from time to time. The Authority will use its reasonable endeavours to procure that such courses are arranged at times which minimise any disruption to the provision of the Services, provided that the Contractor agrees that the requirements of the Royal Navy shall take priority in the event of any conflict between such requirements and the Services; and
 - (d) shall continue to enjoy, be subject to, and comply with the Second Sea Lord's Personnel Functional Standards for the Naval Service as amended from time to time including any arrangements deemed necessary by the Authority in relation to the Divisional Management System.
- 3.3 Nothing in Clause 3 to Schedule 3 shall:
- (a) constitute or be construed as constituting or establishing any partnership or joint venture or other legal relationship between RN Personnel and the Contractor or any other company in the Contractor's Group from time to time; or

- (b) have the effect (or be construed as having the effect) of creating a relationship of employer and employee between any RN Personnel and the Contractor or any other company in the Contractor's Group.

3.4 Contractor's Obligations

- 3.4.1 The Contractor acknowledges and agrees that RN Personnel work under the direction and supervision of the Contractor at all times whilst carrying out Meaningful Shore Employment but at all times subject to their individual Terms of Service.
- 3.4.2 The Contractor shall ensure such RN Personnel are provided with Meaningful Shore Employment appropriate for the relevant RN Personnel member's qualifications and experience.
- 3.4.3 The Meaningful Shore Employment of RN Personnel shall not serve to amend or diminish the Contractor's responsibility to provide the Services.

3.5 RN Personnel Behaviour

- 3.5.1 The Contractor agrees not to take any disciplinary action against any RN Personnel without the express consent of the Authority.
- 3.5.2 In the event of an industrial dispute, involving the employees of the Contractor or any company in the Contractor's Group, the Contractor shall procure so far as reasonably practicable that no RN Personnel are engaged in activities which would have been reasonably expected to be carried out by those employees who are involved in the industrial action.
- 3.5.3 If at any time any member of RN Personnel in Meaningful Shore Employment is guilty of any act of misconduct or neglect in the discharge of his duties or repeatedly fails to comply with the Contractor's reasonable orders, requirements or procedures applicable to the relevant member of RN Personnel, the Contractor shall notify the Authority (by notifying the naval chain of command in respect of such member of the RN "in-scope" Personnel) and shall include in any such Notice the action which it reasonably considers necessary to deal with any such failure in performance or misconduct which may include the removal of the relevant member of RN Personnel. On receipt of such a Notice, the Authority shall take such action as it reasonably considers necessary in order to ensure that the relevant RN Personnel does not repeat such misconduct, performs his duties to the required standard and/or complies with the Contractor's reasonable requirements. Following any action taken by the Authority in respect of the relevant member of RN Personnel pursuant to this Paragraph 3.5.3 the Parties shall agree on the most appropriate action to be taken in respect of the relevant member of RN Personnel, taking into account any continuation of the original misconduct or failure.
- 3.5.4 If at any time any member of the RN Personnel in Meaningful Shore Employment is guilty of any act of serious misconduct or serious or continual neglect in the discharge of his duties or is medically unfit to perform his duties and the Contractor reasonably considers that the removal of RN Personnel is required, it shall notify the Authority in writing and the Authority shall remove the relevant member of RN Personnel as soon as reasonably practicable.

3.6 Non-Application of TUPE

- 3.6.1 The Contractor and the Authority agree and acknowledge that the Meaningful Shore Employment shall not have the effect of transferring from the Authority to the Contractor the

Authority's rights, duties, powers, liabilities and obligations in respect of any contract of employment or other relationship which exists between the Authority, the Crown and RN Personnel in Meaningful Shore Employment.

3.6.2 In the event that any RN Placed Personnel are transferred into the service of the Contractor or any company in the Contractor's Group in accordance with TUPE or otherwise by operation of law the Contractor shall, as soon as practicable after any request therefore, give to the Authority all co-operation or assistance and information which may be reasonably required by the Authority in order to ensure compliance with the intention of the parties as set out in this Clause 3 to Schedule 3.

3.6.3 In the event that any RN Personnel makes a claim against the Authority or the Contractor arising out of or in connection with the Meaningful Shore Employment, the Authority and the Contractor shall, each at their own respective expense give to the other as soon as practicable after any requests therefore, all co-operation, assistance and information which may reasonably be required by the other in relation to any such claim.

3.7 Withdrawal of RN Personnel from Meaningful Shore Employment

3.7.1 The Authority may, in its absolute discretion, withdraw an individual member of RN Personnel from Meaningful Shore Employment at any time. The Authority shall use its reasonable endeavours to provide prior Notice of any such withdrawal.

3.8 Indemnity

3.8.1 The Authority shall have no liability whatsoever to the Contractor or any RN Personnel in Meaningful Shore Employment in respect of any act or omission of any RN Personnel which occurs:

- (a) during the relevant RN Personnel's performance of the Services; or
- (b) whilst such RN Personnel is (or should have been under the direction and supervision of the Contractor.

3.8.2 The Contractor shall indemnify and keep indemnified the Authority in respect of any Losses incurred by or made against:

- (a) the Authority or any RN Personnel member arising out of or in connection with any act or omission of any RN Personnel member which occurs whilst such RN Personnel member is (or should have been under the direction and supervision of the Contractor; and
- (b) the Authority by any RN Personnel member arising out of or in connection with any act or omission of the Contractor during the relevant Meaningful Shore Employment.

3.8.3 The Authority shall indemnify the Contractor and keep the Contractor indemnified in respect of any Losses arising out of or in connection with any Claims (except, in each case, to the extent arising as a result of any act or omission in respect of which the Contractor indemnifies the Authority under Paragraph 3.11.2 of this Schedule 3):

- (a) made or brought by RN Personnel against the Contractor arising out of or in connection with any act or omission of the Authority during the relevant Meaningful Shore Employment; and

- (b) made against the Contractor by any employee of the Contractor or other third party arising out of or in connection with any act or omission on the part of any RN “in-scope” Personnel during the relevant Meaningful Shore Employment while they are not under the direction and supervision of the Contractor.

3.9 Remuneration and Work Agreements

3.9.1 If the employment of any individual member of RN Personnel terminates for any reason, the Meaningful Shore Employment of that individual shall also terminate in a managed manner.

3.9.2 Each individual member of the RN “in-scope” Personnel shall:

- (a) continue to be remunerated by the Authority in accordance with that individual's Terms of Service;
- (b) not receive any overtime, bonus, or other enhanced remuneration arrangements during the Meaningful Shore Employment;
- (c) be entitled to annual leave and time off in lieu for hours worked in addition to those hours agreed to constitute a working week in accordance with the relevant Terms of Service.; and
- (d) be utilised as agreed by the Authority.

3.9.3 The Authority will ensure that the necessary pastoral or divisional care, reporting chain and line management responsibilities for all RN Personnel are in place. The Authority may request that the Contractor supplies input to RN Personnel performance reviews and reports. The Contractor shall ensure that an induction programme is available to ensure that all appropriate work place regulations (including safety related regulations) are communicated to each individual member of RN Personnel in Meaningful Shore Employment.

3.9.4 Assignment

The Contractor may not place any RN Personnel with any Sub-Contractor, supplier or other third party without the prior written consent of the Authority.

4 CROSS SITE CABLING

4.1 On the provision of written notice by the Contractor, the Authority shall install and commission, or shall procure the installation and commissioning of, cabling as further set out in the Contractor's written notice/Contract Pricing Statement in Schedule 17 (*Contract Pricing Statement*) (the "**Cabling Works**").

4.2 The estimated costs of the Cabling Works, at the relevant locations at the Naval Base, are set out in Contractor's written notice/Contract Pricing Statement in Schedule 17 (*Contract Pricing Statement*) (the "**Estimated Cabling Costs**").

4.3 The Parties acknowledge and agree that the Estimated Cabling Costs form part of the Total Contract Price.

4.4 Following completion of the Cabling Works, the Authority shall determine the actual costs of the Cabling Works (the "**Actual Cabling Costs**") and notify the Contractor accordingly. If the Actual Cabling Costs are lower than the Estimated Cabling Costs, the Authority is entitled to set-off any amounts corresponding to the difference between the Estimated Cabling Costs

and the Actual Cabling Costs against any payment due under the Contract, by the Authority to the Contractor, until such time that any such amounts are set-off in full.

- 4.5 In the event the Authority does not proceed with the Cabling Works, it is entitled to recover the Estimated Cabling Costs from the Contractor pursuant to this Paragraph 4 or set off the costs from other amounts due to the Contractor.

Annex 1 – Task Approval Form

DETAILED TASKING PROCEDURE AND FORM OF TAF

Defined terms

- a) **Additional Services** means any works or services required by the Authority that are additional to the Services being provided under the Contract
- b) **TAF or Task Approval Form** means the approval form to be used by the Authority to order works and/or services in the appropriate form appended hereto
- c) **Individual TAF Firm Price** means the price to be paid by the Authority to the Contractor for the provision of Additional Services
- d) **TAF Quotation** means the quotation provided by the Contractor to carry out the works and/or services requested by the Authority pursuant to this Annex 1 (*Task Approval Form*).

Notice

- 1 If the Authority requires the Contractor to provide Additional Services, the Authority shall give the Contractor notice of such requirement. The Authority's notice shall include:
 - (a) Description of the Additional Services requested;
 - (b) GFA (if any); and
 - (c) Relevant date(s) on which the Additional Service(s) shall be completed.

Quote and draft TAF

- 2 Within 10 Business Days (or such other period as may be agreed) of receipt of the notice pursuant to Paragraph 1 above, the Contractor shall provide the following.
 - (a) The TAF Quotation for performing the Additional Services (which for the purposes of a QEC TAF shall be based on the hourly rates set out in Paragraph 5 of Part 2 of Schedule 4).
 - (b) The completed draft TAF in the form set out in the Appendix to this Annex 1 (save for Parts B-D of Section C which are to be completed by the Authority).

Authority Review

- 3 The Authority shall review the draft TAF prepared by the Contractor.
 - a) Authority approves the draft TAF, then the Authority shall complete and sign the TAF and return to the Contractor for countersignature.
 - b) Authority does not approve the draft TAF, then the draft TAF shall be returned to the Contractor.
 - c) Within 10 Business Days of the draft TAF being returned to the Contractor, the Authority and the Contractor shall meet to discuss the Authority's comments on the draft TAF. Following such meeting, the Authority shall notify the Contractor that

either:

- i. it is withdrawing its request for Additional Services; or
 - ii. it requires the Contractor to submit a revised draft TAF amended to take account of, and address, the Authority's comments.
- d) draft TAF within 5 Business Days of the Authority's notice and Paragraph 3 (a) to (c) of this Annex 1 (*Task Approval Form*) shall apply to such revised draft TAF. The Contractor shall submit such revised Part A and/or Annexes within five (5) Business Days of the Authority's notice and Paragraphs
- 4 Signature of the TAF by all the required signatories creates the contractual obligation in respect of the Additional Services in accordance with its terms.

Amendments

- 5 If amendments to Additional Services are required following the issue of the TAF, then the Change Procedure shall apply.
- 6 On any change to Additional Services being approved by way of a Change the Authority shall complete item 3 of Part D of Section C of the issued TAF to confirm the agreed change to the Individual TAF Firm Price resulting from the change.

Appendix A to Annex 1 to Schedule 3 – Task Approval Form

MINISTRY OF DEFENCE		
Name & Address of the Contractor	Task Approval Form	Contract Ref.: Task No. Issued on: DD MONTH YYYY

ADDITIONAL SERVICES REQUIRED

Item No	Description	
1		
INDIVIDUAL TAF FIRM PRICE (ex. VAT)		£[**]
KEY PROGRAMME DATES – For Information		
TAF Completion Date		DD MONTH YYYY

Index of Task Approval Form

Section A - Conditions:

1. General Conditions
2. Definitions & Interpretations
3. DEFFORMS and other MOD Forms
4. Price
5. Key Programme Dates
6. GFA
7. Progress/Project Review Meetings and Schedules
8. Amending Provisions

Section B - Annexes:

Annex 1 - Work Breakdown

Annex 2 - GFA

Annex 3 - Price Breakdown

Section C - Signature/Approval

Section A - TAF - Conditions

1 General Conditions

- (a) The Contractor is responsible for performing the work which is the subject of this TAF in accordance with the requirements of this TAF and the Contract in accordance with the Key Programme Dates as stated in Paragraph 5.
- (b) The terms and conditions of the Contract apply to and form part of the terms and conditions of this TAF (subject to Paragraph 8 below).
- (c) In addition to the terms and conditions referred to Paragraph 8 below, the following additional conditions (being conditions which do not conflict with the terms and conditions of the Contract) shall apply in respect of this TAF:

[to be inserted on a case by case basis].

2 Definitions and Interpretations

[List any definitions and additional rules of interpretation to be used or employed for the purposes of this TAF which are not included in the Contract.]

3 DEFFORMS and other MOD Forms

The following additional DEFFORMS and other MOD Forms shall apply in respect of the Additional Services to be undertaken pursuant to this TAF:

[to be inserted on a case by case basis, if any].

4 Price

The Individual TAF Firm Price for the Additional Services to be performed pursuant to this TAF is as set out on the front of this TAF and broken down in the Price Breakdown in Annex 3 to this TAF.

5 Key Programme Dates

The Key Programme Dates are set out on the front page of this TAF and the following time periods shall also apply to the Additional Services to be undertaken pursuant to this TAF:

[to be inserted on a case by case basis].

6 GFA

The GFA listed in Annex 2 of this TAF shall be provided by the Authority to the Contractor for its use in connection with performance of the Additional Services under this TAF.

7 Progress/Project Review Meetings and Schedules

Progress/project review meetings shall be agreed and held between the Authority and the Contractor. The Contractor shall forward to the attendees copies of agreed documents and reports to be discussed/presented at the meeting, amended to reflect both progress to date and proposed changes to the forward programme.

8 Amending Provisions

The following conditions shall apply and shall take precedence over the terms and conditions of the Contract:

[to be inserted on a case by case basis].

Section B - TAF - Annexes

Annex 1 – Work Breakdown

Full Description of the [complete]
Additional Services to
be provided:

.....

.....

Annex 2 – GFA

[List GFA to be provided by the Authority to the Contractor for its use in connection with performance of the Additional Services or if none, state "none".]

Annex 3 – Price Breakdown

[Set out a detailed breakdown of the costs of the Additional Services identified in Annex 1.]

Section C - Signature/Approval

Part A: CONTRACTOR'S COMMITMENT TO TAF (to be completed by the Contractor)

The Contractor confirms that (subject to the Authority's approval of this TAF) it will provide the Additional Services that are the subject of this TAF in accordance with its conditions and that the Contractor's proposed Individual TAF Firm Price for the completion of such Additional Services is as follows:

Individual TAF Firm Price

The proposed Individual TAF Firm Price of £ _____ is made up as follows:

Direct Labour £ _____ (_____ Hours x _____ per hour)

1st Tier Overhead £ _____ (_____ Hours x _____ per hour)

Materials £ _____

Sub-Contracts £ _____

Disbursements £ _____

Name: _____ Signed: _____ Date: _____

Part B: REQUIREMENT OWNER APPROVAL (to be completed by Authority's Delegated Requirement Owner)

* Tick/Delete as appropriate

1. The proposed Individual TAF Firm Price is/is not* considered FAIR and REASONABLE.

2. The Additional Services are:

APPROVED *	<input type="checkbox"/>
------------	--------------------------

NOT APPROVED *	<input type="checkbox"/>
----------------	--------------------------

Name:
Signed:
(Approved Signatory)

Tel No:	Date:
Title:	

Part C: FINANCIAL APPROVAL (to be completed by Authority's Delegated Finance Officer (Finance))

1. The Additional Services are:

APPROVED *	<input type="checkbox"/>
------------	--------------------------

NOT APPROVED *	<input type="checkbox"/>
----------------	--------------------------

2. The figures in Part A are:

APPROVED *	<input type="checkbox"/>
------------	--------------------------

NOT APPROVED *	<input type="checkbox"/>
----------------	--------------------------

* Tick as appropriate

Name:
Signed:
(Approved Signatory)

Tel No:	Date:
Title:	

Part D: COMMERCIAL APPROVAL (to be completed by Authority's Delegated Commercial Officer (Commercial)).

1. The Additional Services are:

APPROVED *	<input type="checkbox"/>
------------	--------------------------

NOT APPROVED *	<input type="checkbox"/>
----------------	--------------------------

2. The figures in Part A are:

APPROVED *	<input type="checkbox"/>
------------	--------------------------

NOT APPROVED *	<input type="checkbox"/>
----------------	--------------------------

* Tick as appropriate

Name:
Signed:
(Approved Signatory)

Tel No:	Date:
Title:	

3. The agreed Individual TAF Firm Price for the provision of the Additional Services is:

£ [**]

Schedule 4 – Pricing and Payment

Part 1 – Definitions

Annual Firm Price means, in relation to each Firm Price Service, the price specified in Paragraph 2 of Part 2 of this Schedule 4;

Annual Fixed Price means, in relation to each Fixed Price Service, the price specified in Paragraph 3 of Part 2 of this Schedule 4;

Annual Service Price means

- (a) the aggregate of the Annual Firm Price for each Firm Price Service for that Contract Year; or
- (b) the aggregate of the Annual Fixed Price for each Fixed Price Service for that Contract Year.

Dispersed Meal Price means either:

- (a) the published pack meal rate as specified in the CRL Meal and Supplement Charge letter issued by Defence Logistics Cat Services each quarter; or
- (b) in the case of container meals, the cost of the actual Core Meal it was replacing;

Employer Contributions has the meaning given to it in Paragraph 1.2 of Part 4 of Schedule 10 (*Pensions*);

Extension Period means as the context requires or permits a Year 6 Extension Period or Year 7 Extension Period pursuant to Clause 2.3 (*Contract Period Extension*);

Extension Period Services means all of the Services during any Extension Period;

First Month means the first Month of the Contract Period;

Firm Price Service means a Service designated as such in Paragraph 1.1 of Part 2 of this Schedule 4;

Fixed Price Service means a Service designated as such in Paragraph 1.2 and Paragraph 1.3 of Part 2 of this Schedule 4;

Flexible Pricing Mechanism Payment means the amount payable as determined in accordance with Paragraph 4 of Part 2 of this Schedule 4;

Indexation Formula means the indexation formula set out in Part 6 of this Schedule 4;

Issued Pass means a pass correctly issued in accordance with Output PSF 2.1;

Monthly Service Charge has the meaning given to it in Paragraph 2.1 of Part 4 of this Schedule 4;

Phase 1 means the first two (2) Contract Years;

Phase 1 Services means all of the Services during Phase 1;

Phase 2 means each Contract Year during the Initial Contract Period after Phase 1;

Phase 2 Services means all of the Services during Phase 2;

Retail means offerings and services provided in accordance with PSF 2.7.1 at Part 2 of Schedule 2 (*Requirements*);

Retail Revenue means revenue generated by the Contractor through Retail activities in accordance with PSF 2.7.1 at Part 2 of Schedule 2 (*Requirements*);

RN Personnel Actual Amount means the amount calculated in accordance with Paragraph 4.2 of Part 7 of this Schedule 4;

RN Personnel Charge has the meaning given to it in Paragraph 2.1 of Part 7 of this Schedule 4;

RN Personnel Service Charge means the amount calculated in accordance with Paragraph 3.2 of Part 7 of this Schedule 4;

Services means all of the following:

[REDACTED]

SSCR Baseline Profit Rate has the meaning given to it in the Single Source Contract Regulations 2014;

Total Contract Price shall be an amount equal to the total of (i) the aggregate of the Annual Service Price; and (ii) all Flexible Pricing Mechanism Payments for the duration of the Contract Term;

Unit has the meaning given to it in Paragraph 1.2 of Part 3, as applicable;

Unit Price means the price per unit for the Services as calculated in accordance with Paragraph 4.5 of Part 2 of this Appendix 4;

Volumetric Band means any one of the bands of volume for each of the Services set out in the tables in Paragraph 1.2 of Part 3 of this Schedule 4;

Volumetric Band 1 means, in respect of each of the Services, the Volumetric Band in the column adjacent to number "1" in the column headed "*Volumetric Band*" in the table for each Service in Paragraph 1.2 of Part 3 of this Schedule 4, and the terms **Volumetric Band 2**, **Volumetric Band 3**, and **Volumetric Band 4** shall be construed accordingly;

Year 1 means the first Contract Year;

Year 2 means the second Contract Year;

Year 3 means the third Contract Year;

Year 4 means the fourth Contract Year;

Year 5 means the fifth Contract Year;

Year 6 Extension Period means an extension of the duration of the Contract from the end of the fifth (5th) Contract Year to the end of the sixth (6th) Contract year required by the Authority pursuant to Clause 2.3 (*Contract Period Extension*); and

Year 7 Extension Period means an extension of the duration of the Contract from the end of the sixth (6th) Contract Year to the end of the seventh (7th) Contract year required by the Authority pursuant to Clause 2.3 (*Contract Period Extension*).

Part 2 - Contract Price

1 Payment and Designation of Pricing Category

- 1.1 The Phase 1 Services shall each be a Firm Price Service.
- 1.2 The Phase 2 Services shall each be a Fixed Price Service.
- 1.3 The Extension Period Services (if required) shall each be a Fixed Price Service.

2 Pricing of Firm Price Services

2.1 The Annual Firm Price for each of the Firm Price Services is:

- (a) in respect of [REDACTED],
 - (i) in respect of Year 1, [REDACTED];
 - (ii) in respect of Year 2, [REDACTED];
- (b) in respect of [REDACTED],
 - (i) in respect of Year 1, [REDACTED];
 - (ii) in respect of Year 2, [REDACTED];
- (c) in respect of [REDACTED],
 - (i) in respect of Year 1, [REDACTED];
 - (ii) in respect of Year 2, [REDACTED];
- (d) in respect of [REDACTED],
 - (i) in respect of Year 1, [REDACTED];
 - (ii) in respect of Year 2, [REDACTED];
- (e) in respect of [REDACTED],
 - (i) in respect of Year 1, [REDACTED];
 - (ii) in respect of Year 2, [REDACTED];
- (f) in respect of [REDACTED],
 - (i) in respect of Year 1, [REDACTED];
 - (ii) in respect of Year 2, [REDACTED];
- (g) in respect of [REDACTED],
 - (i) in respect of Year 1, [REDACTED];
 - (ii) in respect of Year 2, [REDACTED];

- (h) in respect of [REDACTED],
 - (i) in respect of Year 1, [REDACTED];
 - (ii) in respect of Year 2, [REDACTED];
- (i) in respect of [REDACTED],
 - (i) in respect of Year 1, [REDACTED];
 - (ii) in respect of Year 2, [REDACTED];
- (j) in respect of [REDACTED],
 - (i) in respect of Year 1, [REDACTED];
 - (ii) in respect of Year 2, [REDACTED];
- (k) in respect of [REDACTED],
 - (i) in respect of Year 1, [REDACTED];
 - (ii) in respect of Year 2, [REDACTED].

3 Pricing of Fixed Price Services

3.1 The Annual Fixed Price for each of the Fixed Price Services shall be the relevant sum for that Contract Year set out below, indexed or increased in accordance with Paragraph 4, Part 6 (*Indexation Formula*), Schedule 4 (*Pricing and Payment*):

- (a) in respect of [REDACTED]
 - (i) in respect of Year 3, [REDACTED];
 - (ii) in respect of Year 4, [REDACTED];
 - (iii) in respect of Year 5, [REDACTED];
 - (iv) in respect of Year 6 Extension Period, [REDACTED];
 - (v) in respect of Year 7 Extension Period, [REDACTED];
- (b) in respect of [REDACTED],
 - (i) in respect of Year 3, [REDACTED];
 - (ii) in respect of Year 4, [REDACTED];
 - (iii) in respect of Year 5, [REDACTED];
 - (iv) in respect of Year 6 Extension Period, [REDACTED];
 - (v) in respect of Year 7 Extension Period, [REDACTED];
- (c) in respect of [REDACTED],

- (i) in respect of Year 3, [REDACTED];
 - (ii) in respect of Year 4, [REDACTED];
 - (iii) in respect of Year 5, [REDACTED];
 - (iv) in respect of Year 6 Extension Period, [REDACTED];
 - (v) in respect of Year 7 Extension Period, [REDACTED];
- (d) in respect of [REDACTED],
- (i) in respect of Year 3, [REDACTED];
 - (ii) in respect of Year 4, [REDACTED];
 - (iii) in respect of Year 5, [REDACTED];
 - (iv) in respect of Year 6 Extension Period, [REDACTED];
 - (v) in respect of Year 7 Extension Period, [REDACTED];
- (e) in respect of [REDACTED],
- (i) in respect of Year 3, [REDACTED];
 - (ii) in respect of Year 4, [REDACTED];
 - (iii) in respect of Year 5, [REDACTED];
 - (iv) in respect of Year 6 Extension Period, [REDACTED];
 - (v) in respect of Year 7 Extension Period, [REDACTED];
- (f) in respect of [REDACTED],
- (i) in respect of Year 3, [REDACTED];
 - (ii) in respect of Year 4, [REDACTED];
 - (iii) in respect of Year 5, [REDACTED];
 - (iv) in respect of Year 6 Extension Period, [REDACTED];
 - (v) in respect of Year 7 Extension Period, [REDACTED];
- (g) in respect of [REDACTED],
- (i) in respect of Year 3, [REDACTED];
 - (ii) in respect of Year 4, [REDACTED];
 - (iii) in respect of Year 5, [REDACTED];
 - (iv) in respect of Year 6 Extension Period, [REDACTED];

- (v) in respect of Year 7 Extension Period, [REDACTED];
- (h) in respect of [REDACTED],
 - (i) in respect of Year 3, [REDACTED];
 - (ii) in respect of Year 4, [REDACTED];
 - (iii) in respect of Year 5, [REDACTED];
 - (iv) in respect of Year 6 Extension Period, [REDACTED];
 - (v) in respect of Year 7 Extension Period, [REDACTED];
- (i) in respect of [REDACTED],
 - (i) in respect of Year 3, [REDACTED];
 - (ii) in respect of Year 4, [REDACTED];
 - (iii) in respect of Year 5, [REDACTED];
 - (iv) in respect of Year 6 Extension Period, [REDACTED];
 - (v) in respect of Year 7 Extension Period, [REDACTED];
- (j) in respect of [REDACTED],
 - (i) in respect of Year 3, [REDACTED];
 - (ii) in respect of Year 4, [REDACTED];
 - (iii) in respect of Year 5, [REDACTED];
 - (iv) in respect of Year 6 Extension Period, [REDACTED];
 - (v) in respect of Year 7 Extension Period, [REDACTED];
- (k) in respect of [REDACTED],
 - (i) in respect of Year 3, [REDACTED];
 - (ii) in respect of Year 4, [REDACTED];
 - (iii) in respect of Year 5, [REDACTED];
 - (iv) in respect of Year 6 Extension Period, [REDACTED];
 - (v) in respect of Year 7 Extension Period, [REDACTED];

4 Flexible Pricing Mechanism

4.1 Not used.

- 4.2 From Service Delivery Date, the Flexible Pricing Mechanism shall apply and the monthly average volume of Units for month x for each of the Services listed in Part 3 of this Schedule 4 shall be calculated as follows:

$$MAVU = VUM + \frac{PVUM}{12}$$

For the initial 11 months following the Service Delivery Date 12 shall be replaced with the number of months completed from the Service Delivery Date.

Where:

- (a) $MAVU$ is the monthly average volume of Units for month x ;
- (b) VUM is the volume of Units reported pursuant to the monthly reporting requirements in Paragraph 1.1 of Part 3 of this Schedule 4, for month x ; and

$PVUM$ is the total volume of Units reported pursuant to the monthly reporting requirements in Paragraph 1.1 of Part 3 of this Schedule 4, for the 11 months preceding month x . (For months prior to Service Delivery Date the volume of units should be 0).

- 4.3 In relation to each of the Services (save in relation to Miscellaneous Base Services and Customer Satisfaction Services), where the $MAVU$ for that Service falls within:

- (a) Volumetric Band 1 or Volumetric Band 4 for that Service, the Authority may either:
 - (i) at its discretion, trigger a Contract Change, in accordance with Part 22 (*Risk Assessment*) and Schedule 30 (*Change Procedure*) of the Contract, or
 - (ii) for the purposes of Volumetric Band 4 only, enter into discussions with the Contractor about the reasons for the increase in volumes, and depending on the outcomes of such discussions, pay the Unit Price for each Unit reported above the limit of volumes of Units within Volumetric Band 4;
- (b) Volumetric Band 2 for that Service, either the applicable Annual Firm Price or the applicable Annual Fixed Price for that Service shall be paid in accordance with this Schedule 4; or
- (c) Volumetric Band 3 for that Service, the relevant Flexible Pricing Mechanism Payment for that Service shall be calculated in accordance with 4.4 and 4.5 of this Part 2 and paid in accordance with this Schedule 4.

- 4.4 In relation to each of the Services listed in Part 3 of this Schedule 4, for each Unit reported above the lower limit of volumes of Units within Volumetric Band 3, the Unit Price shall be paid. The Flexible Pricing Mechanism Payment for each of the Services shall be calculated in accordance with the following formula:

$$FPMP = UP \times UOV B$$

Where:

- (a) $FPMP$ is the Flexible Pricing Mechanism Payment for the Service;

- (b) *UP* is the Unit Price for the Service as calculated pursuant to Paragraph 4.5 of this Part 2; and
- (c) *UOV* is the number of Units reported over the lower limit of the Volumetric Band 3 for the Service.

4.5 The Unit Price for each Service shall be determined in accordance with the following formula:

$$UP = (ASP \times (1 - FC)) \div VU$$

Where:

- (a) *UP* is the Unit Price for the Service;
- (b) *ASP* is:
 - (i) in respect of each Month during Phase 1, the relevant Annual Firm Price for the Service; and
 - (ii) in respect of each Month during Phase 2 or during the Extension Period, the relevant Annual Fixed Price for the Service;
- (c) *FC* is the Fixed Costs expressed as a percentage which for the purposes of this Contract shall be x%; and
- (d) *VU* is the maximum volume of Units specified in Volumetric Band 2 for the Service.

5 Task Approval Form Pricing and Payment

5.1 Where the Contractor carries out any work pursuant to a TAF in accordance with Annex 1 of Schedule 3 (*Lot Specific Conditions*), the Authority shall pay a TAF payment in accordance with the terms of the TAF that has been approved by the Authority.

5.2 The Contractor shall invoice the Authority for each completed TAF. Once the TAF is completed, the Authority will pay for the TAF within thirty (30) Business Days of the date of such invoice (or in accordance with any other such payment terms as may be included in the TAF that has been approved by the Authority).

5.3 The TAF Price to be used for any TAFs relating to [REDACTED] shall be based on the all-inclusive hourly rates as follows:

	Year 1 Firm Price per hour	Year 2 Firm Price per hour	Year 3 Fixed Price per hour	Year 4 Fixed Price per hour	Year 5 Fixed Price per hour	Option Year 1 Fixed Price per hour	Option Year 2 Fixed Price per hour
Ancillary Labour (TAFs) - Cleaning in accordance with PSF 2.10	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Ancillary Labour	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

(TAFs) - Porterage Labour in accordance with PSF 2.10							
----------------------------------------------------------------------	--	--	--	--	--	--	--

TAF Prices for Additional Services (non-QEC)

- 5.4 Any other TAFs shall be priced on a No Acceptable Price No Contract (NAPNOC) basis. The Contractor will be required to demonstrate that any rates used to price TAFs is commensurate with the rates used elsewhere in delivering the Services under this contract.
- 5.5 The TAF Price for non- [REDACTED] shall be based on the following formula:

$$TAF\ Price = DC + [REDACTED] + Profit$$

Where:

- (e) *TAF Price* is the price (non-QEC) for the TAF;
- (f) *DC* is the direct costs of the Contractor reasonably and properly incurred by it due to carrying out the TAF;
- (g) [REDACTED] is the overheads of the Contractor calculated as $DC \times [REDACTED]$;
- (h) *Profit* is the profit rate of the Contractor which is set at [REDACTED] at the point in time a TAF is raised by the Authority x DC.

Part 3 – Determination of Volumes

1.1 The Contractor shall provide to the Authority Monthly volumetric reporting for each of the Services in accordance with notice requirements set out in Schedule 22.

1.2 Volumetric Bands

[REDACTED]

2 Catering, Retail and Leisure Payments

2.1 No payment shall be made to the Contractor for the provision of Retail services.

Utilities Payments

2.2 The Authority shall bear financial responsibility for:

- (a) the cost of consumption of utilities, including gas and electricity, used for the catering facilities in the Officers and Senior Rates Mess; and
- (b) 30% of the cost of consumption of utilities in the Neptune Block catering, retail and leisure facilities.

2.3 The Contractor shall pay the Authority quarterly in arrears for:

- (a) 70% of the cost of consumption of utilities in the Neptune Block catering, retail and leisure facilities; and
- (b) the cost of consumption of any other utilities required for the Retail and Leisure Services.

Retail Revenue Payments

2.4 In accordance with JSP 456 Part 2 Volume 4 Chapter 14 Gainshare, the Contractor shall be entitled to keep 98% of Retail Revenue, and shall provide the Authority with a discount of an amount of 2% of the Retail Revenue.

2.5 The Contractor shall provide a discount against the monthly invoice of an amount that represents 2% of the total Retail Revenue for the corresponding month.

3 Pay as you Dine (PAYD)

Core Meals

3.1 The Contractor shall provide a Core Meal to all HM service persons who are entitled to receive one in accordance with JSP 456 (Crown Feeders), and HM service persons shall pay the Contractor the Core Meal Price for each Core Meal.

3.2 Where such HM service persons do not pay the Contractor the Core Meal Price, the Contractor shall provide a Reimbursable Core Meal.

3.3 *Dispersed Meals*

- 3.4 The Contractor shall provide a Dispersed Meal to all HM service persons as requested by the Pay as you Dine (PAYD) Authority in accordance with JSP 456 (Crown Feeders).
- 3.5 *Crown Feeders Payment*
- 3.6 The Contractor shall provide a monthly report to the Authority with the number of:
- 3.7 Reimbursable Core Meals; and
- 3.8 Dispersed Meals
- 3.9 provided to HM service persons provided during that month.
- 3.10 The Authority shall pay a Crown Feeders Payment to the Contractor to reimburse the Contractor for all Reimbursable Core Meals and all Dispersed Meals provided. The Crown Feeders Payment shall be calculated in accordance with the following:
- 3.11 $CFP = (RCM \times CMX) + (DM \times DMX)$
- 3.12 Where:
- 3.13 *CFP* is the Crown Feeders Payment payable in respect of Month *x*;
- 3.14 *RCM* is the number of Reimbursable Core Meals provided during Month *x*;
- 3.15 *CMX* is the Core Meal Price;
- 3.16 *DM* is the number of Dispersed Meals provided during Month *x*; and
- 3.17 *DMX* is the Dispersed Meal Price.
- 3.18 To the extent that there is any conflict or inconsistency between JSP 456 (Crown Feeders) and this Schedule 4, the provisions of this Schedule 4 shall prevail.

Part 4 – Payment of Contract Price

1 Payment for Services

The Authority shall (subject to and in accordance with this Contract) pay the applicable Annual Service Price in consideration for the Services. Such consideration shall be the Contractor's sole entitlement to remuneration for its obligations under this Contract.

2 Entitlement to Monthly Service Charge

2.1 The Contractor shall (subject to and in accordance with Paragraph 6 (*Calculation of Monthly Balancing Payment*), Paragraph 7 (*Payment and Reconciliation of Monthly Service Price*) and Paragraph 8 (*Reconciliation Payments*) of this Part 4) be entitled to receive from the Authority an instalment of the Total Contract Price in respect of each Month *x* during the Contract Period (a **Monthly Service Charge**) determined in accordance with the formulae in Paragraph 2.2 of this Part 4.

2.2 The Monthly Service Charge payable for Phase 1 Services shall be determined in accordance with the following formula:

$$MSC = FPSP + CFP$$

The Monthly Service Charge payable for Phase 2 Services or Extension Period Services shall be determined in accordance with the following formula:

$$MSC = IPSP + CFP$$

Where:

- (a) *MSC* is the Monthly Service Charge payable in respect of Month *x*;
- (b) *FPSP* is an amount payable for Month *x* in respect of the Firm Price Services determined in accordance with Paragraph 3 of this Part 4;
- (c) *IPSP* is an amount payable for Month *x* in respect the Fixed Price Services determined in accordance with Paragraph 4 of this Part 4; and
- (d) *CFP* is an amount payable for Month *x* in respect of the Crown Feeders determined in accordance with Paragraph 3 (*Crown Feeders*) of Part 3.

2.3 For the First Month, the Contractor shall (subject to and in accordance with Paragraph 6 (*Calculation of Monthly Balancing Payment*), Paragraph 7 (*Payment and Reconciliation of Monthly Service Price*) and Paragraph 8 (*Reconciliation Payments*) of this Part 4) be entitled to receive from the Authority an instalment of the Total Contract Price in respect of the First Month during the Contract Period (a **First Monthly Service Charge**) determined in accordance with the following formula:

$$FMSC = FPSP$$

Where:

- (a) *FMSC* is the Monthly Service Charge payable in respect of the First Month; and

- (b) *FPSP* is an amount payable for the First Month in respect of the Firm Price Services determined in accordance with Paragraph 3 of this Part 4;

3 Instalments of Firm Price Services Price

- 3.1 The amount payable for Month *x* in respect of the Firm Price Services (being the value of *FPSP* for that Month) shall be determined in accordance with Paragraph 3.2 of this Part 4.
- 3.2 This Paragraph 3.2 shall apply to Month *x* if it is during Phase 1. Where this Paragraph 3.2 applies to Month *x*, the value of *FPSP* for that Month shall be the aggregate of:
 - (a) $\frac{1}{12}$ of the Annual Service Price for Phase 1 Services; and
 - (b) any Flexible Pricing Mechanism Payments payable pursuant to Paragraph 4 of Part 2.

4 Instalments of Fixed Price Services Price

- 4.1 The amount payable for Month *x* in respect of the Fixed Price Services (being the value of *IPSP* for that Month) shall be determined in accordance with whichever of Paragraph 4.2 or Paragraph 4.3 of this Part 4 is applicable to Month *x*.
- 4.2 This Paragraph 4.2 shall apply to Month *x* if it is during Phase 2. If this Paragraph 4.2 applies to Month *x*, the value of *IPSP* for that Month shall be the aggregate of:
 - (a) $\frac{1}{12}$ of the Annual Service Price for Phase 2 Services; and
 - (b) any Flexible Pricing Mechanism Payments payable pursuant to Paragraph 4 of Part 2.
- 4.3 This Paragraph 4.3 shall apply to Month *x* if (i) the duration of the Contract has been extended pursuant to Clause 2.4 (*Contract Period Extension*) and (ii) Month *x* is during the Extension Period. If this Paragraph 4.3 applies to Month *x*, the value of *IPSP* for that Month shall be:
 - (a) $\frac{1}{12}$ of the Annual Service Price for Extension Period Services; and
 - (b) any Flexible Pricing Mechanism Payments payable pursuant to Paragraph 4 of Part 2.

5 Other Payments

5.1 Transition Payment

The Contractor shall, subject to and in accordance with Paragraph 9 of Schedule 13 (*Mobilisation Arrangements*), be entitled to include the Transition Payment in its Monthly Cost Report for the first Month following the date set out in such Paragraph 9.

5.2 Employer Contributions

The Contractor shall, subject to and in accordance with the provisions of Part 4 of Schedule 10 (*Pensions*), be entitled to include in its invoice for Monthly Balancing Payment any Employer Contributions paid in that month.

6 Calculation of Monthly Balancing Payment

6.1 The Authority shall calculate and notify the Contractor of the Balancing Payment for each Month x during the Contract Period by no later than the later of:

- (a) ten (10) Business Days after the final day of Month x ; and
- (b) five (5) Business Days after receipt from the Contractor where applicable using the documents and supporting information supplied by the Contractor pursuant to Clause 16 (Progress Reports and Financial Reports).

The balancing payment for Month x shall be calculated as follows:

$$MBP = MSC + TAFP - KPID(x - 1) + KPIR(x - 1) + RA$$

Where:

- (c) MBP is the balancing payment for Month x ;
- (d) MSC is the Monthly Service Charge for Month x determined in accordance with Paragraph 2 (*Entitlement to Monthly Service Charge*) of this Part 4;
- (e) $TAFP$ is an amount payable in respect of the TAFs in accordance with Paragraph 5 (*Task Approval Form Pricing and Payment*) of Part 2;
- (f) $KPID_{(x-1)}$ - is the aggregate of all:
 - (i) Performance Retentions to be deducted in accordance with Paragraph 2.1.2 of Part 2 (*Performance Retentions and Deductions*) of Schedule 5 (*Performance Management and Measurement*); and
 - (ii) Performance Deductions to be deducted in accordance with Paragraph 2.1.3 of Part 2 (*Performance Retentions and Deductions*) of Schedule 5 (*Performance Management and Measurement*);

For the month prior to Month x .

- (g) $KPIR_{(x-1)}$ - is the aggregate of all Performance Retentions to be released in accordance with Paragraph 1 of Part 2 (Calculation and Finalisation of Performance Retentions and Deductions) of Schedule 5 (*Performance Management and Measurement*) for the month prior to Month x ; and
- (h) RA is any reconciling amount determined by the Authority in accordance with Paragraph 8 (*Reconciliation Payments*) of this Part 4, expressed as a positive amount if it is an amount due from the Authority to the Contractor or as a negative amount if it is an amount due from the Contractor to the Authority.
- (i) RR is 2% of the total Retail Revenue for Month x .

6.2 The Monthly Balancing Payment calculated in accordance with Paragraph 6.1 of this Part 4 shall be payable by the Authority to the Contractor in accordance with Paragraph 7 (*Payment and Reconciliation of Monthly Service Price*) of this Part 4.

7 Payment and Reconciliation of Monthly Service Price

- 7.1 The Contractor shall submit an invoice in the amount of the Monthly Balancing Payment (calculated and notified by the Authority pursuant to Paragraph 6 (*Calculation of Monthly Balancing Payment*) of this Part 4) to the Authority in accordance with Paragraph 4 of Part 5 (*Miscellaneous Provisions*) of this Schedule 4.
- 7.2 The Authority shall, following receipt of a valid invoice in accordance with Paragraph 7.1 of this Part 4, pay the amount specified in such invoice in accordance with Paragraph 4 and 5 of Part 5 (*Miscellaneous Provisions*) of this Schedule 4 (and for the purposes of this Paragraph 7.2 an invoice is "valid" if, on examination by the Authority, it is free from material errors).

8 Reconciliation Payments

- 8.1 If at any time it is agreed or determined that any previous calculation of a Monthly Service Charge or any other amount payable by one Party to the other was lower or higher than it should have been:
- (a) the amount of the excess or shortfall (as the case may be) shall be a negative or positive (as the case may be) reconciling amount for the purposes of Paragraph 5.1(h) of Part 4; and
 - (b) such reconciling amount shall be due from one Party to the other in the applicable amount, and shall be payable in the manner provided for under Paragraph 6 (*Calculation of Monthly Balancing Payment*) and Paragraph 7 (*Payment and Reconciliation of Monthly Service Price*) of this Part 4.
- 8.2 Without prejudice to Paragraph 8.1, if it becomes apparent that there is any discrepancy or error in any previously invoiced amount then (whether or not a previous reconciling amount has been paid or payable in respect of the amount or matter concerned), such discrepancy or error shall be corrected by an adjustment or reconciling amount reflected in a subsequent invoice.

Part 5 – Miscellaneous Provisions

1 Errors

- 1.1 Subject to Paragraph 1.2, if at any time it becomes apparent that any error has been made in the operation of this Schedule 4, that error shall be corrected as soon as reasonably practicable (and in any event within sixty (60) calendar days of the Authority becoming aware of such error) and such provision shall be made for amendment to items agreed, estimated, determined or calculated pursuant to this Schedule 4 as may be requisite to correct the error concerned and secure that neither Party is financially disadvantaged as a result of the error having been made. The Contractor shall notify the Authority as soon as practicable upon becoming aware of any such error.
- 1.2 Except in cases of fraud, Paragraph 1.1 shall apply only in respect of errors which have come to light and been notified by one Party to the other within six (6) years after the date on which the error was made.

2 CP&F Unique Identifiers

- 2.1 For the purposes of this Paragraph, Unique Identifiers comprise the following:
- (a) Unique Order Identifier (UOI) generated by the Contracting, Purchasing & Finance (CP&F) electronic procurement tool for non-inventory purchase orders;
 - (b) Unique Receipt Reference Identifier (URRI), generated by CP&F for inventory purchase orders; or
 - (c) Electronic Business Capability (EBC) Unique Package Identifier (EUPI) generated for EBC contractor logistic support contracts. EUPIs comprise two parts, the first part being the identifier allocated by the Authority and the second part being the identifier generated by the Contractor.
- 2.1.2 All invoices submitted by the Contractor pursuant to this Contract shall be submitted through CP&F.
- 2.2 For CP&F purchase orders, the Contract or an order issued under a Framework will reference UOIs or URRI, or both. The application of UOIs and URRI is at the line item level. The Contractor must quote the applicable Unique Identifier in any communication concerning a line item.
- 2.3 For EBC contractor logistic support contracts, the Contractor will generate EUPIs in fulfilling demands raised under a contractor logistic support contract. A EUPI applies for each package and the Contractor must quote it in any communication concerning a package. Where a delivery includes more than one package, each package must have a separate EUPI.

3 The Use Of The Electronic Business Delivery Form

Form Usage

- 3.1 Whenever requested by the Authority, the Contractor shall use the electronic business delivery form DEFFORM 129J (Edition 09/17) for all deliveries of Articles and performance of Services.

- 3.2 The electronic business delivery form must accompany the package or consignment to which it applies. The Contractor must either:
- (a) attach the form as a label, directly to the package surface, or
 - (b) forward the form in a document envelope.

4 Payment and Recovery of Sums Due

- 4.1 Payment for the Services will be made by electronic transfer and prior to submitting any claims for payment under Paragraph 3 of Part 4 the Contractor will be required to register their details (Supplier on-boarding) on the Contracting, Purchasing and Finance (CP&F) electronic procurement tool.
- 4.2 Where the Contractor submits an invoice to the Authority in accordance Paragraph 7.1 of Part 4, the Authority will consider and verify that invoice in a timely fashion. Where there is undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of Paragraph 4.3 after a reasonable period of time has passed.
- 4.3 The Authority shall pay the Contractor any sums due under such an invoice no later than a period of thirty (30) calendar days from the date on which the Authority has determined that the invoice is valid and undisputed.
- 4.4 The approval for payment of a valid and undisputed claim for payment 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 under this Contract.
- 4.5 Without prejudice to any other right or remedy, the Authority reserves the right to set off any amount owing at any time from the Contractor to the Authority against any amount payable by the Authority to the Contractor under the Contract or under any other contract with the Authority, or with any other Government department.
- 4.6 All payments under or pursuant to this Contract due or to become due by the Contractor shall be made by the Contractor no later than thirty (30) days (or such other period as set out in this Contract) from the date on which they become due and free of any deduction whatsoever and the Contractor hereby irrevocably waives and disclaims, in relation to any matter under this Contract, any and all rights, past present or future, of retention, set off, compensation or lien as against the Authority.

5 Disputed payments

If the payment or deduction of any amount referred to in Paragraph 4 above is disputed then any undisputed element of that amount shall be paid and the disputed element shall be dealt with in accordance with the Dispute Resolution Procedure.

6 VAT and Import Duty

- 6.1 VAT
- (a) Any amount that is due and payable under this Contract (including the Total Contract Price) excludes any UK output Value Added Tax (VAT) and any similar EU (or non-EU) taxes chargeable on the supplies of Services by the Contractor to the Authority.

- (b) If the Contractor is required by UK VAT law to be registered for UK VAT (or has registered voluntarily) in respect of its business activities at the time of any supply, and the circumstances of any supply are such that the Contractor is liable to pay the tax due to HM Revenue and Customs (**HMRC**), the Authority shall pay to the Contractor in addition to the Total Contract Price (or any other sum due to the Contractor) a sum equal to the output VAT chargeable on the tax value of the supplies of Services, and all other payments under the Contract according to the law at the relevant tax point. In the event of any doubt about the applicability of the tax in such cases, the Authority may require the Contractor to obtain and pass to the Authority a formal ruling from HMRC.

- (c) The Contractor is responsible for the determination of VAT liability. The Contractor shall contact its HMRC Client Relationship Manager or the HMRC Enquiries Desk and not the Authority Contract Manager in cases of doubt. The Contractor shall notify the Authority Contract Manager of the Authority's VAT liability under the Contract, and any changes to it, within 20 (twenty) Business Days of becoming aware that the liability is other than at the standard rate of VAT. In the event of any doubt about the applicability of the tax in such cases, the Authority may require the Contractor to obtain, and pass to the Authority, a formal ruling from HMRC. The Contractor shall comply promptly with any such requirement. Where the Contractor obtains a ruling from HMRC, it shall supply a copy to the Authority within three Business Days of receiving that ruling unless it proposes to challenge the ruling. Where the Contractor challenges the ruling it shall supply to the Authority a copy of any final decisions issued by HMRC on completion of the challenge within three Business Days of receiving the decision.

- (d) Where the Services come within the scope of UK VAT, but the Contractor is not required by UK VAT law to be registered for UK VAT (and has not registered voluntarily), the Authority shall be responsible for assessing and paying over directly to HMRC any UK output VAT due in respect of the Services. The Contractor shall be responsible for ensuring it takes into account any changes in VAT law regarding registration.

- (e) Where 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) turnover or similar tax. In that event, the Authority shall pay to the Contractor in addition to the Total Contract Price (and any other sum due to the Contractor under the Contract) a sum equal to the tax the Contractor is liable to pay to the tax authorities of the country in question in relation to the Services within thirty calendar days of a written request for payment of any such sum by the Contractor.

- (f) In relation to the Services supplied under the Contract the Authority shall not be required to pay any sum in respect of the Contractor's input VAT (and/or similar EU and non-EU input taxes). However, these input taxes will (if they are on a supply to it which is used or to be used exclusively in performing the Services or any of the obligations or provisions under this Agreement) be Actual Costs where it is proven to the Authority that, despite the Contractor having taken all reasonable steps to recover them, it has not been possible to do so. Where there is any doubt that the Contractor has complied with this requirement the matter shall be resolved under the Dispute Resolution Procedure.

- (g) Should HMRC decide that the Contractor has incorrectly determined the VAT liability, in accordance with Paragraph 6.1(b) of this Part 5, the Authority will pay the VAT assessed by HMRC. In the event that HMRC so determines, the Contractor shall pay any interest charged on any assessment or penalties or both directly to HMRC. Such interest or penalties or both shall not be recoverable from the Authority under this Contract or any other contract. The Contractor shall supply the Authority with a copy of all correspondence between HMRC and the Contractor's advisors regarding the VAT assessment within three (3) Business Days of a written request from the Authority for such correspondence.

6.2 Import Duty

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

7 Allowable Verification Issue

- 7.1 The following definitions shall apply for this Paragraph 7:

Allowable Assumption means each allowable assumption as stated in Appendix B (*Allowable Verification Issue*) of this Schedule 4 (*Pricing and Payment*).

Allowable Verification Issue means each issue which may require verification as stated in Appendix B (*Allowable Verification Issue*) of this Schedule 4 (*Pricing and Payment*).

Verification Period means in relation to all Allowable Verification Issues, a period of four (4) months from (and including) the Commencement Date.

- 7.2 The Contractor may determine whether each Allowable Assumption is accurate within its Verification Period by verifying each Allowable Verification Issue.
- 7.3 During the Verification Period, the Authority shall provide the Contractor with reasonable assistance and access to information within its possession or reasonable control and which the Authority deems is relevant to the Allowable Verification Issue and the Allowable Assumption being verified. The Authority and the Contractor may discuss the Allowable Verification Issues during the Verification Period.
- 7.4 Within twenty (20) Business Days of the end of the Verification Period, the Contractor shall provide the Authority with a written report (Verification Report) setting out the results of the Contractor's verification activity for the relevant Allowable Verification Issues, including whether the Allowable Assumption is accurate and the impact, if any, on (i) any Tendered Amount, and/or (ii) the Requirements. Such Verification Report shall set out sufficient detail and evidence to enable the Authority to confirm the contents of such report.
- 7.5 Within twenty (20) Business Days of receipt of the Verification Report, the Authority shall, acting reasonably and with due regard to the Verification Report and any related discussions with the Contractor, determine whether the Allowable Assumption is accurate. The Authority's decision shall (save in the case of manifest error) be final and not capable of dispute by the Contractor.
- 7.6 Where the Authority determines that an Allowable Assumption is not accurate it shall inform the Contractor and:

- (a) the Contractor shall take all reasonable steps to mitigate the impact of the Allowable Assumption on a Tendered Amount and/or the Requirements;
- (b) the Authority may, in its absolute discretion, propose a change to the Volumetric Bands and/or Requirements to take account of the impact of the adjustment of the Allowable Assumption;
- (c) the Authority and the Contractor may, if required by the Authority, discuss the impact of the proposed adjustment to the Allowable Assumption on a Tendered Amount (including on the Annual Firm Prices and Annual Fixed Prices) and/or the Requirements; and
- (d) the Authority may, in its absolute discretion, instruct an alteration to the Volumetric Bands and/or the Requirements and a corresponding alteration to any applicable Tendered Amount.

7.7 Any change to a Tendered Amount pursuant to this Paragraph 7 shall only be made on the basis of the methodology and using the same figures, prices and inputs as applicable for the amounts set out in the Initial Contract Pricing Statement in Schedule 17 (*Contract Pricing Statement*) and such that it is proportionate to any change in the Volumetric Bands and/or Requirements (taking account of any fixed costs which shall be excluded from any such calculations). The Authority shall be the sole arbiter of such matters.

7.8 Should the Authority determine that any Allowable Assumption is accurate, no changes shall be permitted or made to the Volumetric Bands, Requirements, Tendered Amounts or otherwise, and this matter shall not be capable of Dispute.

Part 6 – Indexation Formula

1 Indexation Formula

1.1 Definitions

In this Part 6:

Base Date means 1 October 2021.

Cost Category means the relevant cost category, as set out in Paragraph 4.1, Part 6 of Schedule 4 (*Pricing and Payment*), for the relevant Fixed Price Service (each such cost category being specified in the price summary tab 2, Price, Contract Pricing Statement set out in Schedule 17 (*Contract Pricing Statement*)).

Index means the Consumer Price Index (Overall Index) D7BT - All relevant Cost Categories for the Services (as on the Office of National Statistics (ONS) website: <http://www.ons.gov.uk/>).

Indexable Amount means the amount required to be indexed in accordance with this Part 6.

Indexed Amount means the Indexable Amount after indexation in accordance with this Part 6.

Indexation Date means in every Contract Year the date falling on the anniversary of the Base Date.

National Minimum Wage has the meaning given to it in the National Minimum Wage Act 1998 and as further detailed in the National Minimum Wage Regulations 2015 (SI 2015/621).

O_i is the value of the Index published most recently before the Indexation Date.

O_o is the value of the Index published most recently before the Base Date.

2 Calculation of Indexed Amount

On each Indexation Date, the Indexable Amount shall be substituted by the Indexed Amount, calculated as follows:

$$\text{Indexed Amount} = \text{Indexable Amount} \times \frac{O_i}{O_o}$$

3 Changes to the Indices

3.1 Indices published with a 'B' or 'F' marker, or a suppressed value, in the last 3 years are not valid and shall not be used. Where the price index has an 'F' marker or suppression applied to it during the term of this Contract, the Authority and the Contractor shall agree an appropriate replacement index or indices. The replacement index or indices shall cover, to the maximum extent possible, the same economic activities as the original index or indices.

3.2 In the event that any material changes are made to the indices (including a revised statistical base date) during the Contract Period, then the re-basing methodology outlined by the Office for National Statistics (ONS, the series providers) to match the original index to the new series shall be applied.

- 3.3 In the event the agreed index or indices cease to be published (for example because of a change in the Standard Industrial Classification System) the Authority and the Contractor shall agree an appropriate replacement index or indices, which shall cover to the maximum extent possible the same economic activities as the original index or indices. The methodology outlined by the Office for National Statistics used for rebasing indices (as in Paragraph 3.2 above) shall then be applied.
- 3.4 Notwithstanding the above, any extant index or indices agreed in this Contract shall continue to be used as long as it is (or they are) available and subject to ONS revisions policy. Payments calculated using the extant index or indices during its (or their) currency shall not be amended retrospectively as a result of any change to the index or indices.

4 Indexation and Increases

- 4.1 Each of the Fixed Price Services set out in Paragraph 3, Part 2 (*Contract Price*), Schedule 4 (*Pricing and Payment*) is comprised of the following Cost Categories:
- (a) labour;
 - (b) materials;
 - (c) sub-contractors; and
 - (d) all other costs.
- 4.2 The following Cost Categories for the relevant Fixed Price Service shall be indexed in the relevant Contract Year in accordance with the Indexation Formula set out in Paragraph 1, Part 6, Schedule 4 (*Pricing and Payment*).
- (a) percentage of labour (being the percentage of the Contractor's labour identified in the Contract Pricing Statement, for the relevant Contract Year, in the input assumptions tab 14. Input Assumptions, Contract Pricing Statement set out in Schedule 17 (*Contract Pricing Statement*) as not entitled to receive the National Minimum Wage (such percentage rate shall be a fixed percentage rate applicable for the Contract Period));
 - (b) materials;
 - (c) sub-contractors; and
 - (d) all other costs.
- 4.3 The Cost Category for percentage of labour (being the percentage of the Contractor's labour identified, for the relevant Contract Year, in the input assumptions tab 14. Input Assumptions, Contract Pricing Statement set out in Schedule 17 (*Contract Pricing Statement*) as entitled to receive the National Minimum Wage) for the relevant Fixed Price Service, shall be increased by four point three percent (4.3%) on 1 April in the relevant Contract Year and each anniversary thereafter. Subject to Paragraphs 4.4 and **Error! Reference source not found.**, Part 6, Schedule 4 (*Pricing and Payment*), such percentage increase shall be a fixed percentage increase applicable each Contract Year. For the avoidance of doubt, such percentage of labour shall not also be indexed in accordance with the Indexation Formula pursuant to Paragraph 4.2, Part 6, Schedule 4 (*Pricing and Payment*).

4.4 At the time of determining the Annual Fixed Price for a particular Contract Year within Phase 2 or within the Contract Period Extension, the Authority will consider:

- (a) the average of the National Minimum Wage (the Wage Agreement) across all age groups to which the Wage Agreement applies, calculated as a simple average with equal weight given to each separate hourly wage per age group within the Wage Agreement, at the time such determination of the Fixed Prices is made (this average being WA_n)
- (b) the average of the Wage Agreement, calculated in the manner described in (a) above, one year prior to the time such determination of the Annual Fixed Price is made (this average being WA_{n-1}).
- (c) the average of the Wage Agreement, calculated in the manner described in (a) above, at the Base Date (this average being $WAbase$).

4.5 [REDACTED]

Part 7 – RN Personnel

1 Introduction

1.1 In carrying out the relevant Services, the Parties envisage that the Contractor will only have a limited dependency on RN Personnel provided in accordance with Part 5 (*RN Personnel*) of Schedule 10 (*Personnel*) of this Contract. This Part 7 of Schedule 4 sets out the Parties’ agreement for the pricing and payment for any such RN Personnel under this Contract.

2 Charge for RN Personnel

2.1 The Authority shall charge the Contractor for the placement of RN Personnel at the following hourly rates (the **RN Personnel Charge**).

Authority Financial Year	Hourly rate
2021/2022	██████████
2022/2023	██████████
2023/2024	██████████
2024/2025	██████████
2025/2026	██████████
2026/2027	██████████

2.2 No fees or other payments shall be made by either Party to the other in relation to the provision and/or use of RN Personnel, save to the extent payable as the RN Personnel Charge.

3 RN Personnel Service Charge

3.1 The RN Personnel Service Charge is the amount payable by the Authority to the Contractor in respect of the work anticipated to be carried out by RN Personnel in delivering Services that would, in the absence of those RN Personnel, be carried out by the Contractor in delivering the Services.

3.2 The RN Personnel Service Charge shall be calculated by multiplying the RN Personnel Charge and the RN Annualised Hours agreed between the Authority and the Contractor prior to the commencement of each Contract Year and shall apply to the respective Contract Year in accordance with Schedule 10 (*Personnel*).

3.3 The RN Personnel Service Charge shall be included in the Annual Service Price for each Contract Year, as described in Paragraph 2 (*Pricing of Firm Price Services*) and 3 (*Pricing of Fixed Price Services*) of Part 2 of this Schedule 4, however it shall be changed annually based on the RN Personnel Annualised Hours which are subject to review and adjustment in accordance with Paragraph 2.2 (*RN Programme*) and Paragraph 2.3 (*RN Rota*) of Part 5 (*RN Personnel*) of Schedule 10 (*Personnel*).

4 RN Personnel Actual Amount

- 4.1 The RN Personnel Actual Amount is the amount payable by the Contractor to the Authority in respect of the actual hours worked by RN Personnel on behalf of the Contractor in delivering the Services.
- 4.2 The RN Personnel Actual Amount shall be calculated by multiplying the RN Personnel Charge and the RN Utilised Hours worked by RN Personnel in the respective Contract Year.
- 4.3 The Authority shall invoice the Contractor monthly an amount equal to the respective month's RN Personnel Actual Amount. Alternatively, at its option, the Authority may require the Contractor to include a credit on the Contractor's invoice for the respective (or a future) month.

5 Contractor's Use of Excess Funds

- 5.1 If the RN Personnel Service Charge is greater than the RN Personnel Actual Amount for a particular month, the Contractor shall only use the excess funds to cover its costs arising from providing short term RN Personnel replacements (other than Priority Posts) as required.
- 5.2 No fees or other payments shall be made by either Party to the other in relation to the provision and/or use of RN Personnel, save to the extent payable as the RN Personnel Actual Amount and the RN Personnel Service Charge.

6 RN Personnel volume adjustments

Subject to the provisions of Paragraph **Error! Reference source not found.** (*Employment of RN Personnel*) of Part 5 (*RN Personnel*) of Schedule 10 (*Personnel*) of this Contract, no failure by the Authority to provide any RN Personnel to the Contractor shall lead to any adjustment to the Total Contract Price or any element thereof.

Appendix A – Tendered Amounts

- 1 As further set out in Schedule 17 (*Contract Pricing Statement*).

Appendix B– Allowable Verification Issues

[REDACTED]

Note: the above annual figures or figures per month should be calculated on an average basis from annual volumetric data.

Schedule 5 - Performance Management and Measurement

Part 1 – Performance Measurement

1 Interpretation

In this Schedule 5 (*Performance Management and Measurement*), the following terms shall have the following meanings:

Available means any room is ready for occupation that has been cleaned and Authority-issued bedding supplied with no Reportable Defects;

Contractor Reported means performance data supplied by the Contractor;

Joint Audit means an Audit conducted with both the Authority and the Contractor present, with the Contractor being obliged to attend upon 3 working days' notice from the Authority forecast to be held weekly;

Performance Measure means one of the detailed requirements set out in the column headed "*Performance Measure*" in the KPI Table;

Random Audit means an Audit conducted by the Authority to audit performance, at the discretion of the Authority;

Rating Criteria means, in relation to a KPI, the criteria for rating performance against that KPI, as set out in the column headed "*Rating*" in the KPI Table;

Reportable Defects means a defect not caused by any act of the Contractor that has been reported to the Authority for resolution by a relevant third party;

Reporting Period means a calendar month;

Service Request means a legitimate request for any services provided by the Contractor, made by an Entitled User;

Unavailable means any room is not ready for occupation either due to a Reportable Defect or where the Authority has otherwise designated it as such; and

Uptime means the system is available for customers to access

All other capitalised terms have the meanings set out in Schedule 1 (*Definitions*).

2 Performance Management System: Overview

2.1 Performance of the Services, in accordance with the Output Specification, shall be monitored through the Key Performance Indicators (KPIs) detailed in the KPI Table.

2.2 This Schedule 5 (*Performance Management and Measurement*) documents the way in which adjustments to will be calculated and applied to the Monthly Service Charge.

3 Key Performance Indicators and Management Information

3.1 The KPIs set out the performance standards for meeting and/or exceeding the Requirements.

- 3.2 Each KPI has a set of Performance Measures applicable to it, which will be used to determine the actual performance of the Contractor against the Requirements.
- 3.3 The level of the Contractor's performance against the Performance Measures will result in a rating being allocated to each KPI using the applicable Rating Criteria. This rating will be used to allocate Retentions and Deductions.
- 3.4 In addition to the KPIs set out in this Schedule 5, the Contract shall provide the Management Information in accordance with the format and timescales specified in Schedule 22 (*Reports*).

Part 2 – Performance Management

1 Performance Management

- 1.1 The Contractor shall, within 10 (ten) Business Days after the end of each Reporting Period, provide a report detailing the rating for each KPI (with reference to the applicable Rating Criteria) within the Reporting Period and falling due for measurement at the end of such Reporting Period. Such report shall include any proposed relief to be applied in respect of that Reporting Period, together with justifications and supporting evidence.
- 1.2 Where any KPI relates to a Service, the Contractor shall, notwithstanding the date on which any Deduction is deducted for that KPI, report against the relevant performance measure for that KPI in respect of each Reporting Period.
- 1.3 The operation of this Schedule 5 is without prejudice to the Authority's rights and remedies set out elsewhere in this Contract or at law.
- 1.4 Deductions shall vest permanently in the Authority.

2 Performance Retentions and Deductions

- 2.1 Subject to Clause 54.6.3 (*Relief Events and Compensation Events*) if the Contractor's performance against:
 - 2.1.1 a particular KPI in the relevant Reporting Period is Red or Amber the Authority shall be entitled to retain a percentage of the Monthly Service Charge as detailed in the table at Annex 1 (a **Retention**); and
 - 2.1.2 a particular KPI in two consecutive Reporting Periods is Red or Amber, the Authority may permanently retain the amount previously retained in accordance with the principles detailed in the table at figure 1 (a **Deduction**). However in relation to the Snow and Ice Clearance Services (included in PSF 2.5.1), if the Contractor's performance against a particular KPI in any single relevant Reporting Period is Red, the Authority shall be entitled to permanently retain the percentage of the Monthly Service Charge (without first having to retain such amount).

Period 1 KPI Rating	Period 1 Retention/ Payment	Period 2 KPI Rating	Period 2 Retention/Payment
Red	x % retained	Red	Period 1 Retention becomes a Deduction, Period 2 x % retained.
Red	x % retained	Amber	Period 1 Retention becomes a Deduction, Period 2 y % retained.
Red	x % retained	Green	Period 1 Retention paid

Amber	y % retained	Red	Period 1 Retention becomes a Deduction, Period 2 x % retained.
Amber	y % retained	Amber	Period 1 Retention becomes a Deduction, Period 2 y % retained.
Amber	y % retained	Green	Period 1 Retention paid
Green	No retention	Green	No retention

2.2 In two consecutive Reporting Periods, where a KPI is determined to be Amber or Red in the first of the two consecutive Reporting Periods and Green in the second of the two consecutive Reporting Periods, the Retention for the Amber or Red rating in the first of the two consecutive Reporting Periods shall be released.

2.3 Whenever the Contractor suffers Deductions amounting to ten per cent (10%) of 1/12 of the Annual Service Price, the Parties will meet as soon as reasonably practicable thereafter. At this meeting, the Contractor is required to provide, to the satisfaction of the Authority, a remedial action plan which as a minimum will address the following:

2.3.1 Identify the cause of the Amber/Red KPIs.

2.3.2 Identify the failings of the Contractor to deliver the relevant Service(s).

2.3.3 Identify the steps required to rectify the failings of the Contractor and to ensure the continued deliver the Service(s) without suffering KPI Retention or Deduction.

2.3.4 The Contractor shall be obliged to take all steps identified in the remedial action plan at Paragraph 2.2.3 above.

3 Termination and Partial Termination for Performance Failures

3.1 For the purposes of Clause 59 (*Contractor Default*) a Contractor Default shall occur if:

3.1.1 The same KPI is red in three (3) consecutive Reporting Periods; or

3.1.2 The Contractor suffers Deductions amounting to ten per cent (10%) of 1/12 of the Annual Service Price two (2) times in any six (6) Reporting Periods.

3.2 Not used.

ANNEX 1 – KEY PERFORMANCE INDICATORS

[REDACTED]

Schedule 6 – Governance

1 Definitions

In this Schedule 6 the following words and expressions shall have the meanings set respectively against them:

Lot Owner means, in relation to an FMSP Contract, the Authority representative (as notified by the Authority to the Contractor) with ultimate responsibility for that FMSP Contract, who shall be at the Authority one star level (or equivalent) or above.

Lot Service Manager means the Authority representative with responsibility for supplier delivery and assurance within the particular service Lot. The Lot Service Manager shall be the Authority's first point of contact with the Contractor.

2 Introduction

- 2.1 This Schedule 6 outlines the two principal governance bodies and procedures by means of which: (i) the Authority and the Contractor shall exercise governance of this Contract and provide leadership, direction and accountability; and (ii) the Authority and all Service Delivery Location Suppliers (including the Contractor) shall participate in wider collaboration activities, in both cases so as to facilitate achievement of the Commercial Purpose.
- 2.2 The governance structure of this Contract shall include (and the Parties shall be represented by) the following bodies:
- (a) the Ops Co-ordination Group, as described further in Paragraph 3 (*Ops Co-ordination Group*);
 - (b) the Lot Delivery Board, as described further in Paragraph 4 (*Lot Delivery Board*).
- 2.3 Further regular meetings will be held between the Authority and the Contractor throughout the Contract Period as required and as may be agreed between the Parties, which may include (but are not limited to):
- (a) weekly (or as otherwise required) co-ordination meetings to review prior, current and forthcoming operational activities;
 - (b) daily meetings or calls (as required) to discuss daily operational requirements;
 - (c) regular interface with other contractors to review areas of dependency and approach to opportunities for co-working; and
 - (d) Interaction with intelligent customer contract management personnel acting on behalf of the Authority as and when required.

3 Ops Co-ordination Group

- 3.1 The Ops Co-ordination Group is the forum in which the Authority (represented by the Lot Owners and the Lot Service Managers) and all Service Delivery Location Suppliers (including the Contractor) will regularly review the collaborative working relationships of all Service Delivery Location Suppliers to inform future operational plans, address any issues and foster best practice and collaboration. Other attendees may be invited to Ops Co-ordination Group meetings as appropriate, as specified in Paragraph 3.2 of Annex 1 (*Terms of Reference* –

Ops Co-ordination Group). The Ops Co-ordination Group meeting shall form part of the "Service Delivery Integration Group" function, as shown in the organisational design diagram in Annex 3.

- 3.2 The terms of reference for the Ops Co-ordination Group are set out in Annex 1 to this Schedule 6.

4 Lot Delivery Board

- 4.1 The Lot Delivery Board is the committee responsible for the effective management and monitoring of the operations and performance of this Contract. The Lot Delivery Board meeting shall form part of the "Service Delivery Group" function, as shown in the organisational design diagram in Annex 3.

- 4.2 The terms of reference for the Lot Delivery Board are set out in Annex 2 to this Schedule 6.

5 Costs

- 5.1 Each Party shall bear all its own costs relating to the operation of the governance process described in this Schedule 6.
- 5.2 The costs of any facilities (including use of buildings and infrastructure) provided for the purpose of the operation of the governance process described in this Schedule 6 shall be borne by the Party making the provision.

6 Matters requiring Contractor or Authority approval pursuant to this Contract

- 6.1 Where this Contract expressly provides a requirement for the agreement, consent or approval of or to any matter by the Contractor, the following individuals and/or post-holders are authorised to grant that agreement, consent or approval on behalf of the Contractor:

- (a) the Contractor Contract Manager;
- (b) the Contractor's representatives on the Ops Co-ordination Group, in respect of all matters relating to the Ops Co-ordination Group;
- (c) the Contractor's representatives on the Lot Delivery Board, in respect of all matters relating to the Lot Delivery Board; and
- (d) any other individual or post-holder notified from time to time in writing by the Contractor Contract Manager to the Authority Contract Manager but only to the extent of that individual or post-holder's authorisation (as set out in such Notice),

and provided always that amendments to this Contract may only be authorised in accordance with the process set out at Schedule 30 (*Change Procedure*).

- 6.2 Where this Contract expressly provides a requirement for the agreement, consent or approval of or to any matter by the Authority, the following individuals and/or post-holders are authorised to grant that agreement, consent or approval on behalf of the Authority:

- (a) the Authority Contract Manager;
- (b) the Lot Owner in respect of this Contract in respect of all matters relating to the Ops Co-ordination Group and the Lot Delivery Board; and

- (c) any other individual or post-holder notified from time to time in writing by the Authority Contract Manager to the Contractor Contract Manager but only to the extent of that individual or post-holder's authorisation (as set out in such Notice),

and provided always that amendments to this Contract may only be authorised in accordance with the process set out at Schedule 30 (*Change Procedure*).

7 Not used

Annex 1 – Terms of Reference – Ops Co-ordination Group

1 Introduction

The Ops Co-ordination Group is the forum in which the Authority (represented by the Lot Owners and the Lot Service Managers) and all Service Delivery Location Suppliers (including the Contractor) will review the collaborative working relationships of all Service Delivery Location Suppliers to inform future operational plans, address any issues and foster best practice and collaboration.

2 Purpose of the Ops Co-ordination Group

2.1 The purpose of the Ops Co-ordination Group is to:

- (a) review and plan the activities of all Service Delivery Location Suppliers to coordinate activities and dependencies across relevant FMSP Contracts and allow for efficient delivery;
- (b) identify actual and potential risks and issues at the Service Delivery Location and determine mitigating actions;
- (c) facilitate benchmarking across FMSP Contracts;
- (d) facilitate the sharing of best practice, learning, innovation and know-how amongst Service Delivery Location Suppliers, including sharing of business and commercial advice;
- (e) ensure that all Service Delivery Location Suppliers comply with the Collaboration Principles as set out in Schedule 16 (*Collaboration and Integration*);
- (f) co-ordinate impact assessments (where appropriate); and
- (g) consider and manage the interfaces between the scope of this Contract and the Parties' other activities outside the scope of the Contract.

2.2 The Contractor shall schedule all activities and planned work under this Contract in accordance with output from the Ops Co-ordination Group.

3 Operation of the Ops Co-ordination Group

Membership

3.1 The Ops Co-ordination Group will comprise:

- (a) all Lot Owners in respect of the Service Delivery Location;
- (b) the Lot Service Managers; and
- (c) equivalent representatives from each of the Service Delivery Location Suppliers (who shall each have full power and authority to act for and to make decisions on behalf of the relevant Service Delivery Location Supplier).

3.2 Other attendees may be invited to attend meetings of the Ops Co-ordination Group as appropriate, including:

- (a) other suppliers of services to the Naval Base; and
- (b) subject matter experts, who may be required to share best practice from other contracts and encourage continuous improvement.

Meetings

- 3.3 The Ops Co-ordination Group shall convene monthly and be chaired by the Naval Base Commander. Frequency of meetings may increase if operational complexity or Naval Base output requires it.
- 3.4 Both Parties shall ensure that their representatives as specified in Paragraph 3.1 or replacements as notified in accordance with Paragraph 3.5, shall be present at meetings of the Ops Co-ordination Group. The Contractor shall include details of its representatives' attendance at Ops Co-ordination Group meetings within the progress reports supplied to the Authority pursuant to Clause 16 (*Progress Reports and Financial Reports*).
- 3.5 If any member of the Ops Co-ordination Group is not able to attend a meeting, that person shall use all reasonable endeavours to ensure that:
 - (a) a suitably empowered delegate attends the relevant meeting in his/her place who (wherever possible) is properly briefed and prepared; and
 - (b) that he/she is debriefed by such delegate after the meeting.
- 3.6 The chair of the Ops Co-ordination Group shall have the power to:
 - (a) convene and chair meetings of the Ops Co-ordination Group every month or as otherwise agreed by the Parties;
 - (b) arrange for others to attend Ops Co-ordination Group meetings as appropriate and as agreed by the Parties;
 - (c) determine the agenda for each meeting;
 - (d) monitor the progress of any follow up tasks and activities agreed to be carried out following Ops Co-ordination Group meetings; and
 - (e) facilitate the process or procedure by which any decision agreed at any Ops Co-ordination Group meeting is given effect in the appropriate manner.
- 3.7 Either Party (or any Service Delivery Location Supplier other than the Contractor) may request an extraordinary meeting of the Ops Co-ordination Group in addition to the regular monthly meetings on reasonable Notice (being no less than five (5) Business Days' Notice unless otherwise agreed by the Parties). The Parties shall use reasonable endeavours to ensure that their representatives on the Ops Co-ordination Group, or suitable replacements as notified in accordance with Paragraph 3.5, attend such meetings and that the matter(s) or issue(s) to be addressed are determined expeditiously.
- 3.8 The first meeting of the Ops Co-ordination Group shall be no later than one (1) month after the Effective Date, or such other date as the Parties agree.
- 3.9 The Authority shall provide a secretary for meetings of the Ops Co-ordination Group to record the decisions made, actions to be undertaken and any strategy or plan on how to take key

issues or initiatives forward in relation to the joint working relationships of the Service Delivery Location Suppliers.

- 3.10 The Parties shall participate in meetings of the Ops Co-ordination Group in a collaborative manner and in accordance with the Collaboration Principles set out in Schedule 16 (*Collaboration and Integration*). The attendees shall endeavour to reach a common consensus in relation to any decision required to be taken at an Ops Co-ordination Group meeting and the Naval Base Commander shall be the deciding authority in the event that a common consensus cannot be achieved.

Records

- 3.11 The Authority shall issue the record of decisions made and actions placed including their status within three (3) Business Days of an Ops Co-ordination Group meeting. Both Parties shall, in consultation with the other Service Delivery Location Suppliers and within five (5) Business Days of the date of issue of such record, either agree that record or revise and agree an amended record.
- 3.12 The Authority shall circulate an agenda and any supporting material/management information five (5) Business Days prior to a meeting of the Ops Co-ordination Group, unless the meeting has been convened in accordance with Paragraph 3.7 on less than five (5) Business Days' Notice, in which case the Authority shall use reasonable endeavours to circulate an agenda and relevant information forty-eight (48) hours before the meeting convenes.

4 Authority

The Ops Co-ordination Group has no authority to make decisions that change the structure and operation of this Contract, including the terms and conditions, governance, finance and contracting frameworks and reporting processes.

Annex 2 – Terms of Reference – Lot Delivery Board

1 Introduction

The Lot Delivery Board is the committee responsible for the effective management and monitoring of the operations and performance of this Contract.

2 Purpose of the Lot Delivery Board

2.1 The purpose of the Lot Delivery Board is to:

- (a) manage, co-ordinate and administer this Contract in accordance with the requirements of these terms of reference and in a manner that is consistent with the achievement of the Commercial Purpose; and
- (b) apply appropriate levels of competent and authorised resource to maintain and improve the effectiveness and efficiency of Contract governance.

2.2 The activities and remit of the Lot Delivery Board are set out at Paragraph 3.8 (*Operation of the Lot Delivery Board*) below.

3 Operation of the Lot Delivery Board

Membership

3.1 The Lot Delivery Board will comprise the Lot Owner, the Authority Contract Manager, a financial representative of the Authority and the Lot Service Managers (as required) and equivalent representatives appointed by the Contractor. Both Parties shall ensure that their representatives as specified in this Paragraph 3.1 or replacements as notified in accordance with Paragraph 3.5, shall be present at face-to-face meetings of the Lot Delivery Board (unless otherwise agreed by the Parties).

3.2 As at the Effective Date, the representatives appointed to the Lot Delivery Board by each of the Authority and the Contractor are as detailed in Paragraph 6 (*Membership*). Either Party may replace its representative(s) on the Lot Delivery Board (whether permanently or temporarily) through prior written notification to the other Party.

Meetings

3.3 The Lot Delivery Board shall convene monthly and be chaired by the Lot Owner in respect of this Contract.

3.4 The chair of the Lot Delivery Board shall have the power to:

- (a) convene and chair meetings of the Lot Delivery Board every month or as otherwise agreed by the Parties;
- (b) arrange for others to attend Lot Delivery Board meetings as appropriate and as agreed by the Parties;
- (c) determine the agenda for each meeting;
- (d) monitor the progress of any follow up tasks and activities agreed to be carried out following Lot Delivery Board meetings; and

- (e) facilitate the process or procedure by which any decision agreed at any Lot Delivery Board meeting is given effect in the appropriate manner.
- 3.5 If any member of the Lot Delivery Board is not able to attend a meeting, that person shall use all reasonable endeavours to ensure that:
- (a) a suitably empowered delegate attends the relevant meeting in his/her place who (wherever possible) is properly briefed and prepared; and
 - (b) that he/she is debriefed by such delegate after the meeting.
- 3.6 The first meeting of the Lot Delivery Board shall be no later than one (1) month after the Effective Date or such other date as the Parties agree.
- 3.7 Either Party may request an extraordinary meeting of the Lot Delivery Board in addition to the regular monthly meetings on reasonable Notice (being no less than five (5) Business Days' Notice unless otherwise agreed by the Parties). The Parties shall use reasonable endeavours to ensure that their representatives on the Lot Delivery Board, or suitable replacements as notified in accordance with Paragraph 3.2, attend such meetings and that the matter(s) or issue(s) to be addressed are determined expeditiously.

Activities

- 3.8 At each meeting of the Lot Delivery Board, the Lot Delivery Board shall:
- (a) assess the overall effectiveness and operation of this Contract and its management arrangements, including the effectiveness of any subsidiary body established pursuant to Paragraph 7 (*Delegation*);
 - (b) review compliance with contractual processes to ensure effective Contract assurance;
 - (c) review any reports provided by the Contractor under this Contract, including those provided pursuant to Clause 16 (*Progress Reports and Financial Reports*), Clause 17 (*Annual Report and Reviews*), Schedule 22 (*Reports*) or otherwise commissioned by the Lot Delivery Board;
 - (d) discuss and manage any issues relating to the Contractor's performance of this Contract pursuant to Schedule 5 (*Performance Management and Measurement*).
 - (e) Not used.
 - (f) discuss any matters relating to payments or invoices in respect of this Contract;
 - (g) review key risks and mitigation plans pursuant to the management of this Contract and the achievement of the Commercial Purpose;
 - (h) review the status and progress of Change Proposals;
 - (i) monitor the integration and coherence of agreed transformation plans and their effect upon this Contract;
 - (j) consider and seek to resolve any issues between the Parties or otherwise take action in accordance with Schedule 7 (*Dispute Resolution Procedure*);

- (k) plan for, and review the implementation of any change necessary to improve the effectiveness and efficiency of management arrangements;
- (l) review relationship and behavioural issues affecting the delivery of this Contract in relation to each of the Parties, in accordance with Schedule 16 (*Collaboration and Integration*), and agree any actions;
- (m) agree any output report required for this Contract or corporate governance purposes; and
- (n) review such other matters as the Lot Delivery Board may consider relevant to the management of this Contract.

3.9 The Contractor shall provide a secretary for meetings of the Lot Delivery Board to record the decisions made, actions to be undertaken and any strategy or plan on how to take key issues or initiatives forward under or pursuant to this Contract.

3.10 The Parties shall conduct Lot Delivery Board meetings in accordance with the Collaboration Principles set out in Schedule 16 (*Collaboration and Integration*). However the Lot Owner in respect of this Contract shall, subject to Paragraph 3.11 and Paragraph 5 (*Authority*), have the ultimate authority (acting reasonably) to make any decision of the Lot Delivery Board, which shall be binding on both Parties.

3.11 If a Dispute is referred to the Lot Delivery Board in accordance with Paragraph 6 (*Ordinary Procedure*) of Schedule 7 (Dispute Resolution Procedure), any decision(s) in relation to that Dispute shall require the agreement of both Parties and shall be recorded in writing and signed by a duly authorised representative of each Party.

Records

3.12 The Authority shall issue the record of decisions made and actions placed including their status within three (3) Business Days of a Lot Delivery Board meeting. Both Parties shall, within five (5) Business Days of the date of issue of such record, either agree that record or revise and agree an amended record.

3.13 The Authority shall circulate an agenda and any supporting material/management information five (5) Business Days prior to a meeting of the Lot Delivery Board, unless the meeting has been convened in accordance with Paragraph 3.7 on less than five (5) Business Days' Notice, in which case the Authority shall use reasonable endeavours to circulate an agenda and relevant information forty eight (48) hours before the meeting convenes.

4 Not used

5 Authority

5.1 The Lot Delivery Board has no authority to make decisions that change the structure and operation of this Contract including the terms and conditions, governance, finance and contracting frameworks and reporting processes.

5.2 Not used.

6 Membership

As at the Effective Date, the members of the Lot Delivery Board are the individuals holding the following posts:

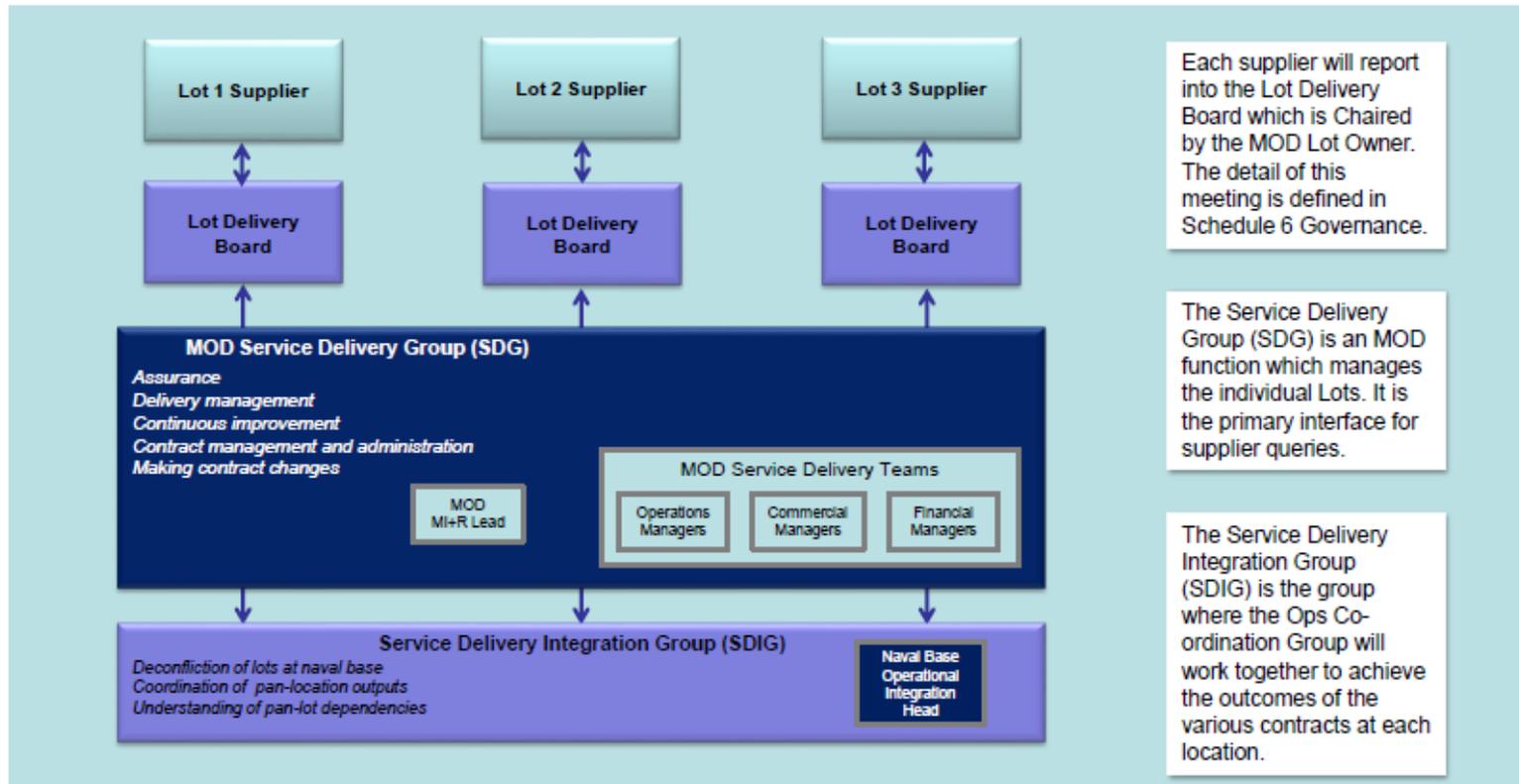
Authority Members	Contractor Members
COB (Chair)	Managing Director
COB SO (Sec)	Contract Manager
Soft FM Service Heads	Commercial Finance Manager
Commercial Soft FM Lead	Integration Manager, HSE Manager / QA Manager / Customer Experience Manager / HR Business Partner / Soft Services Managers / Communications Manager / Workforce Co-ordinator
Finance Soft FM Lead	

7 Delegation

- 7.1 The Lot Delivery Board may establish such subsidiary bodies as it reasonably requires for the efficient operation of this Contract. In the event that the Lot Delivery Board establishes a subsidiary body, it shall agree the terms of reference for that subsidiary body prior to its operation.
- 7.2 The Authority and the Contractor shall use reasonable endeavours to make available suitable persons as are reasonably required, and at the times reasonably required, to give effect to any subsidiary body established by the Lot Delivery Board. In so doing, each Party shall ensure compliance with its own corporate governance arrangements.
- 7.3 Not used.

Annex 3 – Organisational Design Diagram

**FMSP Op Model
Wiring Diagram**



Schedule 7 – Dispute Resolution Procedure

1 Definitions

In this Schedule 7 the following words and expressions shall have the meanings set respectively against them:

Adjudication means the process to be followed by the Adjudicator pursuant to this Schedule 7 to resolve a Dispute.

ADR Notice has the meaning given in Paragraph 9.4 (*Choice of Alternative Dispute Resolution*).

Arbitration means the process to be followed by the Arbitrators pursuant to this Schedule 7 to resolve a Dispute.

Chief Executive means (a) in the case of the Contractor, its chief executive officer with ultimate managerial responsibility for its business and (b) in the case of the Authority, the Defence Equipment and Support Director General Commercial.

Director means (a) in the case of the Contractor, a member of its board directors without direct day-to-day responsibility for the Contract and (b) in the case of the Authority, the DE&S Director Commercial Operations.

Dispute Resolver has the meaning given in Paragraph 9.4(a) (*Choice of Alternative Dispute Resolution*).

Escalation Date has the meaning given in Paragraph 9.1 (*Choice of Alternative Dispute Resolution*).

Fast Track Dispute means Disputes over the following matters:

- (i) any Dispute in relation to Clause 54 (*Force Majeure Events*);
- (ii) any Dispute specified under this Contract as being required to be dealt with through the Fast Track Procedure; and
- (iii) any other Dispute which the Parties may agree from time to time to have determined pursuant to the Fast Track Procedure.

Fast Track Notice has the meaning given in Paragraph 7.1 (*Fast Track Procedure*).

Internal Dispute Resolution Bodies means the Parties' respective representatives, and the representatives which make up the governance bodies, referred to in Paragraph 6 (*Ordinary Procedure*).

Ordinary Dispute means any Dispute that is not a Fast Track Dispute.

Ordinary Procedure the dispute resolution procedure for Ordinary Disputes outlined in Paragraph 6 (*Ordinary Procedure*).

Referring Party means, in relation to any Dispute, the Party who declares a Dispute pursuant to Paragraph 4 (*Giving Notice of a Dispute*) or refers a Dispute to alternative

dispute resolution pursuant to Paragraph 9 (*Choice of Alternative Dispute Resolution*).

Related Agreement means any agreement entered into by the Authority relating to the provision of goods and/or services to the Authority under or pursuant to this Contract.

Related Dispute means any dispute under (a) this Contract or (b) a Related Agreement, which (i) arises from substantially the same facts or matter or (ii) raises issues which are substantially the same, as a Dispute for which a Dispute Notices has been sent under this Contract.

Responding Party means the Party to a Dispute who is not the Referring Party.

Rules has the meaning set out in Paragraph 9.6 (*Choice of Alternative Dispute Resolution*).

Stage means each stage through which a Dispute progresses under the Dispute Resolution Procedure set out in this Schedule 7.

2 General

- 2.1 Neither Party shall commence any legal proceedings in relation to any Dispute until it has followed the dispute resolution procedure set out in this Schedule 7 , provided that nothing in this Contract shall prevent a Party from seeking interim or interlocutory relief in any court.
- 2.2 Before notifying a Dispute, the Parties, acting in good faith, shall make every effort to resolve any issues promptly in discussions at an operational level.
- 2.3 Any timescales set out in this Schedule 7 may be shortened or extended by agreement in writing by the Parties.

3 Designation of Disputes

- 3.1 For the purposes of this Contract, Disputes are divided into two (2) categories:
 - (a) Fast Track Disputes, to which Paragraph 7 (*Fast Track Procedure*) applies;
 - (b) Not used; and
 - (c) Ordinary Disputes, being all other Disputes, to which Paragraph 6 (*Ordinary Procedure*) applies.
- 3.2 Not used.

4 Giving Notice of a Dispute

- 4.1 To declare a Dispute, either Party shall send a Notice (a **Dispute Notice**) to the other setting out full particulars of the nature and circumstances of the Dispute.
- 4.2 Unless specified as a Fast Track Dispute in the Dispute Notice or as otherwise designated in this Contract, each Dispute shall be deemed to be an Ordinary Dispute.

- 4.3 Within five (5) Business Days (or such longer period as agreed by the Parties) of a Party serving a Dispute Notice, each Party shall appoint a representative from within its organisation as the owner of the Dispute for the purposes of this Schedule 7, (a **Dispute Owner**) and shall give Notice to the other Party of the name and contact details of its appointed Dispute Owner.
- 4.4 Each Party shall ensure that its appointed Dispute Owner is of an appropriate level and of sufficient authority within its organisation so as to enable it to progress towards resolving the Dispute.
- 4.5 The Dispute Owners shall be responsible to their respective appointing Parties for collating all relevant information relating to the Dispute and for co-ordinating the progression of the Dispute through the Dispute Resolution Procedure and for managing its appointing Party's obligations in respect of the Dispute until it is resolved.

5 Dispute Reports

- 5.1 Each Party shall require its Dispute Owner to provide a report on the Dispute (a **Dispute Report**) to a nominated representative of the other Party (or, if the other Party has not nominated a representative, the other Party's Dispute Owner) as soon as is reasonably practicable after service of a Dispute Notice. Each Dispute Report will include:
- (a) a unique serial number to be provided by the Authority and the date of the report;
 - (b) the name, post, and phone number of each Party's Dispute Owner;
 - (c) brief details of the issue(s) to be resolved;
 - (d) brief details of the relief, remedy or recourse which the Referring Party seeks;
 - (e) any dates by which the output or decision of the Dispute Resolution Procedure is required;
 - (f) copies of all documents which the Referring Party considers to be important and to have a direct bearing upon the Dispute; and
 - (g) any recommendation for the resolution of the Dispute which the Dispute Owner considers appropriate.
- 5.2 The Dispute Owners shall update and exchange their Dispute Reports on the conclusion of each Stage of the Dispute Resolution Procedure to reflect any partial resolution or clarification of any issues achieved.
- 5.3 The Parties agree that the Dispute Reports shall be prepared and exchanged on a without prejudice basis.

6 Ordinary Procedure

- 6.1 Except as expressly provided to the contrary in this Contract, all Ordinary Disputes shall proceed through the following stages:
- (a) if the Dispute has not been resolved by the Dispute Owners within fifteen (15) Business Days (or such other period as agreed by the Parties) after the date of the Dispute Notice, the Dispute shall be referred to the Lot Delivery Board for resolution.

In referring the matter to the Lot Delivery Board the Dispute Owners may recommend that, given the nature of the Dispute, it should be referred directly to the Directors;

- (b) if the Dispute has not been resolved by a duly quorate meeting of the Lot Delivery Board within fifteen (15) Business Days (or such other period as agreed by the Parties) after the date of referral of the Dispute pursuant to Paragraph 6.1(a) or, if a recommendation from the Dispute Owners is made under Paragraph 6.1(a) and the Lot Delivery Board concurs with such recommendation, the Parties shall refer the Dispute to (i) the Directors or, (ii) if the Lot Delivery Board so decides, the Chief Executives for resolution;
- (c) if the Dispute has not been resolved by the Directors within fifteen (15) Business Days (or such other period as agreed by the Parties) after the date of referral of the Dispute to them pursuant to Paragraph 6.1(b), the Parties shall refer the Dispute to the Chief Executives for resolution;
- (d) if the Dispute has not been resolved by the Chief Executives within fifteen (15) Business Days (or such other period as agreed by the Parties) of the referral of the Dispute to them pursuant to Paragraph 6.1(b) or (c) (as the case may be), then Paragraph 9 (*Choice of Alternative Dispute Resolution*) shall apply.

7 Fast Track Procedure

- 7.1 The Fast Track Procedure will commence when the Referring Party gives the Responding Party a Dispute Notice requiring a Dispute to be resolved in accordance with the Fast Track Procedure (a **Fast Track Notice**).
- 7.2 Where a Dispute is designated as requiring resolution in accordance with the Fast Track Procedure, the Parties shall follow the provisions of Paragraphs 4.3 to 4.5 (*Giving Notice of a Dispute*) and 5 (*Dispute Reports*), save that the time periods set out in those Paragraphs shall be disregarded and the Parties shall be obliged to designate Dispute Owners and generate Dispute Reports within a total of five (5) Business Days after the date on which the Dispute Notice was served.
- 7.3 Except as expressly provided to the contrary in this Contract, Paragraph 6 (*Ordinary Procedure*) shall not apply to Fast Track Disputes. Instead, all Fast Track Disputes shall commence by referral to the Lot Delivery Board. If a duly quorate meeting of the Lot Delivery Board has not resolved the Dispute within ten (10) Business Days (or such other period as agreed by the Parties) after the date of the Delivery Notice, the Parties shall refer the Dispute to the Directors/Chief Executives. If the Dispute has not been resolved by the Directors/Chief Executives within ten (10) Business Days (or such other period as agreed by the Parties) of the referral of the Dispute to them pursuant to this Paragraph 7.3, then Paragraph 9 (*Choice of Alternative Dispute Resolution*) shall apply.

8 Proceedings of Internal Dispute Resolution Bodies

- 8.1 Subject to Paragraph 8.2, each Internal Dispute Resolution Body shall, unless it unanimously agrees otherwise, follow the following procedure:
 - (a) within five (5) Business Days (or such longer period as agreed by the Parties) of the relevant Dispute being referred to it, it shall obtain from the Dispute Owners a copy of the Dispute Reports, updated to reflect any partial resolution or clarification of any

issue achieved by a previous Internal Dispute Resolution Body, or other summary of the points in issue from each Party;

- (b) no later than five (5) Business Days (or such longer period as agreed by the Parties) after the last day for obtaining copies of the Dispute Reports or summaries of the issues, it may convene a meeting with both Dispute Owners (having first given reasonable Notice to each Party of the meeting), at which it may discuss with the Dispute Owners (or such other representative(s) that a Party may submit as their alternates) any matters upon which it requires clarification or further information; and
- (c) no later than five (5) Business Days (or such longer period as agreed by the Parties) after the last day for obtaining copies of the Dispute Reports or summaries of the issues (or, if later, no later than five (5) Business Days after any meeting convened under Paragraph 8.1(b), the Internal Dispute Resolution Body shall meet and either (i) give its determination (which shall contain reasons) of the relevant Dispute or (ii) confirm its inability to resolve the relevant Dispute.

- 8.2 Where the Fast Track Procedure in Paragraph 7 applies, the time periods referred to in Paragraph 8.1 (*Fast Track Procedure*) shall be reduced to three (3) Business Days in each case.
- 8.3 Any valid determination of a Dispute by an Internal Dispute Resolution Body must be recorded in writing and signed by the chair of the relevant Internal Dispute Resolution Body or by all the members thereof and shall be final and binding upon the Parties.
- 8.4 The Parties shall procure that the Internal Dispute Resolution Bodies use their reasonable endeavours to negotiate in good faith to resolve the Dispute.
- 8.5 Anything said, done or produced under or in relation to a review by an Internal Dispute Resolution Body of that Dispute (other than a valid determination of a Dispute as envisaged in Paragraph 8.3) shall be treated as without prejudice to the Parties' rights and obligations unless the Parties expressly agree otherwise in writing.

9 Choice of Alternative Dispute Resolution

- 9.1 If the Directors or the Chief Executives (as the case may be) are unable, or fail, to resolve any Dispute within the time periods pursuant to Paragraph 6.1(d) (*Ordinary Procedure*) or 7.3 (*Fast Track Procedure*), as appropriate (the **Escalation Date**), then:
 - (a) the Directors or the Chief Executives (as the case may be) shall notify the Parties in writing of their inability or failure to reach a resolution in respect of the Dispute (and the reasons for such inability or failure);
 - (b) in further attempting to resolve the Dispute the Directors or the Chief Executives (as the case may be) shall be free to decide to refer to a method of alternative dispute resolution (which may include Adjudication or Arbitration), if it is considered that this would be the most likely way of resolving the Dispute; and
 - (c) the Directors or the Chief Executives (as the case may be) shall notify the Parties in writing of their chosen form of alternative dispute resolution.
- 9.2 In determining the appropriate form of alternative dispute resolution pursuant to Paragraph 9.1, the Directors or the Chief Executives (as the case may be) shall have regard to whether the Dispute:

- (a) is of significant value (and in considering the significance or otherwise of the value, the Directors or the Chief Executives (as the case may be) shall have regard to a threshold of one and a half million pounds (£1.5 million));
 - (b) is of significant importance or complexity;
 - (c) has given (or may give) rise to a Related Dispute; and/or,
 - (d) concerns or could reasonably be anticipated to lead to a Contractor Default or default by the Authority.
- 9.3 If the Directors or the Chief Executives (as the case may be) fail to notify the Parties in accordance with Paragraph 9.1, they shall be deemed to have notified the Parties:
- (a) of their inability or failure to reach a valid determination in respect of the Dispute; and
 - (b) that they have determined that the Dispute be referred to Arbitration.
- 9.4 Within five (5) Business Days of the Escalation Date, either Party may in accordance with determination of the Directors or the Chief Executives (as the case may be) (whether deemed or actual) as to which (if any) form of alternative dispute resolution is to be employed, by Notice to the other Party (the **ADR Notice**) refer the Dispute to such form of alternative dispute resolution and the Parties shall agree the terms of reference for the alternative dispute resolution in relation to the following areas:
- (a) the identity of any persons or bodies to be appointed to resolve the Dispute (the **Dispute Resolver**);
 - (b) the powers of such persons or bodies;
 - (c) the timetable for resolution of the Dispute;
 - (d) the location of the Dispute resolution;
 - (e) any Related Disputes; and
 - (f) whether the outcome of the Dispute resolution will be subject to appeal.
- 9.5 If (a) the Parties fail to reach agreement on each of the matters in Paragraph 9.4 within ten (10) Business Days of the ADR Notice being received; or, (b) the chosen form of alternative dispute resolution fails to resolve the Dispute, then the Dispute shall be referred to and finally resolved by Arbitration.
- 9.6 Any Arbitration under this Schedule 7 shall be conducted in accordance with the London Court of International Arbitration's Arbitration Rules from time to time in force (**the Rules**), which are expressly incorporated herein except that in the event of any conflict between the Rules and this Contract the provisions of this Contract shall prevail. The seat and place of the arbitration shall be London. The language of the arbitration shall be English. The number of arbitrators shall be three. Subject always to Paragraph 9.7(b)(ii) below, each Party shall nominate an arbitrator in the Request for Arbitration or Response as the case may be. The two party-nominated arbitrators shall nominate a third arbitrator to act as chairman within thirty (30) calendar days after confirmation of the second arbitrator's appointment. If any of the Parties fail to nominate an arbitrator or the two arbitrators already appointed fail to nominate the chairman, the appointments shall be made by the LCIA.

9.7 Where there is a Dispute and Related Dispute, then the following provisions shall apply:

- (a) where the Dispute and Related Dispute arise under this Contract only:
 - (i) if neither has been referred to alternative dispute resolution or Arbitration in accordance with this Schedule 7 , the Parties shall deal with both disputes together in accordance with this Schedule 7 and shall appoint the same Dispute Resolver(s) to resolve both; or
 - (ii) if either has been referred to alternative dispute resolution or Arbitration in accordance with this Schedule 7 , the Parties shall refer the Dispute and the Related Dispute to the Dispute Resolver already appointed in relation to the Dispute or Related Dispute (as the case may be), unless that Dispute Resolver (aa) has a conflict of interest or is unwilling or unable to act as Dispute Resolver in relation to both or (bb) in his sole discretion considers that resolving the second (or subsequent) dispute referred to him will significantly delay the resolution of the first dispute referred to him, in which case the second dispute in time shall be resolved by a separate Dispute Resolver appointed in accordance with this Paragraph 9;
- (b) where the Dispute and Related Dispute arise under different contracts (namely, this Contract and a Related Agreement):
 - (i) if all parties agree (namely the Parties and the parties to the Related Agreement), both the Dispute and Related Dispute shall be referred to alternative dispute resolution by the same Dispute Resolver in accordance with this Schedule 7;
 - (ii) Not used;
 - (iii) if either the Dispute or Related Dispute (or both) has been referred to Arbitration in accordance with this Schedule 7, then any party to either dispute may apply to the LCIA Court for, and upon such application the LCIA Court in its sole discretion may make, a direction that the Dispute and Related Dispute be consolidated and resolved together by a single tribunal, and, if the LCIA Court so directs, all parties agree that:
 - (A) if a three-person tribunal has yet to be constituted for either the Dispute and Related Dispute, the LCIA Court shall appoint all members of the tribunal to resolve both;
 - (B) if a three-person tribunal has been constituted for one dispute but not the other, the tribunal so appointed shall resolve both the Dispute and Related Dispute;
 - (C) if a three-person tribunal has been constituted for both the Dispute and Related Dispute:
 - (aa) the first tribunal to have been constituted shall resolve both the Dispute and Related Dispute;
 - (bb) any subsequently constituted tribunal shall be deemed *functus officio*; and,

(cc) any orders made by any subsequently constituted tribunal shall remain in force save as subsequently amended by the tribunal for the consolidated arbitration.

10 Continuing Operations

Unless this Contract has expired or been terminated and the relevant Party's obligations do not, under the terms of this Contract, survive such termination or expiry, the Parties shall continue to comply with, and perform, their obligations pursuant to this Contract notwithstanding that a Dispute has arisen or been referred for determination under any of the procedures described in this Contract, and regardless of the nature of the Dispute that has arisen.

11 Failure of Party to Participate

The Dispute Resolution Procedure set out in this Schedule 7 in relation to any Dispute shall continue notwithstanding any failure by a Party to take part in any way, including where a Party fails to make submissions or to issue a response or fail to attend any meetings within the required times (as applicable). Any Dispute Resolver shall be entitled to disregard any information received after the required time.

12 Confidentiality

12.1 Save as required by Law, the Parties shall and shall ensure that any person(s) appointed to resolve the Dispute in accordance with Paragraph 9 (*Choice of Alternative Dispute Resolution*) shall keep the fact that dispute resolution process is taking place, and its outcome, confidential.

12.2 Save as required by Law, the Parties shall ensure that all documentation, information, data, submissions and comments disclosed or delivered, whether in writing or otherwise by either Party to any person(s) either in connection with or in consequence of the appointment of the Dispute Resolver shall be regarded and treated as confidential and that such person(s) and the Parties shall not disclose any or all of the documentation, information, data, submissions and comments including contents and copies of the same in any form except as required by Law in connection with any proceedings in any court pursuant to this Contract.

12.3 The Referring Party shall ensure that appropriate provisions are included in any contract or letter of engagement with any Dispute Resolver in order to fulfil its obligations in accordance with this Paragraph 12 (*Confidentiality*).

13 Costs

The fees and expenses of the Dispute Resolver, and those of any person employed or engaged by them shall be payable as directed by the Dispute Resolver having regard to the conduct of the Parties with respect to the Dispute in question.

14 Not used

Schedule 8 – Intellectual Property Rights

1 Foreground IP

- 1.1 All Foreground IP shall vest in and be the property of the Authority and the Contractor assigns to the Authority absolutely with full title guarantee all its right, title to and all present and future rights and interest in the Foreground IP, including:
- (a) the absolute entitlement to any registrations granted pursuant to any of the applications comprised in the Foreground IP; and
 - (b) the right to bring, make, oppose, defend, appeal proceedings, claims or actions and obtain relief (and to retain any damages recovered) in respect of any infringement, or any other cause of action arising from ownership, of any of the Foreground IP whether occurring before, on, or after the Effective Date.
- 1.2 The Contractor shall take all reasonable measures to secure that vesting and on request, the Contractor shall demonstrate to the Authority's satisfaction that, where it has sub-contracted work under the Contract, it has secured that vesting in the work performed by its Sub-Contractors.
- 1.3 Where Foreground IP forms an Article or Contractor Deliverable, the Foreground IP shall be deemed to have vested in the Authority immediately upon creation of the relevant Foreground IP, notwithstanding that the relevant Article or Contractor Deliverable may vest in the Authority at a later date pursuant to Part 14 (*Delivery*).
- 1.4 The Authority shall determine whether any of the Foreground IP, which vests in the Authority in accordance with this Paragraph 1, should be protected by patent or like protection. The costs of patent or like protection shall be borne by the Authority. At the request of the Authority the Contractor shall assist in obtaining patent or like protection subject to being reimbursed their reasonable costs for providing such assistance.
- 1.5 The Contractor shall mark any copyright work which is Foreground IP, which vests in the Authority in accordance with this Paragraph 1, with a legend "© Crown owned copyright year of generation of the work".
- 1.6 Where there is a need to provide Background IP to the Authority then the Contractor shall ensure that this is provided in a separately identifiable deliverable from the Foreground IP, unless:
- (a) to do so would render the Foreground IP unusable or the material or deliverable in which Intellectual Property subsists impractical or unsuitable to use; and
 - (b) the parties have expressly agreed a deviation from the principle in this Paragraph 1.6.
- 1.7 To the extent that the Authority owns the Foreground IP, the Authority hereby grants to the Contractor for the term of this Contract a revocable, royalty free, non-exclusive, non-transferable, non-sub-licensable (subject to Paragraph 1.8), worldwide licence to use the Foreground IP solely for the purposes of performing the Services under this Contract.
- 1.8 The Contractor is entitled to provide the Foreground IP to Sub-Contractors and to grant a sub-license to such Sub-Contractors as may be reasonably required by Sub-Contractors for the performance of Services under this Contract, provided that:

- (a) such sub-licence is revocable, non-exclusive, non-transferrable, royalty free and non-sublicensable;
- (b) the sub-licence is solely for the purpose of performing the relevant Services under the Sub-Contract;
- (c) the Sub-Contractor in receipt of Foreground IP shall treat it in confidence on terms consistent with those in Clause 75 (*Confidentiality and Freedom of Information*);
- (d) such sub-licence will terminate on completion of the Sub-Contract and any materials in which Foreground IP subsists shall be returned to the Contractor;
- (e) no sub-licence will be granted in respect of any Foreground IP which is subject to export controls imposed by governments other than the United Kingdom government except in accordance with the terms of any export licence applicable to such Foreground IP; and
- (f) no sub-licence will be granted where the Contractor is aware, or should reasonably be aware, that because of security constraints, release to a Sub-Contractor is precluded.

1.9 The existence of any confidentiality obligations shall not prevent or restrict the Authority from its entitlement to exercise unfettered rights in the Foreground IP. All information in which Foreground IP subsists which is developed by the Contractor, and which vests in the Authority in accordance with this Paragraph 1, shall be treated as Authority Confidential Information for the purposes of this Contract.

1.10 To the extent that the Authority owns the Foreground IP relating to the Services then the Authority hereby grants the Contractor a perpetual, revocable, non-exclusive, royalty-free, worldwide licence to use the same for the purposes of carrying out the Services and any other work for, or to the order of, any department or representative of the United Kingdom Government. This licence is personal to the Contractor and may not (but without prejudice to Paragraph 1.12) be assigned or sub-licensed without the Authority's prior written consent.

1.11 Not used.

1.12 The Authority does not grant any right to the Contractor to use any third party Intellectual Property for any purpose other than the performance of this Contract. If the Contractor wishes to use any third party Intellectual Property other than in performance of this Contract then it will be for the Contractor to agree terms with the owner thereof.

2 Background IP

2.1 The Contractor hereby grants to the Authority a perpetual irrevocable non-exclusive, worldwide, non-transferable, royalty-free licence, with the right to sub-license to use, copy, store, modify, enhance, adapt, translate, develop, maintain, support, or otherwise deal with the Background IP as required:

- (a) for the benefit of, or carrying out work for, or to the order of, the Authority or any other department or representative of the United Kingdom Government and to receive or use any services provided in substitution for, or in succession to, all or any part of the Services; and
- (b) as necessary to enable the Authority to receive or use any services provided under any other contract entered into by the Authority in connection with FMSP and to

receive or use any services provided in substitution for, or in succession to, all or any part of such services.

2.2 In addition to the rights granted under Paragraph 2.1 and subject to Paragraph 2.3, the Contractor shall in respect of any Background IP which is:

- (a) embedded in or which are an integral part of any Article or Contractor Deliverable that comprises Foreground IP;
- (b) required for:
 - (i) the continued use of the Foreground IP;
 - (ii) the continued use of the output of any Service; or
 - (iii) any purpose relating to the Services (or substantially equivalent services);

by the Authority or any other central government body for any purpose,

(the "**Embedded Background IP**"), deliver upon request by the Authority a reasonable number of copies of such Embedded Background IP and the Contractor hereby grants the Authority a perpetual, irrevocable, non-exclusive, transferable (with the relevant Foreground IP) worldwide and royalty free licence to use, copy, store, modify, enhance, adapt, translate, develop, maintain, support, or otherwise deal with such Embedded Background IP, with the right to sub-license, as required for the Authority or for any transferee to receive the benefit of, and fully enjoy, the Foreground IP for any purpose.

2.3 In respect of Embedded Background IP owned by a third party ("**Third Party Background IP**"), the Contractor shall use all reasonable endeavours:

- (a) prior to utilising the Third Party Background IP, to secure on behalf of the Authority the same rights in such Third Party Background IP as are granted to the Authority under Paragraph 2.2, without additional cost to the Authority. If the Contractor is unable to obtain any such licence without additional cost to the Authority it shall notify the Authority Contract Manager in writing, referring to this Paragraph 2.3(a) giving sufficient information about the Third Party Background IP to enable the Authority to understand the purpose, significance and substitutability of that Third Party Background IP. The Authority shall respond as soon as practicable and in any event within thirty (30) calendar days notifying the Contractor either:
 - (i) that it wishes the Contractor to obtain such licence at the Authority's cost; or
 - (ii) that the Contractor obtains such licence without obtaining the licence for the Authority; and
- (b) to deliver to the Authority upon request by the Authority a reasonable number of copies of such Third Party Background IP, subject where appropriate to the terms of any licence procured in accordance with this Paragraph 2.3.

Where as permitted by this Paragraph 2.3 the Authority discloses such material to a third party, the Authority shall ensure that the recipient is made subject to conditions of confidence on terms consistent with those in Clause 75 (*Confidentiality and Freedom of Information*) and is limited to using the said material solely in support of use of the Foreground IP as permitted under this Contract.

- 2.4 Where reasonably practicable, notwithstanding Paragraph 2.1, where any Background IP includes third party commercial off the shelf (**COTS**) products, the Contractor shall notify the Authority prior to utilising the COTS product of: (i) the duration of the licence; (ii) any relevant terms applicable to the use of the COTS product and the use of such COTS product shall be subject to the Authority's prior approval. Where the Authority approves the use of the COTS product, the relevant terms shall apply in place of Paragraph 2.1. This notification is without prejudice to Authority's right to obtain its own licences and provide the COTS product to the Contractor as GFA.
- 2.5 Subject to Paragraph 2.1, to the extent not already provided to the Authority in an Article or Contractor Deliverable, the Contractor shall deliver a copy of the Background IP to the Authority on request.
- 2.6 Where reasonably practicable, the Contractor shall mark any Background IP delivered to the Authority as such. The Contractor shall endeavour to indicate whether the Authority has previously secured rights in respect of the Background IP.

3 Not used

4 Retention of Records

- 4.1 During the continuance of this Contract and not for less than six (6) years after its Termination Date, the Contractor shall retain a copy of materials in its possession in which the Foreground IP subsists and any associated materials in which Background IP subsists (which shall be held together in a coherent format, herein referred to as the **Control Copy**).
- 4.2 The Authority shall have the right during that time, and thereafter as long as the Control Copy is retained, to require the Contractor from time to time to furnish to the Authority copies of any and all materials comprising the Control Copy in such form and detail as the Authority may prescribe. Subject to the provisions of Clause 65.3, the Contractor may charge its reasonable Actual Costs (plus VAT, if applicable) for this service, based on the marginal cost of providing such copies to the extent such a request has been made after the Termination Date or the Expiry Date.
- 4.3 Without prejudice to its obligations under Paragraph 4.1, the Contractor shall not dispose of the Control Copy without first providing the Authority six (6) months' Notice of its intention to dispose of the Control Copy and if the Authority so requests deliver the Control Copy to the Authority.

5 Further Assurance

Each of the Authority and the Contractor will do any act or thing or execute any document that is necessary or desirable to give full effect to the provisions of this Schedule.

6 Third Party Intellectual Property – Rights and Restrictions

6.1 Notifications

- 6.1.1 As it becomes aware, the Contractor shall promptly notify the Authority of:
- (a) any invention or design the subject of patent or registered design rights (or application therefor) owned by a third party which appears to be relevant to the performance of this Contract or to use by the Authority of anything required to be done or delivered under this Contract;

- (b) any restriction as to disclosure or use, or obligation to make payments in respect of any other intellectual property (including technical information) required for the purposes of this Contract or subsequent use by the Authority of anything delivered under this Contract and, where appropriate, the notification shall include such information as is required by Section 2 of the Defence Contracts Act 1958; and
- (c) any allegation of infringement of intellectual property rights made against the Contractor and which pertains to the performance of this Contract or subsequent use by the Authority of anything required to be done or delivered under this Contract.

This Paragraph 6.1.1 does not apply in respect of Articles or Services normally available from the Contractor as a commercial off the shelf (**COTS**) item or service. If the information required under this Paragraph 6.1 has been notified previously, the Contractor may meet its obligations by giving details of the previous notification.

6.2 Patents and Registered Designs in the UK – COTS Articles or Services

6.2.1 In respect of any question arising (by way of an allegation made to the Authority or the Contractor, or otherwise) that the manufacture or supply under this Contract of any Article or Service normally available from the Contractor as a COTS item or service is an infringement of a United Kingdom patent or registered design not owned or controlled by the Contractor or the Authority, the Contractor shall, subject to the agreement of the third party owning such patent or registered design, be given exclusive conduct of any and all negotiations for the settlement of any claim or the conduct of any litigation arising out of such question. The Contractor shall indemnify the Authority, its officers, agents and employees against any liability and cost arising from such allegation. This Paragraph will not apply if:

- (a) the Authority has made or makes an admission of any sort relevant to such question;
- (b) the Authority has entered or enters into any discussions on such question with any third party without the prior written agreement of the Contractor;
- (c) the Authority has entered or enters into negotiations in respect of any relevant claim for compensation in respect of Crown Use under Section 55 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1977;
- (d) legal proceedings have been commenced against the Authority or the Contractor in respect of Crown Use, but only to the extent of such Crown Use that has been properly authorised.

6.2.2 The indemnity in Paragraph 6.2.1 does not extend to use by the Authority of anything supplied under this Contract where that use was not reasonably foreseeable at the time of this Contract.

6.2.3 In the event that the Authority has entered into negotiation in respect of a claim for compensation, or legal proceedings in respect of the Crown Use have commenced, the Authority shall forthwith authorise the Contractor for the purposes of performing this Contract (but not otherwise) to utilise a relevant invention or design in accordance with Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949 and to use any model, document or information relating to any such invention or design which may be required for that purpose.

6.3 Patents and Registered Designs in the UK - All other Articles or Services

- 6.3.1 If a relevant invention or design has been notified to the Authority by the Contractor prior to the Effective Date, then unless it has been otherwise agreed, under the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, the Contractor is hereby authorised to utilise that invention or design, notwithstanding the fact that it is the subject of a United Kingdom patent or United Kingdom registered design, for the purpose of performing this Contract.
- 6.3.2 If, under Paragraph 6.1.1, a relevant invention or design is notified to the Authority by the Contractor after the date of Contract, then:
- (a) if the owner (or its exclusive licensee) takes or threatens in writing to take any relevant action against the Contractor, the Authority shall issue to the Contractor a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, and
 - (b) in any event, unless the Contractor and the Authority can agree an alternative course of action, the Authority shall not unreasonably delay the issue of a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949.

6.4 Patents, Utility Models and Registered Designs outside the UK

- 6.4.1 The Authority shall assume all liability and shall indemnify the Contractor, its officers, agents and employees against liability, including the Contractor's costs, as a result of infringement by the Contractor or its suppliers of any patent, utility model, registered design or like protection outside the United Kingdom in the performance of this Contract when such infringement arises from or is incurred by reason of the Contractor following any specification, statement of work or instruction in this Contract or using, keeping or disposing of any item given by the Authority for the purpose of this Contract in accordance with this Contract.
- 6.4.2 The Contractor shall assume all liability and shall indemnify the Authority, its officers, agents and employees against liability, including the Authority's costs, as a result of infringement by the Contractor or its suppliers of any patent, utility model, registered design or like protection outside the United Kingdom in the performance of this Contract when such infringement arises from or is incurred otherwise than by reason of the Contractor following any specification, statement of work or instruction in this Contract or using, keeping or disposing of any item given by the Authority for the purpose of this Contract in accordance with this Contract.

6.5 Royalties and Other Licence Fees

- 6.5.1 The Contractor shall not be entitled to any reimbursement of any royalty, licence fee or similar expense incurred in respect of anything to be done under this Contract, where:
- (a) a relevant discharge has been given under Section 2 of the Defence Contracts Act 1958, or relevant authorisation in accordance with Sections 55 or 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988 in respect of any Intellectual Property, or
 - (b) any obligation to make payments for Intellectual Property has not been promptly notified to the Authority under Paragraph 6.1.1 of this Paragraph 6.
- 6.5.2 Where an authorisation is given by the Authority under Paragraph 6.2.3, Paragraph 6.3.1 or Paragraph 6.3.2, to the extent permitted by Section 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988, the Contractor shall also be:

- (a) released from payment whether by way of royalties, licence fees or similar expenses in respect of the Contractor's use of the relevant invention or design, or the use of any relevant model, document or information for the purpose of performing this Contract, and
- (b) authorised to use any model, document or information relating to any such invention or design which may be required for that purpose.

6.6 Copyright, Design Rights etc.

6.6.1 The Contractor shall assume all liability and indemnify the Authority and its officers, agents and employees against liability, including costs as a result of:

- (a) infringement or alleged infringement by the Contractor or its suppliers of any copyright, database right, design right or the like protection in any part of the world in respect of any item to be supplied under this Contract or otherwise in the performance of this Contract;
- (b) misuse of any confidential information, trade secret or the like by the Contractor in performing this Contract; and
- (c) provision to the Authority of any information or material which the Contractor does not have the right to provide for the purpose of this Contract.

6.6.2 The Authority shall assume all liability and indemnify the Contractor, its officers, agents and employees against liability, including costs as a result of:

- (a) infringement or alleged infringement by the Contractor or its suppliers of any copyright, database right, design right or the like protection in any part of the world in respect of any item provided by the Authority for the purpose of this Contract but only to the extent that the item is used for the purpose of this Contract; and
- (b) alleged misuse of any confidential information, trade secret or the like by the Contractor as a result of use of information provided by the Authority for the purposes of this Contract, but only to the extent that the Contractor's use of that information is for the purposes intended when it was disclosed by the Authority.

6.7 Authorisation and Indemnity - General

6.7.1

- (a) A party against whom a claim is made or action brought, shall promptly notify the other party in writing if such claim or action appears to relate to an infringement which is the subject of an indemnity or authorisation given under this Paragraph 6 by such other party. The notification shall include particulars of the demands, damages and liabilities claimed or made of which the notifying party has notice.
- (b) The party benefiting from the indemnity or authorisation shall allow the other party, at its own expense, to conduct any negotiations for the settlement of the same, and any litigation that may arise therefrom and shall provide such information as the other party may reasonably require.
- (c) Following a notification under sub-Paragraph 6.7.1(a), the party notified shall advise the other party in writing within thirty (30) days whether or not it is assuming conduct of the negotiations or litigation. In that case the party against whom a claim is made or

action brought shall not make any statement which might be prejudicial to the settlement or defence of such a claim without the written consent of the other party.

- (d) The party conducting negotiations for the settlement of a claim or any related litigation shall, if requested, keep the other party fully informed of the conduct and progress of such negotiations.

6.7.2

- (a) If at any time a claim or allegation of actual or potential infringement arises in respect of any Intellectual Property rights (including copyright, database rights, design rights or breach of confidence) as a result of the provision of any Software, Software Documentation or any other Items or Contractor Deliverables (the "Infringing Material") by the Contractor to the Authority, the Contractor shall, at the Authority's sole option and the Contractor's sole expense either:
 - (i) procure for the Authority the right to continue using, developing, modifying or maintaining the Infringing Material (or any part thereof) in accordance with the terms of this Contract;
 - (ii) modify the Infringing Material so that it ceases to be infringing; or
 - (iii) replace the Infringing Material with a non-infringing functional equivalent;provided that if the Contractor modifies or replaces the Infringing Material, the modified or replacement Infringing Material must comply with all relevant requirements of this Contract.
- (b) The parties will co-operate with one another to mitigate any claim or damage which may arise from use of third party intellectual property rights.

6.8 Sub-Contracts

- 6.8.1 The Contractor shall secure from any Sub-Contractor, the prompt notification to the Authority of the information required by Paragraph 6.1.1 of this Paragraph 6. On receipt of any such notification the Authority will issue a written authorisation to the Sub-Contractor in accordance with Paragraph 6.3.2 of this Paragraph 6. Any such authorisation will be subject always to Paragraphs 6.5.1 and 6.5.2 as though the Sub-Contractor was the Contractor. If any claim or action relevant to such authorisation arises, it shall be promptly notified to the Authority. The Contractor is not authorised to enter into any substantive correspondence in such matter nor in any way to act on behalf of the Authority in such claim or action. Any arrangement between the Contractor and Sub-Contractor to enable the Contractor to underwrite its indemnities to the Authority under this Paragraph 6 is a matter between the Contractor and the Sub-Contractor.

6.9 General

- 6.9.1 In this Paragraph 6:
 - (a) 'design right' has the meaning ascribed to it by Section 213 of the Copyright, Designs and Patents Act 1988; and
 - (a) 'Crown Use' in relation to a patent means the doing of anything by virtue of Sections 55 to 57 of the Patents Act 1977 which otherwise would be an infringement of the

patent and in relation to a registered design has the meaning given in Paragraph 2A(6) of the First Schedule to the Registered Designs Act 1949.

6.9.2 Nothing in this Paragraph 6 shall be taken as an authorisation or promise of an authorisation under Section 240 of the Copyright, Designs and Patents Act 1988.

7 No effect on other Contracts

This Schedule 8 shall not act to extinguish or restrict any rights in respect of, or any entitlement to use, any Intellectual Property rights acquired by either Party under any other contract or agreement.

Schedule 9 – Standards of Conduct and Required Consents

1 Definitions

- 1.1 In this Schedule 9, "foreign" and "overseas" shall be understood from the position of the Authority and be regarded as "non-UK".

2 Provisions relevant to Trade Control Regulations

Items provided by the Authority

- 2.1 Where the Authority (or any agent or representative of the Authority) provides Items to the Contractor pursuant to this Contract and those Items are subject to Trade Control Regulations, the Authority may, or at the request of the Contractor, undertake to give the Contractor a copy of every non-UK licence, agreement or other control of which it is aware that would affect the Contractor's ability to perform this Contract, such copy may be redacted to the extent required to comply with confidentiality restrictions but must include, to the extent applicable to the Contractor's performance of this Contract:

- (a) the exporting nation, including the export licence or agreement number (where known);
- (b) the Items affected;
- (c) the nature of the restriction or obligation;
- (d) the authorised end use and end users;
- (e) any specific restrictions on the end user or on access or use by third parties, or by individuals based upon their nationality, to the Items affected; and
- (f) any specific restrictions on re-transfer or re-export to third parties of the Items affected,

but this will not include Intellectual Property specific restrictions of the type referred to in Paragraphs 6.1.1(b) and (c) (*Third Party Intellectual Property – Rights and Restrictions*) of Schedule 8 (*Intellectual Property Rights*).

- 2.2 If the information required under Paragraph 2.1:

- (a) has been provided previously to the Contractor by the Authority, the Authority may satisfy the requirements of Paragraph 2.1 by giving details of the previous notification and confirming that it remains valid and satisfies the provisions of Paragraph 2.1; or
- (b) has been provided previously by the Contractor to the Authority, the Authority may satisfy the requirements of Paragraph 2.1 by referring to the Contractor's prior notification.

- 2.3 If the Authority becomes aware of any changes in the information notified previously under Paragraphs 2.1 or 2.2 that would affect the Contractor's ability to use, access disclose, re-transfer or re-export an Item or part of it as is referred to in those Paragraphs, the Authority shall notify the Contractor promptly of the change.

- 2.4 Without prejudice to the Contractor's other obligations under this Paragraph 2, the Contractor shall and shall procure that its Sub-Contractors shall (where such Sub-Contractor's access subject to these restrictions is also authorised) abide by the lawful restrictions so notified by

the Authority. The Contractor shall notify the Authority immediately if it is unable for whatever reason to abide by any restriction advised by the Authority to the Contractor under Paragraph 2.1.

Contractor obligations to notify

- 2.5 The Contractor shall use reasonable endeavours to identify whether any Item or Service is subject to Trade Control Regulations. Except to the extent already notified by the Authority to the Contractor under Paragraph 2.1, the Contractor shall notify the Authority promptly if the Contractor becomes aware that all or part of any Item or Service to be delivered under this Contract is or will be subject to Trade Control Regulations. Such notification shall be no later than thirty (30) calendar days of knowledge of any affected Item or Service and in any event such notification shall be not less than thirty (30) calendar days prior to delivery of the relevant Item or Service. For the purposes of this Paragraph 2.5, the Contractor's obligations do not include the Intellectual Property specific restrictions of the type referred to in Paragraphs 6.1.1(b) and (c) (*Third Party Intellectual Property – Rights and Restrictions*) of Schedule 8 (*Intellectual Property Rights*).
- 2.6 The Contractor shall give the Authority:
- (a) a copy of every licence or agreement required in relation to any Item or Service referred to in Paragraph 2.5 to the extent that they place an obligation or restriction on the Authority with which the Authority must comply, such copy may be redacted to the extent required to comply with confidentiality restrictions but must include (to the extent applicable to such obligations or restrictions):
 - (i) the exporting nation, including the export licence or agreement number (where known);
 - (ii) the Item or Service affected;
 - (iii) the nature of the restriction or obligation;
 - (iv) the authorised end use and end users;
 - (v) any specific restrictions on access by third parties, or by individuals based upon their nationality, to the Items affected or to anything delivered or used in the performance of the Services; and
 - (vi) any specific restrictions on the end user or on re-transfer or re-export to third parties of the Items affected or of anything delivered or used in the performance of the Services; and
 - (b) a list of pending licences and agreements required in relation to any Item or Service referred to in Paragraph 2.5 to the extent that such licence or agreement is expected to place an obligation or restriction on the Authority with which the Authority must comply, including (to the extent applicable to such obligations or restrictions) the information required under Paragraphs 2.6(a)(i) to (vi) of which the Contractor is aware.
- 2.7 If the information required under Paragraph 2.5 or 2.6 has been provided previously to the Authority by the Contractor, the Contractor may satisfy the requirements of those Paragraphs by giving details of the previous notification and confirming that it remains valid and satisfies the provisions of Paragraphs 2.5 and/or 2.6.

- 2.8 If the Contractor becomes aware of any changes in the information notified previously under Paragraphs 2.5 or 2.6 that would affect the Authority's ability to use, access, disclose, re-transfer or re-export an Item or part of it as is referred to in those Paragraphs, the Contractor shall notify the Authority promptly of the change.
- 2.9 The Contractor shall notify the Authority promptly of any changes in the information notified previously under Paragraphs 2.5 or 2.6 that would affect the Authority's ability to use, access, disclose, re-transfer or re-export an Item or part of it as is referred to in those Paragraphs, the Contractor shall notify the Authority promptly of the change. This Paragraph shall survive termination or expiry of this Contract howsoever arising.

Items sourced by the Contractor

- 2.10 If in the performance of this Contract the Contractor (or any Sub-Contractor acting on the Contractor's behalf):
- (a) needs to export, import, handle or otherwise deal with an Item which is subject to Trade Control Regulations; and
 - (b) such export, import, handling or dealing with the relevant Item cannot be done without a licence or other permission from a foreign government.

the responsibility for applying for and obtaining the licence, agreement or other permission shall rest with the Contractor. Until such time as the Contractor has procured such licence, agreement or permissions, it shall put in place a risk management plan for the Item(s) and such plan shall be made available to the Authority to review and the Contractor shall be responsible for compliance with Trade Controls Regulations relating to such Item(s).

- 2.11 Without prejudice to United Kingdom Government's position on the validity of any claim by a foreign government to extra-territoriality, the Authority undertakes to provide the Contractor with all reasonable assistance to facilitate the granting of any licence or permission required by a foreign government pursuant to relevant Trade Control Regulations and which is required in respect of the Contractor's performance of this Contract.

Licences required but which have not been obtained

- 2.12 Without prejudice to Paragraph 2.9 when a licence, agreement or permission is required from a foreign government for the performance of this Contract (or any part of it) pursuant to Trade Control Regulations and neither Party has already procured it, the Contractor (or the Contractor's Sub-Contractor) shall promptly consult with the Authority to determine whether the Contractor or the Authority should apply for the licence, agreement or permission. In the event that the Parties cannot agree which is best placed to make a licence application pursuant to this Paragraph 2.12, the Authority shall have the right to make a final determination, acting reasonably.
- 2.13 Where the Contractor (or the Contractor's Sub-Contractor) is the applicant for such licence, agreement or permission, the Contractor shall, or procure that the Contractor's Sub-Contractor shall:
- (a) ensure that when end use or end user restrictions, or both, apply to all or part of any Item or Service to be delivered under this Contract that is or will be subject to Trade Control Regulations, the Contractor (or the Contractor's Sub-Contractor, as applicable), unless otherwise agreed with the Authority, identifies in the licence application:

- (i) the end user as: Her Britannic Majesty's Government of the United Kingdom of Great Britain and Northern Ireland (**HM Government**), and
- (ii) the end use as: For the purposes of HM Government; and
- (b) include in the submission for the licence, agreement or permission a statement that "information on the status of processing this licence application may be shared with the Ministry of Defence of the United Kingdom".

2.14 Where the Authority is the applicant for such licence, agreement or permission, the Authority shall:

- (a) ensure that each Contractor Group Member is identified as a permitted party, licensee, sub-licensee, consignee or intermediate consignee to all or part of any Item or Service to be delivered under this Contract that is or will be subject to Trade Control Regulations and, unless otherwise agreed with the Contractor, that the licence application identifies:
 - (i) each Contractor Group Member and (to the extent specified by the Contractor) any other appropriate Contractor legal entities;
 - (ii) the relevant Service Delivery Locations;
 - (iii) the relevant territories; and
 - (iv) all exemptions and/or exceptions permitted under the Trade Control Regulations and agreed to be applicable by the Parties; and
- (b) include in the submission for the licence, agreement or permission a statement that "information on the status of processing this licence application may be shared with the Contractor."

Variations to licences

2.15 During the term of the Contract and for a period of up to two (2) years from completion of the Contract, either Party may make a written request to the other Party to seek a variation to the conditions to a licence, agreement or permission procured by the other Party (or the other Party's Sub-Contractor) pursuant to this Paragraph 2 to enable the requesting Party to re-export or re-transfer a licensed Item from the UK to a non-licensed third party.

2.16 The Party making a written request pursuant to Paragraph 2.15 shall consult with the other Party to determine which Party is best placed in all the circumstances to file the application to seek a variation. The Parties shall, and will procure that their Sub-Contractors shall, expeditiously consider whether or not there is any reason why it should object to making the variation request and, where it has no objection, file an application to seek a variation of the applicable licence or permission in accordance with the procedures of the licensing authority.

2.17 Where either Party has an objection during the consultation process set out at Paragraph 2.16, the Parties shall meet within five (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. In the event that the Parties cannot agree which is best placed to make a request, the Authority shall have the right to make a final determination, acting reasonably.

- 2.18 Each Party undertakes to provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the other Party in making the application for a variation requested pursuant to Paragraph 2.15.
- 2.19 Any variation to the Contract resulting from a request made pursuant to Paragraph 2.15 shall be implemented in accordance with the procedures set out in Schedule 30(*Change Procedure*).

General provisions relevant to Trade Control Regulations

- 2.20 The Contractor shall not do, or omit to do, anything which would put the Authority in breach of any applicable Trade Control Regulations.
- 2.21 Where restrictions are advised by the Authority to the Contractor under Paragraph 2.1, 2.2 or 2.3, or by the Contractor to the Authority under Paragraph 2.6, 2.7 or 2.8, the Authority and the Contractor shall each act promptly to mitigate their impact and:
- (a) if these restrictions adversely affect performance of the Contract, the restrictions shall be regarded as a Change and handled under the Change Procedure;
 - (b) if the Contractor is unable to perform this Contract as a result of these restrictions then the Authority shall consult with the Contractor on alternative solutions requiring amendment of this Contract by way of a Change and may terminate the Contract if no alternative solution satisfying the essential terms of the Contract is agreed; and
 - (c) termination under these circumstances will be under the terms of Clause 62 (*Termination for Prolonged Force Majeure Events*) with the inability on the part of the Contractor to perform this Contract because of the existence of such restrictions being deemed for such purposes as constituting a Force Majeure Event.
- 2.22 Without prejudice to Schedule 14 (*Supply Chain and Sub-Contracting Strategy*), where the Contractor sub-contracts work under this Contract which is likely to be subject to Trade Control Regulations, the Contractor shall use reasonable endeavours to incorporate in the relevant Sub-Contract equivalent obligations to those placed on the Contractor under this Schedule 9 to ensure that the Contractor is able to fulfil its obligations to the Authority under this Contract.
- 2.23 Where either Party becomes aware of:
- (a) a failure by an issuing authority to issue any licence or permission required pursuant to Trade Control Regulations in a timely manner (for reasons other than any act or omission of the Contractor or any of its Sub-Contractors); or
 - (b) any change in applicable Trade Control Regulations,
- it shall promptly consult with the other Party in respect of such occurrence. In such event, the Parties shall work together to minimise the impact of any such failure or change on the provision of the Services by the Contractor. Notwithstanding the foregoing and without limitation to any express rights under this Contract, to the extent that any failure or change referred to in Paragraph 2.23(a) or 2.23(b) prevents the Contractor from complying with any of its obligations under this Contract, the Contractor shall be relieved from any action for failure to comply with such obligations.
- 2.24 A failure by the Authority to perform its obligations under this Schedule 9 either at all or in sufficient time so as to enable the Contractor to comply with its obligations under this Contract

shall, if and to the extent resulting in the Contractor being unable to comply with its obligations under this Contract, be a Compensation Event for the purposes of (and subject to) Clause 55.2 (*Relief Events and Compensation Events*).

3 Not used

4 Controlled Information

4.1 This Paragraph shall apply in addition to and notwithstanding any other confidentiality condition of this Contract.

4.2 The Contractor shall:

- (a) hold the Controlled Information and not use it other than for the purpose of discharging its obligations under this Contract;
- (b) not copy the Controlled Information except as strictly necessary for the purpose of discharging its obligations under this Contract;
- (c) not disclose the Controlled Information to any third party unless so authorised in writing beforehand by the Authority.
- (d) protect the Controlled Information diligently against unauthorised access and against loss; and,
- (e) act diligently to ensure that:
 - (i) Controlled Information is disclosed to its employees only to the extent necessary for the purpose of discharging its obligations under this Contract;
 - (ii) employees to whom Controlled Information is disclosed are made aware of and required to comply with the terms of this Paragraph 4.
- (f) comply with the terms of any export licence applicable to the Controlled Information to which it is a party; and
- (g) use its best endeavours to procure the compliance by each Contractor Group Member that is involved in the performance of the Services with the terms of any export licence to which such Contractor Group Member is a party to the extent that such licence applies to Controlled Information

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

- (a) compile a register of that Controlled Information, which shall include explicit description of the Controlled Information, a record of the number of copies made and a record of all access to the Controlled Information including access to any copies of the Controlled Information;
- (b) maintain this register for the duration of this Contract and for two years following termination or expiry of this Contract;
- (c) 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 Paragraph; and

- (d) notwithstanding any other obligation to maintain such Controlled Information under this Contract, at the termination or expiry of this Contract and where so requested by the Authority, return to the Authority all original and duplicate copies of the Controlled Information, or else at the Authority's option destroy these copies and provide a certificate of destruction to the Authority. This provision shall survive the termination or expiry of this Contract.

4.4 This Paragraph shall not diminish or extinguish any right of the Contractor to copy, use or disclose any other information to the extent that it can show:

- (a) that the information concerned was or has become published or publicly available for use without breach of any provision of this Contract or any other agreement between the Parties;
- (b) that the information was already known to it (without restrictions on disclosure or use) prior to receiving it under or in connection with this Contract;
- (c) that the information concerned was lawfully provided by a third party without restriction on use or further disclosure;
- (d) from its records, that the information was derived independently of the Controlled Information; or
- (e) that the Controlled Information was copied, used or disclosed in accordance with the terms of any export licence applicable to it;

but only to the extent that such copying, use or disclosure of this other information does not disclose its relationship to any Controlled Information.

Schedule 10 – Personnel

Part 1 of Schedule 10 – Employee Transfer Arrangements on Entry

1 Definitions

1.1 In this Part 1, save where otherwise provided, words and terms defined in Schedule 1 (*Definitions*) of the Contract shall have the meaning ascribed to them in Schedule 1 (*Definitions*) of the Contract.

1.2 Without prejudice to Schedule 1 (*Definitions*) of the Contract, in this Part 1 unless the context otherwise requires:

"Authority Employees" means those employees of the Authority who are listed in the Final List;

"Costs" means recruitment costs in respect of the provision of the Services, those costs of employing the employees of the Authority and/or any reasonable termination costs, including, without limitation, redundancy payments (but excluding costs arising from acts or omissions of the Contractor and/or Employing Sub-Contractor, and/or any payment which the Contractor and/or any Employing Sub-Contractor is not obliged to make by contract or statute and/or any compensation, payment, costs or awards (whether protective or otherwise) in connection with claims of unfair dismissal, discrimination and claims in respect of a protective award under the Trade Union and Labour Relations (Consolidation) Act 1992 (save where such claims are as a result of an act or omission of the Authority);

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

"Employee List" means the list of Expected Authority Transferees listed at Appendix A of this Part 1 plus the information listed in Part 1 of Appendix B of this Part 1 for those Expected Authority Transferees;

"Employing Sub-Contractor" means any sub-contractor of the Contractor providing any part of the Services who is, or is to be, the employer of an Authority Employee or an Unexpected Employee;

"Expected Authority Transferee" means an employee of the Authority whom the Authority considers is assigned or whose principal purpose is to provide the Services to be provided by the Contractor and/or an Employing Sub-Contractor prior to the Relevant Transfer Date and who the Authority expects to transfer to the Contractor or an Employing Sub-Contractor on the Relevant Transfer Date;

"Final List" means the list of Expected Authority Transferees as at twenty-eight (28) calendar days prior to the Relevant Transfer Date, plus the information listed in Part 2 of Appendix B of this Part 1 in respect of those Expected Authority Transferees;

"Former Authority Employee" means at any time any person whose employment previously transferred to a contractor or its sub-contractor pursuant to the Transfer Regulations and who has, pursuant to this Contract and the Transfer Regulations, transferred to the Contractor or any Sub-Contractor *provided that* since such person was employed by the Authority (a) he has not ceased to be eligible for membership of the Schemes; and (b) any change in his employer has been effected pursuant to the Transfer Regulations;

"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 partial termination, termination or expiry of this Contract;

"New Services" means any services outsourced by the Authority to the Contractor or any Sub-Contractor following discussion pursuant to Clause 57.5 (*Good faith discussion*) of the Contract.

"Previous Contractor" means BAE Systems Surface Ships Limited (Company No. 06160534);

"Previous Contractor Employee" means an employee of a Previous Contractor (including but not limited to Former Authority Employees) who immediately before the Relevant Transfer Date is assigned to carry out the services to be carried out by the Contractor or Sub-Contractor under this Contract and who has not been dismissed, resigned, been reassigned or objected to the Relevant Transfer;

"Previous Contractor Employee List" means the list of Previous Contractor Employees plus the information listed in Part 1 of Appendix B of this Part 1 for those Previous Contractor Employees;

"Previous Contractor Final List" means the list provided by the Authority to the Contractor pursuant to Paragraph 2.4.1 as updated, including pursuant to Paragraph 2.4.4 (as applicable) and which is current 28 days prior to the Relevant Transfer Date;

"Relevant Transfer" means a transfer to the Contractor or an Employing Sub-Contractor of an Authority Employee, or a Previous Contractor Employee (as applicable) pursuant to this Contract and the Transfer Regulations;

"Relevant Transfer Date" means the date on which a Relevant Transfer is effected for Authority Employees, or Previous Contractor Employees (as applicable);

"Relevant Statutory Scheme" has the same meaning as in Regulation 8 of the Transfer Regulations;

"Transfer Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time and/or the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 (as amended from time to time), as appropriate;

"Unexpected Employee" means any employee of the Authority or former employee of the Authority who is not on the Final List provided in accordance with Paragraph 2.5.4 and who is or was assigned by the Authority to the Services or New Services (or part thereof, as applicable) provided by the Contractor and/or an Employing Sub-Contractor prior to the Relevant Transfer Date; and

"Unexpected Previous Contractor Employee" means any Previous Contractor Employee or former employee of the Previous Contractor who is not on the Previous Contractor Final List and who is or was assigned by the Previous Contractor to perform services which were fundamentally or essentially the same as the Services or New Services (or part thereof, as applicable) provided by the Contractor and/or an Employing Sub-Contractor prior to the Relevant Transfer Date.

2 Incoming employees

- 2.1 It is the Parties' understanding that the commencement of the provision of the Services (or any part) under this Contract, will result in a transfer of Previous Contractor Employee to the Contractor under the Transfer Regulations on the Relevant Transfer Date.
- 2.2 The Parties also recognise that the commencement of the provision of New Services may result in a transfer of Authority Employees to the Contractor under the Transfer Regulations on a Relevant Transfer Date.
- 2.3 If at any time the Authority reasonably believes the Transfer Regulations will apply on the commencement of any provision of the Services (or any part), including any New Services (or any part) under this Contract, it shall notify the Contractor and the remaining terms in this Part 1, shall apply.

2.4 Employee Information Previous Contractor Employees

- 2.4.1 In the case of a Relevant Transfer involving Previous Contractor Employees, where reasonably practicable, no later than three (3) months prior to the Relevant Transfer Date the Authority shall provide to the Contractor the Previous Contractor Employee List to the extent that such information has been provided to the Authority by the Previous Contractor.
- 2.4.2 The Authority shall provide the Contractor with any update to the information provided under Paragraph 2.4.1 as soon as is reasonably practicable, to the extent that such information has been provided to the Authority by the Previous Contractor.
- 2.4.3 The Contractor shall provide any information provided to it by the Authority pursuant to Paragraph 2.4.1 to an Employing Sub-Contractor within seven (7) Business Days of receipt to the extent that such Previous Contractor Employees are to transfer to an Employing Sub-Contractor under a Relevant Transfer on the Relevant Transfer Date.
- 2.4.4 Paragraphs 2.4.1 and 2.4.2 is subject to the Authority and any Previous Contractor's obligations in respect of the Data Protection Legislation and any data provided by the Authority in accordance with Paragraphs 2.4.1 or 2.4.2 shall be provided in anonymous form in order to enable its disclosure. To the extent anonymous data has been provided by the Authority pursuant to its obligations under Paragraphs 2.4.1 or 2.4.2 above, the Authority shall provide full data no later than twenty-eight (28) calendar days prior to the Relevant Transfer.
- 2.4.5 The Authority does not warrant the accuracy of the information provided under Paragraph 2.4.1.

2.5 Authority Employee Information / Total Contract Price Adjustment

- 2.5.1 Three (3) months prior to the Relevant Transfer Date the Authority shall provide to the Contractor:
- (a) The Employee List; and
 - (b) Employee Liability Information in respect of the Expected Authority Transferees;
- 2.5.2 Up to twenty-eight (28) calendar days prior to the Relevant Transfer Date the Authority shall inform the Contractor of, and provide any information related to, any changes to the information provided pursuant to Paragraph 2.5.1 as soon as reasonably practicable.

- 2.5.3 The Contractor's Representative shall provide any information provided to it by the Authority under Paragraphs 2.5.1 and 2.5.2 to an Employing Sub-Contractor within seven (7) Business Days of receipt to the extent that such Expected Authority Transferees are to transfer to an Employing Sub-Contractor under a Relevant Transfer on the Relevant Transfer Date.
- 2.5.4 No later than twenty-eight (28) calendar days prior to the Relevant Transfer Date the Authority shall provide to the Contractor the Final List.
- 2.5.5 Paragraph 2.5.1 is subject to the Authority's obligations in respect of the Data Protection Legislation and the Authority shall use its reasonable endeavours to obtain the consent of its employees to the extent necessary under the Data Protection Legislation or provide the data in anonymous form in order to enable disclosure of the information required under Paragraph 2.5.1. To the extent anonymous data has been provided by the Authority to the Contractor pursuant to its obligations under Paragraph 2.5.1 above, the Authority shall provide full data to the Contractor no later than twenty-eight (28) calendar days prior to the Relevant Transfer.
- 2.5.6 Where any differences between the Employee List at Appendix A (which shows the employee information on which the Contractor based the employment costs used to calculate the Total Contract Price, those employment costs being zero pounds (£0)) and the Final List result in reasonable additional Costs to the Contractor and/or any Employing Sub-Contractor, the Contractor may propose a reasonable adjustment to the Total Contract Price to meet such reasonable additional Costs that the Contractor and/or any Employing Sub-Contractor incurs as a result of such a change provided that such a change is not as a result of an act or omission of the Contractor and/or any Employing Sub-Contractor. The Contractor shall produce such evidence of the reasonable additional Costs incurred as the Authority may reasonably require as soon as is reasonably practicable and in any event no later than twenty-eight (28) calendar days following the receipt of such a written request prior to any adjustment being made. No adjustment to the Total Contract Price shall be made where there is a failure to produce such evidence within this timescale or where the Authority considers such information insufficient.
- 2.5.7 Where the Authority considers that any differences between the Employee List at Appendix A (which shows the employee information on which the Contractor based the employment costs used to calculate the Total Contract Price, those employment costs being zero pounds (£0)) and the Final List result in a reduction of Costs to the Contractor and/or any Employing Sub-Contractor, the Authority shall propose a reasonable adjustment to the Total Contract Price to reflect any reasonable reduction in Costs to the Contractor and/or any Employing Sub-Contractor. The Authority and the Contractor shall produce such reasonable evidence as the other Party shall reasonably require as soon as is reasonably practicable and in any event no later than twenty-eight (28) calendar days after a request is made in writing in order to establish such a reduction in Costs. A failure by the Contractor to produce such evidence shall preclude the Contractor from objecting to an adjustment to the Total Contract Price. A failure by the Authority to produce such evidence, save where such a failure is as a result of an act or omission of the Contractor or Employing Sub-Contractor, shall result in no adjustment to the Total Contract Price.
- 2.5.8 Where, following the Relevant Transfer Date, the Contractor and/or the Authority provides reasonable evidence to the other Party that any of the details in the Final List were inaccurate (other than details in respect of the number or identity of the Expected Authority Transferees which shall not be taken into account in respect of any Total Contract Price adjustment due to additional Costs) the Total Contract Price shall be adjusted to reflect the adjustment which would have been made under Paragraphs 2.5.6 and/or 2.5.7 (if any) had the Final List been accurate on the Relevant Transfer Date. The Authority and the Contractor shall produce such reasonable evidence of the inaccuracies and/or the additional Costs and/or reduction in Costs

incurred as the other Party may reasonably require as soon as is reasonably practicable and in any event, no later than twenty-eight (28) calendar days following the receipt of such a request prior to any adjustments being made. Where there is a failure by the Contractor to produce such evidence within this timescale or where the Authority reasonably considers such information insufficient, no adjustment to the Total Contract Price shall be made. A failure by the Authority to produce reasonable evidence to demonstrate inaccuracies and/or the reduction in Costs, save where such a failure is as a result of an act or omission of the Contractor or Employing Sub-Contractor, shall result in no adjustment to the Total Contract Price.

- 2.5.9 No adjustments shall be made to the Total Contract Price in respect of inaccuracies raised under Paragraphs 2.5.6, 2.5.7 or 2.5.8 more than six (6) months following the Relevant Transfer Date.
- 2.5.10 The Parties agree that any adjustments to the Total Contract Price under Paragraphs 2.5.6, 2.5.7 or 2.5.8 for each Relevant Transfer shall be made at the same time which shall be no earlier than six (6) months after the Relevant Transfer Date.
- 2.5.11 If a claim or allegation is made by an Unexpected Employee that he has or should have transferred to the Contractor and/or any Sub-Contractor and/or (in the case of an Unexpected Employee whose employment terminated on or before the Relevant Transfer Date) that any liability relating to him has transferred to the Contractor and/or any Sub-Contractor by virtue of the Transfer Regulations and this Contract, the Party receiving the claim or allegation shall notify the other Party (or the Contractor shall notify the Authority on the Sub-Contractor's behalf) in writing as soon as reasonably practicable and no later than ten (10) Business Days after receiving notification of the Unexpected Employee's claim or allegation, whereupon:
- (a) the Authority shall, as soon as reasonably practicable, offer and/or confirm continued employment to the Unexpected Employee or take such other steps so as to effect a written withdrawal of the claim or allegation; and
 - (b) if the Unexpected Employee's claim or allegation is not withdrawn or resolved the Authority shall notify the Contractor (who will notify any Sub-Contractor who is a party to such claim or allegation), and the Contractor or Sub-Contractor shall employ the Unexpected Employee or as soon as reasonably practicable (subject to compliance with its obligations at Paragraph 2.5.11(c)), serve notice to terminate the Unexpected Employee's employment in accordance with his contract of employment and/or (in the case of an Unexpected Employee whose employment terminated on or before the Relevant Transfer Date) shall resist any claim brought by the Unexpected Employee against the Contractor and/or any Sub-Contractor; and
 - (c) the Authority shall effect an adjustment to the Total Contract Price which has the effect of reimbursing the Contractor for any of the following liabilities incurred by the Contractor or Sub-Contractor in dealing with or disposing of the Unexpected Employee's claim or allegation:
 - (i) any additional Costs of employing the Unexpected Employee to provide the Services under this Contract up to the date of dismissal where the Unexpected Employee has been dismissed in accordance with Paragraph 2.5.11(b));
 - (ii) any liabilities acquired by virtue of the Transfer Regulations in relation to the Unexpected Employee;

- (iii) any liabilities relating to the termination of the Unexpected Employee's employment provided the Contractor or Sub-Contractor has used reasonable endeavours to find alternative employment for the Unexpected Employee, but excluding such proportion or amount of any liability for unfair dismissal, breach of contract or discrimination attributable:
 - (A) to a failure by the Contractor or an Employing Sub-Contractor to act reasonably to mitigate the costs of dismissing such person);
 - (B) directly or indirectly to the procedure followed by the Contractor or an Employing Sub-Contractor in dismissing the Unexpected Transferee; or
 - (C) to the acts/omissions of the Contractor or an Employing Sub-Contractor not wholly connected to the dismissal of that person;
- (iv) any liabilities incurred under a settlement of the Unexpected Employee's claim which was reached with the express permission of the Authority (not to be unreasonably withheld or delayed);
- (v) reasonable administrative costs incurred by the Contractor or Sub-Contractor in dealing with the Unexpected Employee's claim or allegation, subject to a cap per Unexpected Employee of five thousand pounds (£5,000); and
- (vi) legal and other professional costs reasonably incurred;

2.5.12 The Contractor shall be deemed to have waived its right to an adjustment as per Paragraph 2.5.11(c) if it fails without reasonable cause to take, or fails to procure any Sub-Contractor takes, any action in accordance with any of the timescales referred to in Paragraph 2.5.11.

2.6 Obligations in Respect of Authority Employees

- 2.6.1 The Contractor and the Authority acknowledge, and the Contractor shall procure that the Employing Sub-Contractors acknowledge, that the provision of the Services under this Contract will constitute one or more Relevant Transfers for the purposes of the Transfer Regulations.
- 2.6.2 The Contractor agrees and shall procure that the Employing Sub-Contractors agree that from the Relevant Transfer Date the contracts of employment of any Authority Employees together with any collective agreements (save insofar as such contracts and such agreements relate to benefits for old age, invalidity or survivors under any occupational pension scheme or otherwise do not transfer pursuant to regulation 4A of the Transfer Regulations) will take effect as if originally made between the Contractor or an Employing Sub-Contractor and the Authority Employees (or the relevant trade union, as the case may be).
- 2.6.3 The Authority and the Contractor shall (and the Contractor shall procure that any Employing Sub-Contractors shall):
 - (a) before and in relation to the Relevant Transfer Date liaise with each other and shall co-operate with each other in order to implement effectively the smooth transfer of the Authority Employees to the Contractor or Employing Sub-Contractor; and
 - (b) comply with their respective obligations under the Transfer Regulations including their obligations to inform and consult under Regulation 13.

- 2.6.4 The Authority shall be responsible for all emoluments and outgoings in respect of an Authority Employee (including without limitation all wages, bonuses, commissions, payments in respect of holiday taken up to the Relevant Transfer Date, PAYE, national insurance contributions and contributions to retirement benefit schemes) in respect of the period prior to the Relevant Transfer Date and shall indemnify the Contractor in respect of the same.
- 2.6.5 The Contractor or Employing Sub-Contractor (as the case may be) shall have responsibility for all emoluments and outgoings (including without limitation all wages, bonuses, commissions, payments in respect of holiday taken after the Relevant Transfer Date, PAYE, national insurance contributions and contributions to retirement benefit schemes) in relation to the Authority Employees with effect from and including the Relevant Transfer Date and the Contractor shall indemnify the Authority in respect of the same.
- 2.6.6 No later than three (3) months after the Relevant Transfer Date the Contractor shall pay to the Authority a sum equal to the outstanding balance on the Relevant Transfer Date of any loan, advance or other indebtedness of any Authority Employee to the Authority which is outstanding immediately prior to the Relevant Transfer save to the extent that such sums are otherwise recovered by the Authority pursuant to Paragraph 2.5.8.
- 2.6.7 The Authority shall indemnify the Contractor against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any claim or claims by any Authority Employee brought against the Contractor and/or any Employing Sub-Contractor at any time up to the Subsequent Transfer Date arising out of or in connection with any acts or omissions of the Authority which occurred prior to the Relevant Transfer Date for that Authority Employee provided that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with such claims are not the result of any act or omission of the Contractor and/or Employing Sub-Contractor.
- 2.6.8 The Authority shall indemnify the Contractor against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any claim or claims by any Authority Employee or trade union representative or Authority Employee representative brought against the Contractor, whether before or after the Relevant Transfer Date, arising out of any failure by the Authority to comply with its obligations under Regulation 13 of the Transfer Regulations in respect of any Authority Employee or any other employee of the Authority affected by the Relevant Transfer effected by this Contract (as defined by Regulation 13 of the Transfer Regulations), except to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with such claims are the result of any act or omission of the Contractor and/or Employing Sub-Contractor.
- 2.6.9 The Contractor shall indemnify the Authority against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any claim or claims by any employee or trade union representative or employee representative brought against the Authority, whether before or after the Relevant Transfer Date, arising out of any failure by the Contractor or any Employing Sub-Contractor to comply with its or their obligations under Regulation 13 of the Transfer Regulations save to the extent that any reasonable costs (including reasonable legal costs), losses, and expenses and all damages, compensation, fines and liabilities arising out of such claims are the result of the act or omission of the Authority.

2.6.10 The Contractor shall indemnify the Authority in respect of all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and other liabilities arising out of or in connection with or as a result of a substantial change proposed or made by the Contractor or any Employing Sub-Contractor to the working conditions of all or any Authority Employees to the material detriment of such Authority Employees. For the purposes of this Paragraph the expressions "substantial change" and "material detriment" shall have the same meaning as for the purposes of Regulation 4(9) of the Transfer Regulations.

2.6.11 The Contractor shall indemnify the Authority in respect of all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and other liabilities arising out of or in connection with or as a result of any variations or proposed variations to any Authority Employee's terms and conditions of employment pursuant to regulations 4(5) and 4(5B) of the Transfer Regulations.

2.7 Application of Paragraphs in this Schedule to employed Unexpected Employees

2.7.1 Paragraph 2.5.2, 2.5.4 to 2.5.7 and 2.5.10 of this Part 1, Part 2 (*Staff Transfer on Exit*) and Part 4 (*Pensions*) of this Schedule 10 shall apply to any Unexpected Employee whom the Contractor and/or any Sub-Contractor has decided to employ in accordance with Paragraph 2.5.11 save that references to "the Relevant Transfer Date" in Paragraphs 2.5.2, 2.6.4 to 2.6.7 of this Part 1 shall be construed as being references to the date on which that Unexpected Employee took up employment with the Contractor or Sub-Contractor and any reference to an "Authority Employee" shall be construed as being a reference to the Unexpected Employee.

2.8 Employee Liability Information

2.8.1 The Parties consider that the provisions of this Contract (and in particular Paragraph 2.5.7 of this Part 1) provide sufficient protection and opportunity for compensation to the Contractor or Employing Sub-Contractors in the event of any breach by the Authority of its obligations under Regulation 11 of the Transfer Regulations and that as anticipated by Regulation 12(5) of the Transfer Regulations it is just and equitable that the Tribunal make no award for compensation under Regulation 12(3)(b) and, in the alternative, if the Tribunal determines that it is just and equitable for an award of compensation to be made then the Contractor for itself and on behalf of any Employing Sub-Contractor agrees that such award should be no more than five hundred pounds (£500) for the relevant employee.

2.9 Obligations in respect of Previous Contractor Employees

2.9.1 The Contractor and the Authority acknowledge (and the Contractor shall procure that the Employing Sub-Contractor acknowledges) that the provision of the Services under this Contract will constitute a Relevant Transfer of Previous Contractor Employees on commencement.

2.9.2 The Contractor agrees (and will procure that the Employing Sub-Contractor agrees) that from the Relevant Transfer Date the contracts of employment of any Authority Employees, or Previous Contractor Employees (in each case as applicable) together with any collective agreements (save insofar as such contracts and such agreements relate to benefits for old age, invalidity or survivors under any occupational pension scheme) will take effect as if originally made between the Contractor or an Employing Sub-Contractor and the Authority Employees, or Previous Contractor Employees (or the relevant trade union, as the case may be) (in each case as applicable) subject to any variations to such contracts of employment made pursuant to Regulation 9 of the Transfer Regulations, where applicable.

- 2.9.3 Save for any liabilities in respect of Previous Contractor Employees under a Relevant Statutory Scheme or Schemes, the Contractor or Employing Sub-Contractor (as the case may be) shall have responsibility for all emoluments and outgoings (including without limitation all wages, bonuses, commissions, payments in respect of holiday taken after the Relevant Transfer Date as appropriate, PAYE, national insurance contributions and contributions to retirement benefit schemes) in relation to the Authority Employees, or Previous Contractor Employees (in each case as applicable) with effect from and including the Relevant Transfer Date and shall indemnify the Authority and the Previous Contractor in respect of the same.
- 2.9.4 The Authority shall indemnify the Contractor against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any claim or claims by any Previous Contractor Employee or trade union representative or Previous Contractor Employee representative brought against the Contractor and/or any Employing Sub-Contractor, whether before or after the Relevant Transfer Date, arising out of any failure by the Previous Contractor to comply with its obligations under Regulation 13 of the Transfer Regulations in respect of any Previous Contractor Employee or any other employee of the Previous Contractor affected by the Relevant Transfer effected by this Contract (as defined by Regulation 13 of the Transfer Regulations), except to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with such claims are the result of any act or omission of the Contractor and/or Employing Sub-Contractor.
- 2.9.5 The Authority shall indemnify the Contractor against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any claim or claims by (or on behalf of) any Previous Contractor Employee brought against the Contractor and/or any Employing Sub-Contractor arising out of or in connection with any acts or omissions of the Previous Contractor which occurred prior to the Relevant Transfer Date in respect of that Previous Contractor Employee, provided that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with such claims are not the result of any act or omission of the Contractor and/or Employing Sub-Contractor.

2.10 Unexpected Previous Contractor Employees

- 2.10.1 If a claim or allegation is made by an Unexpected Previous Contractor Employee that he has or should have transferred to the Contractor and/or any Sub-Contractor and/or (in the case of an Unexpected Previous Contractor Employee whose employment terminated on or before the Relevant Transfer Date) that any liability relating to him has transferred to the Contractor and/or any Sub-Contractor by virtue of the Transfer Regulations and this Contract, the Party receiving the claim or allegation shall notify the other Party (or the Contractor shall notify the Authority on the Sub-Contractor's behalf) in writing as soon as reasonably practicable and no later than ten (10) Business Days after receiving notification of the Unexpected Previous Contractor Employee's claim or allegation, whereupon:
- (a) the Authority shall procure that the Contractor shall, as soon as reasonably practicable, offer and/or confirm continued employment to the Unexpected Previous Contractor Employee or take such other steps so as to effect a written withdrawal of the claim or allegation; and
 - (b) if the Unexpected Previous Contractor Employee's claim or allegation is not withdrawn or resolved the Authority shall notify the Contractor (who will notify any Sub-Contractor who is a party to such claim or allegation), and the Contractor or Sub-

Contractor shall employ the Unexpected Previous Contractor Employee or as soon as reasonably practicable (subject to compliance with its obligations at Clause 2.10.1 (c) and in any event within ten (10) Business Days of such notification that the allegation has not been withdrawn or resolved), serve notice to terminate the Unexpected Previous Contractor Employee's employment in accordance with his contract of employment and/or (in the case of an Unexpected Previous Contractor Employee whose employment terminated on or before the Relevant Transfer Date) shall resist any claim brought by the Unexpected Previous Contractor Employee against the Contractor and/or any Sub-Contractor; and

- (c) the Authority shall effect an adjustment to the Total Contract Price which has the effect of reimbursing the Contractor for any of the following liabilities incurred by the Contractor or Sub-Contractor in dealing with or disposing of the Unexpected Previous Contractor Employee's claim or allegation:
- (i) any additional Costs of employing the Unexpected Previous Contractor Employee to provide the Services under this Contract up to the date of dismissal where the Unexpected Previous Contractor Employee has been dismissed in accordance with Clause 2.10.1 (c));
 - (ii) any liabilities acquired by virtue of the Transfer Regulations in relation to the Unexpected Previous Contractor Employee;
 - (iii) any liabilities relating to the termination of the Unexpected Previous Contractor Employee's employment pursuant to Clause 2.10.1 (c) provided the Contractor or Sub-Contractor has used reasonable endeavours to find alternative employment for the Unexpected Previous Contractor Employee, but excluding such proportion or amount of any liability for unfair dismissal, breach of contract or discrimination attributable:
 - (A) to a failure by the Contractor or an Employing Sub-Contractor to act reasonably to mitigate the costs of dismissing such person);
 - (B) directly or indirectly to the procedure followed by the Contractor or an Employing Sub-Contractor in dismissing the Unexpected Previous Contractor Employee; or
 - (C) to the acts/omissions of the Contractor or an Employing Sub-Contractor not wholly connected to the dismissal of that person;
 - (iv) where the Unexpected Previous Contractor Employee's employment was terminated in accordance with Clause 2.10.1, any liabilities incurred under a settlement of the Unexpected Previous Contractor Employee's claim which was reached with the express permission of the Authority (not to be unreasonably withheld or delayed);
 - (v) reasonable administrative costs incurred by the Contractor or Sub-Contractor in dealing with the Unexpected Previous Contractor Employee's claim or allegation, subject to a cap per Unexpected Previous Contractor Employee of five thousand pounds (£5,000); and
 - (vi) legal and other professional costs reasonably incurred.

2.10.2 The Contractor shall be deemed to have waived its right to an adjustment as per Clause 2.10.1(c) if it fails without reasonable cause to take, or fails to procure any Sub-Contractor takes, any action in accordance with any of the timescales referred to in Paragraph 2.10.1.

2.11 Application of Paragraphs in this Schedule to employed Unexpected Employees

2.11.1 Clause 2.9.2 to 2.9.5 of this Part 1, Part 2 (*Employee Transfer Arrangements on Exit*) and Part 4 (*Pension*) of this Schedule 10 shall apply to any Unexpected Previous Contractor Employee whom the Contractor and/or any Sub-Contractor has decided to employ in accordance with Clause 2.10.1(b) save that references to "the Relevant Transfer Date" in Clauses 2.9.2 to 2.9.5 of this Part 1 shall be construed as being references to the date on which that Unexpected Previous Contractor Employee took up employment with the Contractor or Sub-Contractor and any reference to a Previous Contractor Employee shall be construed as also being a reference to the Unexpected Previous Contractor Employee.

2.12 Indemnities

2.12.1 The Contractor shall indemnify and hold harmless the Authority against all demands, claims, liabilities, losses and damages, costs and expenses (including all interest, penalties, legal and other costs and expenses) together with any applicable Value Added and similar taxes or liability for deduction of PAYE tax properly incurred by the Authority arising out of or in connection with:

- (a) any breach by the Contractor and/or any Employing Sub-Contractor of their obligations under Regulation 13 of the Transfer Regulations;
- (b) any act or proposal by the Contractor or any Employing Sub-Contractor prior to or following the Relevant Transfer Date which amounts to a repudiatory breach of contract as referred to in Regulation 4(11) of the Transfer Regulations and/or to make a substantial change in working conditions of any Authority Employee to the material detriment of that employee. For the purposes of this sub-clause the expressions "repudiatory breach", "substantial change" and "material detriment" shall have the same meanings as for the purposes of Regulation 4(9) and 4(11) of the Transfer Regulations; and
- (c) any collective agreement or any arrangement with any trade union or staff association after the Authority Employee Relevant Transfer Date (in each case as applicable).
- (d) any variations or proposed variations to any Authority Employee's terms and conditions of employment pursuant to regulations 4(5) and 4(5B) of the Transfer Regulations.

3 General provisions applicable to previous contractor Employees and contractor personnel

3.1 Contractor Indemnity

3.1.1 The Contractor shall indemnify the Authority and any New Provider against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with the employment or termination of employment by the Contractor or any Employing Sub-Contractor of any person (including any Authority Employees) engaged in connection with the provision of the Services during the term of this Contract.

3.2 Post Transfer Reporting

3.2.1 The Contractor shall upon request by the Authority provide (or shall procure that an Employing Sub-Contractor shall provide) the Authority with the following information in respect of the employees who are wholly or mainly employed, assigned or engaged in providing the Services:

- (a) any proposed, agreed or imposed changes to terms and conditions of service;
- (b) disputes relating to compliance with the Transfer Regulations which are regarded as unresolved by a recognised Trade Union;
- (c) any court action or tribunal proceedings relating to compliance with the Transfer Regulations;
- (d) completed court action or tribunal proceedings relating to compliance with the Transfer Regulations; and
- (e) out of court settlements relating to compliance with the Transfer Regulations if possible having regard to the wording of the settlement.

Appendix A to Part 1 of Schedule 10 – List of Former Authority Employees

Appendix B to Part 1 of Schedule 10 – Personnel Information to be released pursuant to this Contract

Part 1 of Appendix B to Part 1 of Schedule 10

Pursuant to Paragraph 2.5.1 of Part 1 of this Schedule 10, the written statement of employment particulars as required by section 1 of the Employment Rights Act 1996 together with the following information (save where that information is included within that statement) will be provided to the extent it is not included within the written statement of employment particulars:

Personal, Employment and Career

- a) Age;
- b) Security Vetting Clearance, level, reference number and expiry date;
- c) Job title;
- d) Work location;
- e) Conditioned hours of work;
- f) Employment Status;
- g) If in a probationary period following appointment – the probation end date
- h) Details of training and operating licensing required for Statutory and health and safety reasons;
- i) Details of training or sponsorship commitments;
- j) Standard Annual leave entitlement and current leave year entitlement and record;
- k) Annual leave reckonable service date;
- l) Details of disciplinary or grievance proceedings taken by or against transferring employees in the last two (2) years;
- m) Information of any legal proceedings between employees and their employer within the previous two (2) years or any such proceedings that the transferor has reasonable grounds to believe that an employee may bring against the transferee arising out of their employment with the transferor;
- n) Issue of Uniform/Protective Clothing;
- o) Working Time Directive opt-out forms; and
- p) Date from which the latest period of continuous employment began.

Superannuation and Pay

- a) Maternity leave or other long-term leave of absence (meaning more than four (4) weeks) planned or taken within the last two (2) years;
- b) Annual salary and rates of pay band/grade;

- c) Shifts, unsociable hours or other premium rates of pay;
- d) Overtime history for the preceding twelve-month period;
- e) Allowances and bonuses for the preceding twelve-month period indicating if these are permanent and continuing, or have an end date, or temporary – paid when eligible occurrences happen;
- f) Payments of statutory holiday pay in the preceding twelve-month period;
- g) Details of outstanding loan, advances on salary or debts;
- h) Civil Service Pension Scheme Membership (Opt-out of Civil Service Pension Scheme, Classic, Classic Plus, Premium, Defined Contribution) or, where relevant Contractor Scheme or other Contractor/Sub-Contractor pension scheme membership;
- i) For pension purposes, the notional reckonable service date;
- j) Percentage of any pay currently contributed under additional voluntary contribution arrangements; and
- k) Percentage of pay currently contributed under any added years arrangements.

Medical

- a) Details of any period of sickness absence of three (3) months or more in the preceding period of twelve (12) months; and

Further information

- a) Information about specific adjustments that have been made for an individual under the Equality Act 2010;
- b) Short term variations to attendance hours to accommodate a domestic situation;
- c) Individuals that are members of the Reserve Forces, staff that have been granted special leave for purposes including Local Authority Councillor (or similar), Magistrate, or School Governor; and
- d) Information about any maternity or other statutory leave or other absence from work.

Part 2 of Appendix B to Part 1 of Schedule 10

Information to be provided twenty-eight (28) calendar days prior to the Relevant Transfer Date:

- a) Employee's full name;
- b) Date of Birth;
- c) Home address; and
- d) Bank/building society account details for payroll purposes Tax Code.

Medical

- a) Details of any active restoring efficiency case for health purposes.

Disciplinary

- a) Details of any active restoring efficiency case for reasons of performance; and
- b) Details of any active disciplinary cases where corrective action is on-going.

Part 3 of Appendix B to Part 1 in Schedule 10

Information to be provided within fourteen (14) calendar days following a Relevant Transfer Date:

Performance Appraisal

- a) The current year's Performance Appraisal;
- b) Current year's training plan (if it exists); and
- c) Performance Pay Recommendations (PPR) forms completed in the current reporting year, or where relevant, any bonus entitlements;

(where such information is relevant for contractual employment terms or collective agreement (including any link to payments), or in the case of the training plan, indicates identification of attendance at or date for courses required to meet statutory or regulatory compliance.)

Superannuation and Pay

- a) Cumulative pay for tax and pension purposes;
- b) Cumulative tax paid;
- c) National Insurance Number;
- d) National Insurance contribution rate;
- e) Other payments or deductions being made for statutory reasons;
- f) Any other voluntary deductions from pay;

Part 2 of Schedule 10 – Employee Transfer Arrangements on Exit

1 Definitions

1.1 In this Part 2, save where otherwise provided, words and terms defined in Schedule 1 (*Definitions*) or Part 1 (*Employee Transfer Arrangements on Entry*) of this Schedule 10 shall have the meaning ascribed to them in Schedule 1 (*Definitions*) or Part 1 (*Employee Transfer Arrangements on Entry*) of this Schedule 10.

1.2 Without prejudice to Schedule 1 (*Definitions*) or Part 1 (*Employee Transfer Arrangements on Entry*) of this Schedule 10, in this Part 2 unless the context otherwise requires:

Employee Liability Information has the meaning given to it in Regulation 11(2) of the Transfer Regulations

Employing Sub-Contractor means any sub-contractor of the Contractor providing all or any part of the Services who employs or engages any person in providing the Services;

Final List has the meaning given to it in Paragraph 2.1.3 of this Part 2 (*Employee Transfer Arrangements on Exit*);

Former Authority Employee means at any time any person whose employment previously transferred to a contractor or its sub-contractor pursuant to the Transfer Regulations and who has, pursuant to this Contract and the Transfer Regulations, transferred to the Contractor or any Sub-Contractor provided that since such person was employed by the Authority (a) they have not ceased to be eligible for membership of the Schemes; and (b) any change in their employer has been effected pursuant to the Transfer Regulations;

Subsequent Relevant Transfer means a transfer of the employment of Subsequent Transferring Employees from the Contractor or any Employing Sub-Contractor to a New Provider or the Authority under the Transfer Regulations;

Subsequent Transfer Date means the date on which the transfer of a Subsequent Transferring Employee takes place under the Transfer Regulations;

Subsequent Transferring Employee means an employee wholly or mainly employed or otherwise assigned to the Services (or in respect of partial termination, the relevant part of the Services) whose employment transfers under the Transfer Regulations from the Contractor or any Employing Sub-Contractor to a New Provider; and

Transfer Regulations means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time and/or the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 (as amended from time to time), as appropriate.

2 Employment

2.1 Information on Re-tender, Partial Termination, Termination or Expiry

2.1.1 On receipt of a written request by the Authority, at any time, the Contractor shall (and shall procure that any Employing Sub-Contractor shall):

- (a) supply to the Authority such information as the Authority may reasonably require in order to consider the application of the Transfer Regulations on the termination, partial termination or expiry of this Contract;

- (b) supply to the Authority such full and accurate and up-to-date information as may be requested by the Authority including the information listed in Appendix A to this Part 2 relating to the employees who are wholly or mainly employed, assigned or engaged in providing the Services or part of the Services under this Contract who may be subject to a Subsequent Relevant Transfer, separately identifying those former employees of the Authority whose employment previously transferred to the Contractor and/or Employing Sub-Contractor and who continue to be eligible under New Fair Deal (as defined and set out in Part 4(*Pensions*) of this Schedule);
 - (c) provide the information promptly and in any event not later than two (2) months from the date when a request for such information is made and at no cost to the Authority;
 - (d) acknowledge that the Authority will use the information for informing any prospective New Provider for any services which are substantially the same as the Services or part of the Services provided pursuant to this Contract;
 - (e) inform the Authority of any changes to the information provided under Paragraphs 2.1.1(a) or 2.1.1(b) up to the Subsequent Transfer Date as soon as reasonably practicable.
- 2.1.2 Three (3) months preceding the termination, partial termination or expiry of this Contract or on receipt of a written request from the Authority the Contractor shall:
- (a) ensure that Employee Liability Information and such information listed in Part 1 of Appendix B of this Part 2 relating to the Subsequent Transferring Employees is provided to the Authority and/or any New Provider;
 - (b) inform the Authority and/or any New Provider of any changes to the information provided under this Paragraph 2.1.2 up to any Subsequent Transfer Date as soon as reasonably practicable;
 - (c) enable and assist the Authority and/or any New Provider or any sub-contractor of a New Provider to communicate with and meet those employees and their trade union or other employee representatives.
- 2.1.3 No later than twenty-eight (28) calendar days prior to the Subsequent Transfer Date the Contractor shall provide the Authority and/or any New Provider with a final list of the Subsequent Transferring Employees together with the information listed in Part 2 of Appendix B of this Part 2 (*Personnel Information*) relating to the Subsequent Transferring Employees ("Final List"). The Contractor shall inform the Authority and/or New Provider of any changes to this list or information up to the Subsequent Transfer Date.
- 2.1.4 Within fourteen (14) calendar days following the relevant Subsequent Transfer Date the Contractor shall provide to the Authority and/or any New Provider the information set out in Part 3 of Appendix B of this Part 2 in respect of Subsequent Transferring Employees.
- 2.1.5 Paragraphs 2.1.1 and 2.1.2 of this Part 2 are subject to the Contractor's obligations in respect of the Data Protection Legislation and the Contractor shall use its reasonable endeavours to obtain the consent of its employees (and shall procure that its Sub-Contractors use their reasonable endeavours to obtain the consent of their employees) to the extent necessary under the Data Protection Legislation or provide the data in an anonymous form in order to enable disclosure of the information required under Paragraphs 2.1.1 and 2.1.2. To the extent anonymous data has been provided by the Contractor pursuant to its obligations under Paragraph 2.1.1 or 2.1.2 above, the Contractor shall provide full data to the Authority no later than twenty-eight (28) calendar days prior to the Subsequent Transfer Date.

2.1.6 On notification to the Contractor by the Authority of a New Provider or within the period of six (6) months prior to the Termination Date or after service of Notice to terminate this Contract (whether in whole or in part), whichever is earlier and in any event on receipt of a written request by the Authority, the Contractor shall not and shall procure that an Employing Sub-Contractor shall not:

- (a) materially amend or promise to amend the rates of remuneration or other terms and conditions of employment of any person wholly or mainly employed or engaged in providing the Services under this Contract; or
- (b) replace or re-deploy from the Services any person wholly or mainly employed or engaged in providing the Services, or materially increase or decrease the number of persons performing the Services under this Contract or the working time spent on the Services (or any part thereof); or
- (c) reorganise any working methods or assign to any person wholly or mainly employed or engaged in providing the Services (or any part thereof) any duties unconnected with the Services (or any part thereof) under this Contract; or
- (d) terminate or give notice to terminate the employment of any person wholly or mainly employed or engaged in providing the Services (or any part thereof) under this Contract other than in the case of serious misconduct or for poor performance,

save in the ordinary course of business and with the prior written consent of the Authority (not to be unreasonably withheld or delayed) and the Contractor shall indemnify and keep indemnified the Authority in respect of any reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any breach of Paragraphs 2.1.1, 2.1.2, 2.1.3, 2.1.4 or 2.1.6 of this Part 2.

2.1.7 The Authority may at any time prior to the period set out in Paragraph 2.1.5 of this Part 2 request from the Contractor any of the information in sections 1(a) to (d) of Appendix A to this Part 2 and the Contractor shall and shall procure any Sub-Contractor will provide the information requested within twenty-eight (28) calendar days of receipt of that request.

2.2 Obligations in Respect of Subsequent Transferring Employees

2.2.1 To the extent that the Transfer Regulations apply on expiry, termination or partial termination of this contract, the Contractor shall and shall procure any Employing Sub-Contractor shall and the Authority shall and shall procure that a New Provider shall in such circumstances:

- (a) before and in relation to the Subsequent Transfer Date liaise with each other and shall co-operate with each other in order to implement effectively the smooth transfer of the Subsequent Transferring Employees to the Authority and/or a New Provider; and
- (b) comply with their respective obligations under the Transfer Regulations including their obligations to inform and consult under Regulation 13 of the Transfer Regulations.

2.3 Unexpected Subsequent Transferring Employees

2.3.1 If a claim or allegation is made by an employee or former employee of the Contractor or any Employing Sub-Contractor who is not named on the Final List (an "**Unexpected Subsequent Transferring Employee**") that he has or should have transferred to the Authority and/or New Provider by virtue of the Transfer Regulations, the Party receiving the claim or allegation shall notify the other Party (or the Contractor shall notify the Authority on the Sub-Contractor's behalf and the Authority shall notify the Contractor on the New Provider's behalf) in writing as

soon as reasonably practicable and no later than ten (10) Business Days after receiving notification of the Unexpected Subsequent Transferring Employee's claim or allegation, whereupon:

- (a) the Contractor shall (or shall procure that the Employing Sub-Contractor shall), as soon as reasonably practicable, offer and/or confirm continued employment to the Unexpected Subsequent Transferring Employee or take such other steps so as to effect a written withdrawal of the claim or allegation; and
- (b) if the Unexpected Subsequent Transferring Employee's claim or allegation is not withdrawn or resolved the Contractor shall notify the Authority (who will notify any New Provider who is a party to such claim or allegation), and the Authority (insofar as it is permitted) and/or New Provider (as appropriate) shall employ the Unexpected Subsequent Transferring Employee or as soon as reasonably practicable, (subject to Paragraph 2.3.1 (c)(iii)), serve notice to terminate the Unexpected Subsequent Transferring Employee's employment in accordance with his contract of employment; and
- (c) the Contractor shall indemnify the Authority against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any of the following liabilities incurred by the Authority or New Provider in dealing with or disposing of the Unexpected Subsequent Transferring Employee's claim or allegation:
 - (i) any additional costs of employing the Unexpected Subsequent Transferring Employee up to the date of dismissal where the Unexpected Subsequent Transferring Employee has been dismissed in accordance with Paragraph 2.3.1(b);
 - (ii) any liabilities acquired by virtue of the Transfer Regulations in relation to the Unexpected Subsequent Transferring Employee;
 - (iii) any liabilities relating to the termination of the Unexpected Subsequent Transferring Employee's employment but excluding such proportion or amount of any liability for unfair dismissal, breach of contract or discrimination attributable:
 - (A) to a failure by the Authority or a New Provider to act reasonably to mitigate the costs of dismissing such person);
 - (B) directly or indirectly to the procedure followed by the Authority or a New Provider in dismissing the Unexpected Transferee; or
 - (C) to the acts/omissions of the Authority or a New Provider not wholly connected to the dismissal of that person;
 - (iv) any liabilities incurred under a settlement of the Unexpected Subsequent Transferring Employee's claim which was reached with the express permission of the Contractor (not to be unreasonably withheld or delayed);
 - (v) reasonable administrative costs incurred by the Authority or New Provider in dealing with the Unexpected Subsequent Transferring Employee's claim or allegation, subject to a cap per Unexpected Subsequent Transferring Employee of five thousand pounds (£5,000); and

- (vi) legal and other professional costs reasonably incurred;

2.3.2 The Authority shall be deemed to have waived its right to an indemnity under Paragraph 2.3.1(c) if it fails without reasonable cause to take, or fails to procure any New Provider takes, any action in accordance with any of the timescales referred to in this Paragraph 2.3.

2.4 Indemnities on Subsequent transfer under the Transfer Regulations on Partial Termination, Termination or Expiry of the Contract

2.4.1 If on the expiry, termination or partial termination of the Contract there is a Subsequent Relevant Transfer, the Contractor shall indemnify the Authority and any New Provider against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any claim by any employee or trade union representative or employee representative arising whether before or after the Subsequent Transfer Date out of any failure by the Contractor or any Sub-Contractor to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Subsequent Transferring Employee or any other employee of the Contractor or any Sub-Contractor affected by the Subsequent Relevant Transfer (as defined by Regulation 13 of the Transfer Regulations), save to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities are a result of the act or omission of the Authority or the New Provider.

2.4.2 If there is a Subsequent Relevant Transfer, the Authority shall indemnify the Contractor against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of, or in connection with:

- (a) any claim or claims by a Subsequent Transferring Employee at any time on or after the Subsequent Transfer Date which arise as a result of an act or omission of the Authority or a New Provider or a sub-contractor of a New Provider during the period from and including the Subsequent Transfer Date;
- (b) subject to Paragraph 2.4.1 any claim by any employee or trade union representative or employee representative arising whether before or after the Subsequent Transfer Date out of any failure by the Authority or a New Provider or a sub-contractor of a New Provider to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Subsequent Transferring Employee or any other employee engaged wholly or mainly in connection with the Services by the New Provider or any other employee of the Authority or any New Provider affected by the Subsequent Relevant Transfer effected by this Contract (as defined by Regulation 13 of the Transfer Regulations),

save to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities are a result of the act or omission of the Contractor or any Employing Sub-Contractor.

2.4.3 In the event of a Subsequent Relevant Transfer, the Authority shall indemnify the Contractor in respect of all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and other liabilities arising out of or in connection with or as a result of a substantial change by the Authority or a New Provider or any sub-contractor of a New Provider on or after the Subsequent Transfer Date to the working conditions of any Subsequent Transferring Employee to the material detriment of any such Subsequent Transferring Employee. For the purposes of this Paragraph 2.4.3, the expressions

"substantial change" and "material detriment" shall have the meanings as are ascribed to them for the purposes of Regulation 4(9) of the Transfer Regulations.

2.5 Contracts (Rights of Third Parties) Act 1999

- 2.5.1 A New Provider may enforce the terms of Paragraphs 2.3 and 2.4 against the Contractor in accordance with the Contracts (Rights of Third Parties) Act 1999.
- 2.5.2 The consent of a New Provider (save where the New Provider is the Authority) is not required to rescind, vary or terminate this Contract.
- 2.5.3 Nothing in this Paragraph 2.5 shall affect the accrued rights of the New Provider prior to the rescission, variation, expiry or termination of this Contract.

2.6 General

- 2.6.1 The Contractor shall not recover any Costs and/or other losses under this Part 2 of Schedule 10 where such Costs and/or losses are recoverable by the Contractor elsewhere in this Contract and/or are recoverable under the Transfer Regulations or otherwise.

Appendix A to Part 2 of Schedule 10 – Contractor Personnel-Related Information to be Released upon re-tendering where the Transfer Regulations Applies

1. Pursuant to Paragraph 2.1.1(b) of this Part 2, the following information will be provided:
 - a) The total number of individual employees (including any employees of Sub-Contractors) that are currently engaged, assigned or employed in providing the Services and who may therefore be transferred. Alternatively the Contractor should provide information why any of their employees or those of their Sub-Contractors will not transfer;
 - b) The total number of posts or proportion of posts expressed as a full-time equivalent value that currently undertakes the work that is to transfer;
 - c) The preceding twelve (12) months total pay costs – (Pay, benefits employee/employer ERNIC and Overtime); and
 - d) Total redundancy liability including any enhanced contractual payments.
2. In respect of those employees included in the total at 1a), the following information will be provided:
 - a) Age (not date of Birth);
 - b) Employment Status (i.e. Fixed Term, Casual, Permanent);
 - c) Length of current period of continuous employment (in years, months) and notice entitlement;
 - d) Weekly conditioned hours of attendance (gross);
 - e) Standard Annual Holiday Entitlement (not "in year" holiday entitlement that may contain carry over or deficit from previous leave years);
 - f) Pension Scheme Membership (including for Former Authority Employees or other former Civil Servants who are current members of the Civil Service Pension Schemes (PCSPS/alpha));
 - g) Pension and redundancy liability information;
 - h) Annual Salary;
 - i) Details of any regular overtime commitments (these may be weekly, monthly or annual commitments for which staff may receive an overtime payment);
 - j) Details of attendance patterns that attract enhanced rates of pay or allowances;
 - k) Regular/recurring allowances; and
 - l) Outstanding financial claims arising from employment (i.e. season ticket loans, transfer grants);
3. The information to be provided under this Appendix A should not identify an individual employee by name or other unique personal identifier unless such information is being provided twenty-eight (28) calendar days prior to the Subsequent Transfer Date.
4. The Contractor will provide (and will procure that the Sub-Contractors provide) the Authority/tenderers with access to the Contractor's and Sub-Contractor's general employment

terms and conditions applicable to those employees identified at Paragraph 1(a) of this Appendix A.

Appendix B to Part 2 of Schedule 10 – Personnel Information to be released pursuant to this Contract

Part 1 of Appendix B to Part 2 of Schedule 10

Pursuant to Paragraph 2.1.2 of this Part 2, the written statement of employment particulars as required by section 1 of the Employment Rights Act 1996 together with the following information (save where that information is included within that statement) will be provided to the extent it is not included within the written statement of employment particulars:

Personal, Employment and Career

- a) Age;
- b) Security Vetting Clearance, level reference number and expiry date;
- c) Job title;
- d) Work location;
- e) Conditioned hours of work;
- f) Employment Status;
- g) If in a probationary period following appointment – the probation end date;
- h) Details of training and operating licensing required for Statutory and health and safety reasons;
- i) Details of training or sponsorship commitments;
- j) Standard Annual leave entitlement and current leave year entitlement and record;
- k) Annual leave reckonable service date;
- l) Details of disciplinary or grievance proceedings taken by or against transferring employees in the last two (2) years;
- m) Information of any legal proceedings between employees and their employer within the previous two (2) years or such proceedings that the transferor has reasonable grounds to believe that an employee may bring against the transferee arising out of their employment with the transferor;
- n) Issue of Uniform/Protective Clothing;
- o) Working Time Directive opt-out forms; and
- p) Date from which the latest period of continuous employment began.

Superannuation and Pay

- a) Maternity leave or other long-term leave of absence (meaning more than four (4) weeks) planned or taken during the last two (2) years;

- b) Annual salary and rates of pay band/grade;
- c) Shifts, unsociable hours or other premium rates of pay;
- d) Overtime history for the preceding twelve-month period;
- e) Allowances and bonuses for the preceding twelve-month period indicating if these are permanent and continuing or have an end date, or Temporary – paid when eligible occurrences happen;
- f) Payments of statutory holiday pay in the preceding twelve-month period;
- g) Details of outstanding loan, advances on salary or debts;
- h) Civil Service Pension Scheme Membership (Opt-out of Civil Service Pension Scheme, Classic, Classic Plus, Premium, Defined Contribution) or, where relevant Contractor Scheme or other Contractor/Sub-Contractor pension scheme membership;
- i) For pension purposes, the notional reckonable service date;
- j) Percentage of any pay currently contributed under additional voluntary contribution arrangements; and
- k) Percentage of pay currently contributed under any added years arrangements.

Medical

- a) Details of any period of sickness absence of three (3) months or more in the preceding period of twelve (12) months; and

Further information

- a) Information about specific adjustments that have been made for an individual under the Equality Act 2010;
- b) Short term variations to attendance hours to accommodate a domestic situation;
- c) Individuals that are members of the Reserve Forces, staff that have been granted special leave for purposes including Local Authority Councillor (or similar), Magistrate, or School Governor; and
- d) Information about any maternity or other statutory leave or other absence from work.

Part 2 of Appendix B to Part 2 of Schedule 10

Information to be provided twenty-eight (28) calendar days prior to the Relevant Transfer Date:

- a) Employee's full name;
- b) Date of Birth
- c) Home address;
- d) Bank/building society account details for payroll purposes Tax Code.

Medical

- a) Details of any active restoring efficiency case for health purposes.

Disciplinary

- a) Details of any active restoring efficiency case for reasons of performance; and
- b) Details of any active disciplinary cases where corrective action is on-going.

Part 3 of Appendix B to Part 2 of Schedule 10

Information to be provided within fourteen (14) calendar days following a Relevant Transfer Date:

Performance Appraisal

- a) The current year's Performance Appraisal;
- b) Current year's training plan (if it exists); and
- c) Performance Pay Recommendations (PPR) forms completed in the current reporting year, or where relevant, any bonus entitlements;

(where such information is relevant for contractual employment terms or collective agreement (including any link to payments), or in the case of the training plan, indicates identification of attendance at or date for courses required to meet statutory or regulatory compliance.)

Superannuation and Pay

- a) Cumulative pay for tax and pension purposes;
- b) Cumulative tax paid;
- c) National Insurance Number;
- d) National Insurance contribution rate;
- e) Other payments or deductions being made for statutory reasons;
- f) Any other voluntary deductions from pay;

Part 3 of Schedule 10 – Redundancy

1 Not used

Part 4 of Schedule 10 – Pensions

1 Definitions

- 1.1 In this Part 4, save where otherwise provided, words and terms defined in Schedule 1 (*Definitions*), or Part 1 (*Employee Transfer Arrangements on Entry*) or Part 2 (*Employee Transfer Arrangements on Exit*) of this Schedule 10 shall have the meaning ascribed to them in Schedule 1 (*Definitions*) or Part 1 (*Employee Transfer Arrangements on Entry*) or Part 2 (*Employee Transfer Arrangements on Exit*) of this Schedule 10.
- 1.2 Without prejudice to Schedule 1 (*Definitions*) or Part 1 (*Employee Transfer Arrangements on Entry*) or Part 2 (*Employee Transfer Arrangements on Exit*) of this Schedule 10 (*Personnel*), in this Part 4 unless the context otherwise requires:

Active Member means an individual who has been admitted to and remains in active membership of any of the Schemes.

Admission Agreement means in relation to the Contractor or a Sub-Contractor an agreement made (or to be made) between (1) The Minister for the Cabinet Office (2) the Contractor or the Sub-Contractor, as the case may be, and (3) the Authority relating to the participation of the Contractor or the Sub-Contractor, as applicable, in the Schemes for the benefit of those of the Former Authority Employees who are for the time being employed by the Contractor or the Sub-Contractor, as applicable, and which is substantively in the form set out in Annex A to this Schedule.

ALPHA means the public service pension scheme for civil servants established under the Public Service Pensions Act 2013 introduced with effect on and from 1 April 2015 (and includes, unless the context otherwise requires, any successor scheme).

Employer Contributions means the sums which are payable to the Pension Schemes in accordance with Paragraphs 7.1.5, 7.1.7 and 7.2 of the Admission Agreement in respect of the Former Authority Employees, whether by the Contractor, Sub-Contractor or Sub-Sub-Contractor. For the avoidance of doubt, the employee redundancy compensation payment amount which is taken into account under Paragraph 7.2 of the Admission Agreement is not included as part of the pass-through under Paragraph 2.2.

Former Authority Employee means at any time any person whose employment previously transferred to a contractor or its sub-contractor pursuant to the Transfer Regulations and who has, pursuant to this Contract and the Transfer Regulations, transferred to the Contractor or any Sub-Contractor *provided that* since such person was employed by the Authority (a) he has not ceased to be eligible for membership of the Schemes; and (b) any change in his employer has been effected pursuant to the Transfer Regulations.

New Fair Deal means the revised Fair Deal policy set out in HM Treasury's guidance "Fair Deal for staff pensions: staff transfers from central government" issued in October 2013.

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

Pension Schemes means ALPHA and/or the PCSPS whichever is or are relevant in the context (and includes, unless the context otherwise requires, the respective managers from time to time of such scheme or schemes).

Relevant Benefits means any benefit payable on retirement, on death, on reaching a particular age, on the onset of serious ill-health or incapacity or in similar circumstances (including the provision of medical, dental or similar benefits).

Relevant Transfer Date means the date on which a transfer to the Contractor or a Sub-Contractor is effected pursuant to this Contract and the Transfer Regulations.

Schemes means the PCSPS, the Partnership Pension Account and its (i) Ill-health Benefits Scheme and (ii) Death Benefits Scheme, the Civil Service Additional Voluntary Contribution Scheme, and ALPHA each as amended or replaced from time to time, or such one of them as is or are relevant in context. Any reference to the Schemes includes, unless the context otherwise requires, a reference to the respective managers from time to time of the Schemes.

Transfer Regulations means the means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time and/or the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 (as amended from time to time), as appropriate.

2 Pensions

2.1 The Contractor shall:

- (a) enter into, and shall procure that any employing Sub-Contractor enter into, an Admission Agreement in the form set out in Annex A to Part 4 (*Pensions*) of Schedule 10 (*Personnel*);
- (b) comply with the Admission Agreement to which it is a party and shall not terminate the Admission Agreement while the Contractor is providing any of the Services;
- (c) ensure that on each occasion (including, but without limitation, on the termination of a contract between the Contractor and a Sub-Contractor) any Former Authority Employee becomes an employee of the Contractor pursuant to the Transfer Regulations (and the date upon which he becomes such an employee is called the “Employment Date”) the Former Authority Employee if not already an Active Member of the Pension Schemes becomes such an Active Member with effect as on and from the Employment Date provided that this is permitted under the terms of the Pension Schemes and the Admission Agreement as applicable; and
- (d) ensure that in relation to each Former Authority Employee who immediately prior to the Employment Date is an Active Member or who becomes an Active Member with effect from that date and for so long as the Former Authority Employee is employed by the Contractor and is assigned to or otherwise engaged at least to the minimum extent specified in the Admission Agreement in the provision of the Services or any of them:
 - (i) it is an express term of the contract of employment of the Former Authority Employee with the Contractor that the Contractor shall ensure that (subject to the terms from time to time of the Schemes and the Admission Agreement) the Former Authority Employee may be and may continue to be an Active Member; and
 - (ii) each such Former Authority Employee is able to be and remain such an Active Member;

- (e) if it is in arrears in respect of any contributions due to the Schemes in respect of any Former Authority Employee, agree (which agreement the Contractor hereby irrevocably gives) that the Authority may deduct an amount equal to that which is overdue from any monies due to the Contractor and pay that amount to the relevant Scheme.
- 2.2 The Contractor agrees that the Employer Contributions shall be priced on a pass-through basis.
- 2.3 The Contractor shall ensure that no Sub-Contractor by whom any of the Former Authority Employees become employed pursuant to the Transfer Regulations is appointed unless the contract under which the Sub-Contractor is to provide any of the Services (the “Contract”) contains terms which provide for the following:
- (a) a condition precedent (which may not be waived) to such contract becoming effective is that there is in force an Admission Agreement between (1) The Minister for the Cabinet Office (2) the Sub-Contractor, and (3) the Authority;
 - (b) the Sub-Contractor must at all material times comply with the Admission Agreement and will not terminate the Admission Agreement while the Sub-Contractor is providing any of the Services;
 - (c) a breach of the Admission Agreement which is not capable of remedy or which if it is capable of remedy is not remedied within ten (10) Business Days of the Sub-Contractor being given notice of such breach by the Schemes, the Minister for the Cabinet Office (in respect of the Admission Agreement) or the Authority is an event of default by the Sub-Contractor enabling the other party to the Contract to terminate the Contract or the Contractor to terminate the Sub-Contract (which the Contractor undertakes to the authority to do if directed to do so by the Authority) immediately on the giving of notice and no notice to waive the event of default or which states that termination is not immediate and reserves a future right to terminate may be given without the consent in writing of the Authority;
 - (d) on each occasion (including, but without limitation, the termination of any contract pursuant to which the Sub-Contractor sub-contracts the provisions of any of the Services) any Former Authority Employee becomes an employee of the Sub-Contractor pursuant to the Transfer Regulations the Former Authority Employee shall if he is not already an Active Member of the Pension Schemes become such an Active Member with effect as on and from the date upon which he becomes such an employee provided that this is permitted under the terms of the Pension Schemes and the Admission Agreement;
 - (e) on each such occasion the Sub-Contractor must make it a term of the contract of employment of each Former Authority Employee employed by the Sub-Contractor that the Sub-Contractor must ensure that the Former Authority Employee may be an Active Member at all times he is assigned to or otherwise engaged at least to the minimum extent specified in the Admission Agreement in the provision of any of the Services (subject to the terms of the Schemes from time to time and the Admission Agreement);
 - (f) any contract pursuant to which the Sub-Contractor sub-contracts to another person (the “Sub-Sub-Contractor”) and which results in any Former Authority Employer becoming an employee of the Sub-Sub-Contractor pursuant to the Transfer

Regulations must contain the same terms as must be included in the Sub-Contractor's contract in accordance with this Paragraph 2.3 and such contract shall not take effect unless and until there is in force an Admission Agreement to which the Sub-Sub-Contractor is a party; and

- (g) the Sub-Contractor must use its best endeavours to enforce the terms of his contract with the Sub-Sub-Contractor which must be included in that contract in accordance with this Paragraph 2.3.
- 2.4 The Contractor shall indemnify the Authority and at all times keep the Authority indemnified in respect of any Claim in connection with any failure or alleged failure by the Contractor, the Sub-Contractor or Sub-Sub-Contractor as the case may be, to comply with the Schemes or the Admission Agreement to which the Contractor, the Sub-Contractor or the Sub-Sub-Contractor as the case may be, is a party or to comply with (in the case of the Contractor) the provisions of this Paragraph 2.4 or (in the case of a Sub-Contractor or Sub-Sub-Contractor) the provisions to be included in the Contract pursuant to Paragraph 2.3.
- 2.5 If the Sub-Contractor or Sub-Sub-Contractor fails to pay by the due date any amount payable to any of the Schemes the Authority may deduct an amount equal to that which has not been paid from any money otherwise payable by the Authority to the Contractor and pay that amount to the Schemes.
- 2.6 Save with the approval of the Authority the Contractor shall not and shall procure any Sub-Contractor and/or Sub-Sub-Contractor as applicable shall not on or after the earliest of:
- (a) the date which is eighteen (18) months before the Expiry Date;
 - (b) the Authority giving the Contractor a Termination Notice terminating the whole of this Contract or any part of the Services;
 - (c) the Contractor giving notice under Clause 54 (*Force Majeure Events*) and such notice is accepted by the Authority;
 - (d) on notification to the Contractor by the Authority of a replacement contractor; and
 - (e) on receipt by the Contractor of a written request by the Authority,
- allow (other than as required by law or an amendment to the Schemes) the grant or variation of any new or existing Relevant Benefits for or in respect of any employee of the Contractor to be made, announced or proposed.
- 2.7 The Contractor shall not and shall procure that the Sub-Contractor and/or Sub-Sub-Contractor shall not issue any announcements to Former Authority Employees prior to the Relevant Transfer Date concerning the matters in this Paragraph 2 without the consent in writing of the Authority (such consent not to be unreasonably withheld or delayed) and the Authority shall not issue any such announcement without the consent of the Contractor (such consent not to be unreasonably withheld or delayed).
- 2.8 The Contractor shall procure, and shall ensure that any Sub-Contractor or Sub-Sub-Contractor shall procure, that any information to be provided to the Authority pursuant to the Admission Agreement is sent to the Authority Contract Manager.
- 2.9 The Contractor shall not recover any costs and/or other payments in relation to New Fair Deal where such costs and/or payments are recoverable or have already been recovered by the

Contractor elsewhere in this Contract or otherwise. If the Contractor does recover costs and/or other payments as set out in this Paragraph 2.9 the Authority may deduct an amount equal to the amount of such costs and/or other payments from any money otherwise payable by the Authority to the Contractor.

- 2.10 The Contractor shall provide and shall procure each Sub-Contractor or Sub-Sub-Contractor as appropriate provides all such co-operation and assistance as the Schemes and a replacement contractor or sub-contractor of a replacement contractor and/or the Authority may reasonably require to enable the replacement contractor or sub-contractor of a replacement contractor to participate in the Schemes in respect of any Former Authority Employee and to give effect to any transfer of accrued rights required as part of the participation under New Fair Deal.
- 2.11 The Contractor undertakes to the Authority to indemnify and keep indemnified the Authority on demand against any liability out of or attributable to or in any way connected with the transmission of information supplied to it by the Contractor, Sub-Contractor or Sub-Sub-Contractor as in connection with a re-tendering or proposed re-tendering of all or any of the Services.

Annex A – Admission Agreement

IMPORTANT PLEASE READ

Guidance notes for completing the Admission Agreement

The Admission Agreement (AA) should not be completed without the relevant parties having read and considered the documents on the: New Fair Deal page on the Civil Service Pension website which can be found [here](#)

If having considered the documents, you consider that the new employer is to participate in the Civil Service Pension Schemes (**CSPS**) and become an admitted body (**AB**) both the department responsible for the transfer, the contracting authority (**CA**) and the AB will need to enter into an AA. Participation in the Pension Schemes brings with it participation in their associated schemes/arrangements. The full list is in Schedule 2 of the AA, (the **Schemes**). The most current version of the AA is shown on the Civil Service Pensions website [here](#) and you will be sent a WORD version for completion once you have submitted an application form to the Cabinet Office. Detailed guidance on completing the AA is set out below. This note also contains the obligations the AA places on the contracting authority.

Cover page

Ensure the data inserted on this cover page is consistent with the commercial documents. Note also: A separate AA is required for each contract. Where multiple transfers occur within the same contract this must be expressly raised with Civil Service Pensions early on.

The Contracting Authority must be both a Scheme Employer and able to give the indemnities contained within the AA. If either of these two conditions are not met another body will be required to act as Contracting Authority. Civil Service Pensions must be informed early on.

It is anticipated that the contract provides for both the transfer of employees eligible for NFD protection and the provision of services by the new employer the AB to the CA. Where this is effected under two different contracts or arrangements Civil Service Pensions must be informed early on. If the contract start date is different from the 'Effective Date' this must be stated. Civil Service Pensions need to know the anticipated length of time for which the AB will participate under the terms of the AA. Hence this additional enquiry regarding the scope for extension.

The number of staff transferring **MUST** match Schedule 1. Where it is likely this number will change mark the number as *INTENDED*

The email contacts required on the cover sheet are for the department or person(s) at the CA and AB responsible for ensuring the compliance with the AA going forward on a day to day basis. It is not necessarily the party that signed the AA.

Signature process

The AA must be sent to Civil Service Pensions in advance of the transfer but it is acknowledged that the list of transferring employees at Schedule 1 may not have been finalised. The list should be completed to the best of the CA's ability and if the list changes between the date it is supplied to Civil Service Pensions and the date of transfer, the Effective Date, an updated list must be provided by the CA. It is the AB's responsibility to double check within 3 months of transfer¹ that the list is correct.¹

The AA must be signed and dated in hard copy in **triplicate** by both the CA & AB before all three signed and dated documents are sent to Civil Service Pensions. The AA must be signed by someone with authority to give the undertakings and indemnities contained within it.

The AA imposes obligations not only on the AB, but also on the CA. In signing the AA the CA is confirming that it has read and understood all of the terms of the AA and that it will comply with the obligations imposed.

Non standard situations

¹ **Note:** See clause Schedule 10Part 45.2.12 of the AA

The AA is a standard document and only the highlighted text is to be amended. Any further amendments require the approval of Civil Service Pensions.

Non standard situations must be referred to Civil Service Pension in good time and at least [three/six] months before the transfer date. Non standard situations can often be accommodated; the following is a non-exhaustive list of non standard situations accommodated to date:

Transfer of a function;

Transfer to a sub-contractor where financial arrangement remain between the CA and Prime Contractor;

Commissioning Body not able to act as CA;

Transfers on more than one date;

Multiple CA, e.g. more than one CA calling off services under a framework agreement; and

Multi party issues involving more than one of the above.

Note, the AA contains the following indemnities:

Clause 4.4: the AB to indemnify the Minister for the Schemes and the CA should it allow someone to be admitted who is not eligible.

Clause 5.2.11: the AB to indemnify the Minister for the Schemes and the CA should it fail to notify and consult with employees or their representatives regarding loss of eligibility or obtain a signed waiver form.

Clause 5.3: the AB to indemnify the Minister for the Schemes and the CA for any losses, damages or claims incurred by either as a result of the AB's breach of the terms of the AA.

Clause 9: the CA to indemnify the Minister for the Schemes for any cost to the Schemes arising as a result of the AB's breach of the terms of the AA. Owing to this indemnity the CA will require the right to set off such sums from the AB.

Obligations placed on CA

Obligations include, but are not limited to the following:

Clauses 9.1 and 9.2 of the AA require the CA to indemnify the pension scheme for any failure by the AB to pay employer and employee contributions and all such other sums that the AB is required to pay to the Schemes. There is also a right in the AA for the CA to set off any such payments against any sums it is due to pay to the AB under the Contract, although it is strongly recommended that this is also included in the main commercial contract.

Clause 9.1 of the AA also requires the CA to use best endeavours to ensure that the AB complies with the terms of the AA.

Clause 9.4 of the AA requires the department to obtain, and keep up to date, lists of eligible and admitted employees during the life of the Contract for so long as there are Eligible Employees.

Clause 9.5 follows on from 9.4 and requires the CA to use its best endeavours to ensure that Eligible Employees will have NFD protection on subsequent transfers. This needs to be addressed in the commercial contracts.

To comply with 9.4 the CA must keep records of all other information provided by the AB throughout the term of the AA namely:

Those Eligible Employees who cease to be eligible (clause 4.3);

Those Eligible Employees choose to opt out (clause 4.3);

Any information provided regarding the AB's participation in the Schemes or ability to meet its obligations under the AA (clause 4.5);

General information required under clause 5.2:

any information the Schemes may request (clause 5.2.6);

information relating to any change in terms and conditions of employment, working patterns or attendance, which might affect an admitted employee's eligibility to participate in the CSPA (clause 5.2.8);

the annual lists of Eligible Employees and Admitted Persons provided by the AB (5.2.12);

any data given on termination of the AA (clause 13.5)

Schedule 4 obligations

Definitions and explanation of the detail of the AA

Parties: the AB is the party who will, from the effective date, be employing staff who remain or become eligible to participate in the Schemes. You should discuss with your lawyers whether any parent company or prime contractor guarantee is required, this will be required if there is any suggestion that the AB will be unable to meet its obligations under the AA or if the CA has, or is likely to have insufficient protection under its right to set off in the main agreement.

There may be situations where it is necessary to join another or other parties to the AA e.g. the non standard situations described above.

“Additional Eligible Services”: These are typically services covered by another AA. The employee will need to transfer to the AA relevant for the services they are performing. Where these are AES the eligible employee will have his or her name removed from the 0 list of employees participating under the first AA to join the 0 list for the AA for the AES. This action will only be taken with the express permission of Civil Service Pensions and the CAs involved, which must be sought 3-6 months in advance.

“Contract”: the definition of ‘Contract’ is key because of the following:

The Services are those set out in the Contract (definitions).

The Contract is that which provides for the transfer of staff (AA Clause 2.1).

The eligibility is dependent on the employees providing the Services under the Contract (AA Clause 3.1(c))

The AB is to remain admitted to the Pension Schemes for the term of the Contract, (if this option is chosen) (AA Clause 5.1 and Clause 13 the Termination provisions)

The set off provisions at Clause 10 of the AA refer to the Contract

Where there is not a single contract covering the transfer of staff and provision of services e.g. where there are multiple contracts or change notices or use of sub contracting care must be taken to identify the correct contract(s). If there are multiple relevant contracts amendment maybe required and/ or other definitions included. Note additionally, where staff are allowed to return to the Schemes in a situation which is not a compulsory transfer, further amendment is required. Legal advice must be taken in either case and you must contact Civil Service Pensions 3 - 6 months in advance.

“Effective Date”: This is the date the staff transfer to the new employer. (i) The Contract is anticipated to provide for the transfer of employees. If this is not the case the definition of Effective Date and Clause 2.1 will require amending. (ii) If staff are to transfer on multiple dates please seek advice from both Civil Service Pensions and your lawyers.

“Services”: this definition links to eligibility in Clause 3.1 therefore it is crucial that the Services are clearly defined. Services can include or comprise functions as appropriate. Services are expected to be the services and/or function which the transferring employees carry out or Services and/or functions that the transferring employees could reasonably carry out but are not undertaking at the point of transfer and are published on the list of Admitted Bodies.

Clause 2.2: this wording needs to be amended depending on whether staff are retaining eligibility or re-joining the Pension Schemes for the first time. Where staff are being transferred out of the public sector for the first time, the following wording should be selected ‘*employ persons who immediately before the Effective Date were members, or were entitled to be members of the Schemes*’. Whereas for staff who currently participate in a broadly comparable private sector pension scheme the

following wording should be chosen: '*employ persons who on the Effective became eligible to be members of the Schemes*'. This is because staff who are currently participating or eligible to participate in the Pension Schemes retain membership, whereas those returning for the first time have the right to re-join. Subsequent retendering will operate as an initial transfer, because staff will be already participating in the scheme. If the transfer involves a combination of staff transferring out of public service for the first time and staff re-joining the Pension Schemes, please contact Civil Service Pensions.

Clause 4.1: as above, amendment is required depending on whether staff are retaining eligibility (to include both Civil Servants being outsourced from a Government department or Schedule 1 body, and former Civil Servants, who remain eligible employees being transferred from a contractor already participating in the Schemes to a new contractor about to participate in the Schemes (first or subsequent transfers) or re-joining for the first time, i.e. from a 'broadly comparable' pension scheme (2nd generation transfer). If the transfer involves a combination of staff transferring out of public service for the first time and staff re-joining the Pension Schemes, both sub-Paragraphs should be used and the numbering amended accordingly.

Note it is the CA who must provide the AB with a list of transferring staff that are eligible for participation in the Pension Schemes. In an initial transfer out from the public sector, it is expected that all the transferring employees will be eligible to either remain in the Pension Schemes or be admitted on transfer. Whereas in a re-tender situation the list of employees to whom NFD is to apply is expected to be smaller than the list of transferring employees because of the eligibility requirements. Please allow six (6) months to collate and check this information.

Q: The list of eligible employees expected to transfer on the effective date must be attached prior to signature. The AB is required to update this list when required by Civil Service Pensions. Subsequent and updated lists will additionally be required to state the date on which eligibility ended.

Admission Agreement relating to participation in certain parts of the Civil Service Pension Arrangements

Dated

The Minister for the Cabinet Office

(Minister)

[Contractor]

(Admitted Body)

[Sponsoring Government Department]

(Contracting Authority)

For information only:

Effective date of transfer - First Effective Date Expected Second Effective Date:

Number of staff transferring First Effective Date Expected Second Effective Date:

Contract Start Date

Contract End Date

Scope for extension

Contractor email:

Sponsoring Department email:

Services: [insert definition of services to be published]

(required under Schedule 9, 3(6)(b) of the Public Service Pensions Act 2013)

[Before completion this document is unclassified. Once the employee data at 0 is included the status becomes: OFFICIAL (sensitive personal data)]

Admission Agreement

Dated

Between

The Minister for the Cabinet Office of 70 Whitehall, London, SW1A 2AS (the **Minister**);

[**Contractor**] Contractor company number:** of [address] [(the **Admitted Body**);2 and

[**Sponsoring Government Department**] of [address] (the **Contracting Authority**)

together defined as the **Parties**.

Recitals

The Minister for the Civil Service has legislative responsibility for the delivery of Civil Service pension arrangements including the Schemes; day to day responsibility for the management of which has been delegated to the Minister for the Cabinet Office and to the Civil Service Pensions Board.

The Civil Service Pensions Board has a responsibility to assist the Scheme Manager in overseeing the operation of the contract between the Cabinet Office and MyCSP Ltd pursuant to which MyCSP Ltd agreed to provide administration services to admitted employers to the Schemes.

The HMT Guidance entitled "A Fair Deal for staff pensions" (dated 1999 & 2004) provided that staff compulsorily transferring out of public sector pension schemes should be offered membership in a scheme that provided broadly comparable pension benefits to those provided in the Schemes and should allow members to transfer their existing pensions into the broadly comparable pension scheme on favourable terms, should the member wish to do so.

The revised HMT guidance as set out in the HM Treasury paper "Fair Deal for Staff Pensions: Staff Transfers from Central Government (October 2013)" provides that staff who are compulsorily transferred from the public sector should be allowed to retain access to their current employer's pension arrangements.

The Public Service Pensions Act 2013 enables extended access to Civil Service pensions, including extended access to the Civil Service Pension Schemes, with the effect that Eligible Employees (as defined below) who are subject to a compulsory transfer can remain in the Schemes when they transfer, in accordance with the provisions of the Acts. [Eligible Employees are also permitted to return to the Schemes [during the life of a contract/ on retender where there is no change in employer] such as in the current situation].³

A condition of allowing access to the Schemes for the Eligible Employees is that the Admitted Body agrees to enter into terms and conditions on the basis of those set out in this Agreement.

The Minister in consideration of the Admitted Body and the Contracting Authority agreeing to the obligations set out in this Agreement agrees to admit the Admitted Body to the Schemes

² For Contracting Authority to consider whether a parent company or prime contractor guarantee is required. Legal advice MUST be taken.

³ This wording should be used only where the employer remains the same on admission, i.e. eligible employees do not transfer to a new employer. This can apply for both second generation 'transfers' where employees are returning to the Schemes for the first time and on subsequent 'transfers' where the incumbent is successful at securing the new contract. It can also apply where NFD applies on any extension of the contract, or a decision to apply NFD mid contract.

It is agreed:

1 Interpretation

1.1 In this Agreement the following definitions will apply:

1972 Act means The Superannuation Act 1972;

Acts means The Superannuation Act 1972, The Public Service Pensions Act 2013 and such regulations and statutory rules as may be created under such Acts or by the Minister from time to time;

Additional Eligible Service means a service provided by the Admitted Body on behalf of a Government Department, Government Agency or any other public body sanctioned by the Scheme Manager and where such service has been certified as constituting Additional Eligible Service by the Scheme Manager;⁴

Admitted Person means any person who has been admitted to and remains in active membership of any of the Schemes;

ASLC means the accruing superannuation liability charge as defined in Schedule 3;

CSP means Civil Service Pensions the division of the Cabinet Office that provides support to the Scheme Manager;

CSOPS means the Public Service (Civil Servants and Others) Pensions Regulations 2014 made under the Public Service Pensions Act 2013 and which establishes the new public service pension scheme for Civil Servants known as 'alpha ' introduced on 1 April 2015;

Contract means a contract [to be] entered into between the Contracting Authority and the Admitted Body dated [insert date] pursuant to which the Admitted Body will provide the Services to the Contracting Authority [and under which Eligible Employees will be compulsorily transferred to the Admitted Body in accordance with the provisions of TUPE on the effective dates];

Effective Date means either the First Effective Date or the Second Effective Date as set out in Schedule 1 as the context requires, from which the employment of the Eligible Employee(s) listed in Schedule 1 [transferred or] are transferred to the Admitted Body in accordance with the provisions of [the Contract];

Eligible Employee means those employees referred to in Clause 3.1;

EPG means the Employers' Pension Guide available online at www.civilservicepensionscheme.org.uk/employers/employer-pension-guide/;

EPN means Employer Pension Notices available online at www.civilservicepensionscheme.org.uk/employers/employer-pension-notices/;

First Effective Date means [insert date] being the first date, from which the employment of the Eligible Employee(s) see Schedule 1, transferred to the Admitted Body in accordance with the provisions of the Contract;

Internal Dispute Resolution Procedures or IDRP means the statutory complaint procedure of the same name which gives the Admitted Body and/or Admitted Persons and or Eligible Employees the

⁴ See covering guidance.

right to formalise complaints about the administration of any of the Schemes, their membership and/or their retirement benefits;

PCSPS means the Principal Civil Service Pension Scheme established under the 1972 Act;

Pension Schemes means CSOPS and /or the PCSPS and/or the Partnership Pension Account whichever is relevant in the context;

Rules means the rules for any of the Schemes listed in Schedule 2;

Schemes means those schemes listed in Schedule 2 and where necessary will mean the particular scheme or section of a scheme to which the Admitted Person is a member or an Eligible Employee is eligible to join;

Scheme Actuary means the actuary appointed by the Minister from time to time to provide a consulting service on a range of actuarial matters relevant to Civil Service pension arrangements;

Scheme Administrator means MyCSP Ltd or such other replacement administrator as may be appointed by the Scheme Manager from time to time in respect of either or both Pension Schemes;

Scheme Manager means the Cabinet Office acting through Civil Service Pensions;

Scheme Medical Adviser means Health Management Ltd or such other replacement scheme medical adviser as may be appointed in accordance with the Rules;

Scheme Year means the 12 months set by the Pension Schemes currently 1 April to 31 March;

Second Effective Date means the second date, from which the employment of the Eligible Employee(s), see Schedule 1, transferred to the Admitted Body in accordance with the provisions of the Contract;

Services means the services set out in the Contract to be [transferred to and] performed by the Admitted Body; and

TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended and/or replaced from time to time).

- 1.2 Where any of the definitions above differ from those in the Rules the definition in the Rules will prevail.
- 1.3 Where the context so admits, words relating to men also relate to women and vice versa, and words importing the singular include the plural and vice versa.
- 1.4 References to any statutory provision, statutory instrument, order, regulation or statutory rule include any pre-enactment, amendments, modification, re-enactment or extension of that provision for the time being in force and any statutory instruments, orders, regulations or statutory rule from time to time made under that provision.
- 1.5 The expression **person** includes any firm, organisation or body of persons (whether or not incorporated).
- 1.6 The headings and the references in square brackets to the headings do not affect their interpretation.

- 1.7 This Agreement benefits and binds the Minister and the Contracting Authority and any of their successors.
- 1.8 The information provided on the cover sheet is for information only and shall not affect the interpretation or construction of this Agreement.

2 Participation

- 2.1 The Minister has responsibility for the Schemes under the Acts.
- 2.2 The Contract provides for, amongst other things, [the transfer of employees to the Admitted Body and] the provision of the Services to the Contracting Authority by the Admitted Body.
- 2.3 The Admitted Body will, from the First Effective Date, employ persons who [immediately before]/ [on] the Effective Date [were members, or were entitled to be members]/ [became eligible to be members] of the Schemes by virtue of:
- (a) being employees of the Civil Service, or
 - (b) being in service in an office or of an employer listed in Schedule 1 of the 1972 Act, or
 - (c) being in service in an office or of an employer specified in the list produced for the purposes of section 1(4A) of the 1972 Act; or
 - (d) being persons to whom CSOPS relates by virtue of a determination made by the Minister under section 25(5) of the Public Service Pensions Act 2013.

3 Eligibility for membership

- 3.1 Any employee of the Admitted Body who:
- (a) is a person to whom Clause 2.2 applies, and
 - (b) is employed in connection with the provision of the Services or any Additional Eligible Service, and
 - (c) has spent and continues to spend in excess of 50% of his contracted time, (to be calculated annually over the Scheme Year), to include time spent carrying out functions associated with the Services (such as relevant training) in connection with:
 - (i) the provision of the Services under the Contract; or
 - (ii) the provision of the Services under the Contract and any other Additional Eligible Service; or
 - (iii) any Additional Eligible Service
- is eligible to be a member of the Schemes (the **Eligible Employees**).
- 3.2 An Eligible Employee shall cease to be eligible for membership (and in the case of an active member shall cease to accrue benefits) in any of the Schemes upon:
- (a) ceasing to fulfil any of the criteria listed under Clause 3.1 above; or

- (b) voluntarily giving up the right to be eligible for membership of the Schemes in return for some other advantage (noting the requirement to comply with Clauses 5.2.9-5.2.11 below); or
- (c) voluntarily electing to become an active member of any other workplace pension scheme provided by the Admitted Body in respect of the same employment (noting the requirement to comply with Clauses 5.2.9-5.2.11 below);

for the avoidance of doubt an Eligible Employee who has opted out of the Pension Schemes, without fulfilling any of the criteria listed in 3.2 above, is still eligible for participation in the Schemes in accordance with their terms.

4 Admission of members/cessation of membership to the pension schemes

- 4.1 An employee who remains an Eligible Employee shall become an Admitted Person from such date (or dates) as may be agreed between the Admitted Body, the Contracting Authority and the Minister, and in the absence of any other agreement:

[[Either For 1st Generation transfers or Subsequent Transfer]⁵

- (a) an Eligible Employee who immediately before the Effective Date was an Admitted Person shall continue to be an Admitted Person immediately after the Effective Date without having to make an election, or
- (b) where such an Eligible Employee was not a member of the Pension Schemes before the Effective Date he shall be admitted as a member into the Pension Schemes (as appropriate),

in either case in accordance with the terms of the Pension Schemes and the Acts.

[AND/ OR For 2nd Generation transfers]

- (c) an Eligible Employee who immediately before the Effective Date was not an Admitted Person shall be admitted as a member into the Pension Schemes (as appropriate) in accordance with the terms of the Pension Schemes and the Acts.]]

- 4.2 Admitted Persons may choose to opt out of the Pension Schemes without relinquishing their eligibility to join the Schemes. The Admitted Body hereby undertakes to the Minister and the Contracting Authority that each Eligible Employee not being an Admitted Person will be automatically enrolled into either the PCSPS or CSOPS (as appropriate) in accordance with the terms of the Pension Schemes and in compliance with the requirements of legislation in each subsequent automatic enrolment period for so long as the employee remains an Eligible Employee.
- 4.3 The Admitted Body undertakes to promptly (and in any event within 28 days) give notice in writing to the Scheme Manager and the Scheme Administrator of any Admitted Person who (1) ceases to be an Eligible Employee by virtue of Clause 3.2 or (2) chooses to opt out of the Pension Schemes.
- 4.4 The Admitted Body hereby agrees and acknowledges that save for the Eligible Employees, none of its employees shall be eligible to seek or retain admission under this Agreement as an Admitted Person to the Schemes. The Admitted Body agrees to indemnify the Minister and the Contracting

⁵ A subsequent transfer occurs whenever there is a transfer from an existing Admitted Body to a new Admitted Body, e.g. a retender where the exiting contractor participated in the Schemes under NFD.

Authority for all and any losses arising in the event that any person who is not an Eligible Employee becomes, retains or claims membership of any of the Schemes.

- 4.5 The Admitted Body must promptly (and in any event within 28 days) give notice in writing to the Minister and the Contracting Authority of any matter, which may affect or is likely to affect its participation in the Schemes or its obligations under this Admission Agreement. The Admitted Body must give immediate notice in writing to the Minister and the Contracting Authority of any actual or proposed change in its status which may give rise to a termination in its participation in the Schemes including (but not limited to) take-over, reconstruction or amalgamation, liquidation or receivership or a change in the nature of its business or constitution.

5 General obligations of the Admitted Body

- 5.1 The Admitted Body shall remain admitted to the Schemes for the term of the Contract (including any extension or retender where the Admitted Body continues to provide the Services or part thereof) unless and until this Agreement is terminated in accordance with its terms.
- 5.2 The Admitted Body undertakes to:
- 5.2.1 Adhere to and comply with all the obligations of an employer under the Acts, the Rules, the EPG and the EPNs in respect of Admitted Persons and Eligible Employees;
- 5.2.2 Ensure its staff are fully aware of the Admitted Body's obligations and have received sufficient training to ensure compliance with such obligations;
- 5.2.3 From the First Effective Date, adopt the practices and procedures relating to the operation of the Schemes set out in the Rules, the EPG and the EPNs;
- 5.2.4 Comply with interfacing protocols maintained and issued by or on behalf of the Minister from time to time, including without limitation those ensuring that the Admitted Body's systems are compatible with and capable of interfacing with the Scheme Administrator's administration systems (so that information and data can be transferred and accuracy checks performed on behalf of the Minister as and when required and ensure that it takes prompt remedial action to correct any errors for which it is responsible);
- 5.2.5 Ensure that its staff work in partnership with and provide reasonable assistance in a timely manner to the Contracting Authority, the Minister and to whomsoever the Minister may delegate his functions, so as to ensure the Admitted Body's compliance with its responsibilities and obligations under this Agreement and facilitate each of the Admitted Person's participation in the Schemes;
- 5.2.6 Provide all such relevant information, data and/or documentation as may be required from time to time to fulfil its obligations as an Admitted Body, and/or allow the other Parties to fulfil their obligations under this Agreement, such information to be provided to the Scheme Actuary, Scheme Administrator, CSP, the Scheme Manager, Eligible Employees, Admitted Persons, the Minister, the Contracting Authority and, as the case may be, any such other body as the Minister and/or the Contracting Authority may reasonably direct by such date as may be specified, to facilitate compliance with the obligations entered into hereunder;
- 5.2.7 Comply with its data protection obligations;
- 5.2.8 Promptly (and in any event within 28 days) give notice in writing to the Scheme Administrator, or any other such person or body as the Minister and the Contracting Authority may direct, of any change in an Admitted Person's:

- (a) terms and conditions of employment, including but not limited to, any permanent change to contractual time spent on the Services,
- (b) working pattern, including but not limited to a change in working hours, or
- (c) attendance including but not limited to, any termination of employment or any long term sick leave or other absences;

which affects that Admitted Person's status as an Eligible Employee;

- 5.2.9 Notify and consult with any Eligible Employee and their trade union/employee representatives (where such representatives exist) in advance, in good time and before making any changes to terms and conditions of employment, whether voluntary or compulsory, which may have the effect of ending that employee's status as an Eligible Employee;
- 5.2.10 Following the Admitted Body's compliance with the procedures in sub-clause 5.2.9 above, where an Eligible Employee wishes to waive their rights, obtain the Eligible Employee's signed agreement to a waiver of the employee's new fair deal pension rights, in the form of any such waiver agreement as CSP may from time to time request;
- 5.2.11 Provide written confirmation to the Scheme Manager in the form set out in 0 that such notification and consultation has taken place and that the signed waiver form has been obtained in accordance with 5.2.9 and 5.2.10 and indemnify the Minister and the Contracting Authority in respect of any losses arising from any failure of the Admitted Body to comply with 5.2.9 to 5.2.11 inclusive;
- 5.2.12 Review and update its lists of Eligible Employees and Admitted Persons regularly in accordance with the Acts. Such lists to be (i) received from the Contracting Authority not less than 14 days before the Effective Date, and updated where applicable, in accordance with Clause 9.3, (ii) reviewed within 3 months of each Effective Date, (iii) produced annually at the end of each complete Scheme Year, (iv) provided to the Scheme Administrator and the Contracting Authority within 30 calendar days of the end of the Scheme Year, and (v) produced as and when required by the Contracting Authority to fulfil its obligations under Clause 9.4; such reviewed and updated list to be provided to CSP and the Contracting Authority within 28 calendar days of the review;
- 5.2.13 Provide such information (in addition to that provided in accordance with 5.2.11 & 5.2.12 above) as CSP may from time to time require;
- 5.2.14 Use its reasonable endeavours to resolve grievances and disputes relating to participation in the Schemes directly with Eligible Employees, Admitted Persons and the other Parties and to comply with the dispute resolution procedures in Clause 12;
- 5.2.15 Not do anything to prejudice its participation in the Schemes;
- 5.2.16 Use its best endeavours to ensure that Eligible Employees have the continued right to participate in the Schemes should it transfer any part of the Services to another party and provide full details of any such subsequent transfer in good time in advance of such transfer to CSP to allow CSP to take such steps as are necessary to ensure for the continued participation of the Eligible Employees.
- 5.3 The Admitted Body will indemnify the Contracting Authority and the Minister, on his own behalf and on behalf of the Schemes, for any losses, damages or claims incurred by those Parties arising from a breach by the Admitted Body of any term of this Agreement.

6 General obligations of the Minister

The Minister will ensure that the Contracting Authority is notified as soon as reasonably practicable of the Minister becoming aware that the Admitted Body has failed to comply with any of the requirements of participation in the Schemes including, without limitation, the failure to pay any sum due under Clause 7 below.

7 Costs to be met by the Admitted Body and additional liabilities

7.1 The Admitted Body shall pay to the Schemes all such contributions as may be required of an employer under the Acts, Rules, EPG or the EPNs for the period commencing on the First Effective Date which shall include:

- (a) [**]⁶;
- (b) additional administrative charges as follows:
 - (i) the cost of services commissioned from the Scheme Medical Adviser, and/or Scheme Actuary;
 - (ii) the cost of other non-core services requested by the Admitted Body and/or provided by the Scheme Administrator to facilitate the Admitted Body's participation in the Schemes (including one-off charges associated with the Admitted Body);
- (c) any other sum arising in accordance with the Acts in respect of additional expenses flowing from the Admitted Body's breach of the provisions of the Schemes or of this Agreement;
- (d) all employee contributions deducted by the Admitted Body to include all and any additional enhanced and/or voluntary contributions (not including any employee contributions made by salary sacrifice) to be paid directly to the relevant provider in respect of all of the Schemes;
- (e) the employer contributions (to be paid directly to the relevant provider) for the Partnership Pension Account;
- (f) such additional contributions as the Minister, the Scheme Manager or the Scheme Administrator may determine to compensate the Schemes for the Admitted Body's breach of the terms of its participation in the Schemes where that breach has resulted in an increase in the Schemes' costs or liabilities;
- (g) the accruing superannuation liability charge (ASLC) as set down in Schedule 3, as may be amended from time to time on notice;
- (h) the flat rate charge applicable to the Partnership Pension Account, Ill Health Benefits Arrangements and Partnership Pension Account Death Benefits Arrangements from time to time⁷; and
- (i) any one-off or ongoing payments due in respect of exceptional increase in pensionable earnings or qualifying service,

at a rate (or rates) and in manner set out in the EPG and EPNs from time to time.

⁶ original wording "the annual administration charges[1] covering core services provided by the Scheme Administrator;" deleted with effect from 1 April 2019 when such costs were subsumed within the employer contribution rate.

⁷ Currently being 0.5% of pensionable pay from 1 April 2015

- 7.2 In respect of the early retirement without actuarial reduction (other than on the grounds of ill health) of any Admitted Person, the Admitted Body must:
- (a) at least three months before the early retirement is to take effect, give the Minister notice in writing of such early retirement copied to the Scheme Administrator; and
 - (b) not later than the date on which the early retirement shall take effect, pay to the Minister when requested to do so, such amount or amounts as the Scheme Actuary or the Minister shall determine covering any additional liabilities caused by the early retirement.
- 7.3 Without prejudice to the obligation to pay contributions under this Clause 7, if the cumulative increase in final pensionable earnings to an Admitted Person(s) of the Admitted Person's active membership of the Schemes is greater than the amount set out in the Schemes,⁸ the Minister may require the Admitted Body to pay such additional employer pension contributions as the Scheme Actuary shall determine in accordance with the Rules.
- 7.4 The Admitted Body shall not grant an additional period of membership or additional pension in respect of any Admitted Person, which would result in an increase in the Schemes' liabilities, save to the extent that such sum as calculated by the Scheme Actuary is paid by the Admitted Body to the Minister. For the avoidance of doubt this will not preclude Admitted Persons purchasing additional years or pension from the Schemes in accordance with the terms of the Schemes.
- 7.5 Any agreement between the Admitted Body and any of the Schemes that result in the settlement of any one off payment being spread over a period of time or merged into the regular monthly employer contribution rate shall not be deemed to be part of the regular employer contribution rate. The Admitted Body undertakes to pay such amount as and when due.
- 7.6 The Admitted Body undertakes to pay any amount due under any determination made in accordance with Clause 12 below (Resolution of Disputes), (or where any such determination is appealed or referred to any person or body having jurisdiction to make a further determination on the same question, under the final decision of that appeal or further determination).

8 Cost adjustments/cap

- 8.1 The Admitted Body agrees and acknowledges that the employer contributions referred to in Clause 7 may be revised following a valuation of the Schemes. The Admitted Body agrees to meet any increases in employer contributions notified to it by the Scheme Manager subject only to Clause 8.2 below.
- 8.2 The ASLC for the Admitted Body shall be set at the same rates as the ASLC for all public sector employers who participate in the Schemes.

9 Contracting authority indemnity and obligations

- 9.1 In the event that the Admitted Body fails to comply with its obligations under this Agreement the Contracting Authority will use best endeavours to ensure that the Admitted Body complies with them (including, without limitation, its obligations to make, and account to the Schemes for all employer and employee contributions and make any of the payments to the Schemes in accordance with Clause 7), the Contracting Authority agrees to pay on demand such sums as determined by the Minister to compensate the Schemes for the Admitted Body's breach of the terms of its participation in the Schemes where that breach has resulted in an increase in the Schemes' costs or liabilities.

⁸ Currently the higher of (i) 10% over and above salary growth in the public sector over the same period and (ii) £5,000 as indexed.

- 9.2 Where the Contracting Authority receives a demand for payment from the Minister in accordance with Clause 9.1 above, it shall arrange for the payment of such sums to be made immediately to the Schemes or within such other time period as the Scheme Manager shall in its absolute discretion notify to the Contracting Authority.
- 9.3 The Contracting Authority shall complete 0 below to the best of its abilities and provide a copy of the same to the Scheme Manager, Scheme Administrator and the Admitted Body not less than 14 days before each Effective Date.
- 9.4 In preparation for subsequent transfers, the Contracting Authority will procure and keep up to date lists of Eligible Employees and Admitted Persons from the Admitted Body.
- 9.5 The Contracting Authority will use its best endeavours to ensure that Eligible Employees have the continued right to participate in the Schemes on any subsequent transfer.

10 Set off

- 10.1 The Contracting Authority may, at its discretion, set off against any payments due to the Admitted Body under the Contract an amount equal to any overdue employer and employee contributions and/or other payments due from the Admitted Body to the Schemes under this Agreement and/or the Acts.
- 10.2 For the avoidance of doubt:
- (a) if the liability for any such contributions and/or other payments is discharged by the Contracting Authority pursuant to Clause 9.2 above or otherwise, such contributions and/or other payments shall nevertheless be regarded as continuing to be due for the purposes of this Clause 10; and
 - (b) any amount payable by the Admitted Body under any of Clauses 4.4, 5.2.11 or 5.3 above may also, at the discretion of the Contracting Authority, be set off against payments due to the Admitted Body under the Contract.

11 Records and administration

- 11.1 The Admitted Body shall maintain accurate and up to date records (including payroll records) and accounts in accordance with all guidance issued by the Scheme Manager from time to time, including in the EPG/EPNs.
- 11.2 The Minister, Scheme Manager, its auditors and its authorised representatives shall be given reasonable opportunity during normal business hours to examine, inspect and take copies of the records or accounts referred to in Clause 11.1 above (the **Audit**).
- 11.3 The Admitted Body shall provide the Scheme Manager, its auditors and its authorised representatives with all reasonable co-operation and assistance in relation to each Audit, including:
- (a) all information reasonably requested by the Scheme Manager on a timely basis; and
 - (b) reasonable access to relevant Admitted Body personnel.
- 11.4 The Admitted Body shall transfer all necessary member records to any new employer on such occasions and in such a manner as required by the Schemes and notified under the EPG.

- 11.5 If requested to do so by the Minister, the Admitted Body must provide the Minister with a copy of its audited annual accounts in respect of the immediately preceding financial year within 21 days of such request.

12 Resolution of disputes

- 12.1 Subject to sub-clause 12.2 below, any issue that may arise between the Contracting Authority and the Admitted Body relating to the construction of this Agreement, or to the rights and obligations of either the Contracting Authority and the Admitted Body under it, shall be referred in writing to the Minister.
- 12.2 Nothing in this Agreement shall affect the rights of the Admitted Body and/or the Contracting Authority and/or Eligible Employees and/or Admitted Persons in connection with the IDRPs and/or to seek adjudication in any matter from the Pensions Ombudsman.
- 12.3 The Admitted Body and the Contracting Authority agree to fully and promptly co-operate with any investigation, process or determination carried out by the Pensions Ombudsman, and /or the IDRPs and/or any other dispute resolution process and comply with any determinations made thereunder.

13 Termination

- 13.1 The Minister may terminate participation in the Schemes under the terms of this Agreement in any or all of the following circumstances:
- (a) if the Admitted Body breaches any of the obligations contained within this Agreement, the Acts, the Rules the EPG or the EPNs (but where the breach is capable of remedy only where it has not been remedied within a reasonable time and in any event within 28 days of service of a notice giving particulars of the breach and requiring the Admitted Body to remedy it);
 - (b) if the Admitted Body fails to pay any sums due to the Minister under this Agreement or the Acts within 28 days of service of a notice giving particulars of the amount outstanding and requiring the Admitted Body to pay it;
 - (c) in the event of the insolvency, winding up or liquidation of the Admitted Body; or
 - (d) in the event of the Admitted Body ceasing to provide the Services.

The Minister will give written notice of termination to all other Parties to this Agreement, setting out the date on which termination becomes effective.

- 13.2 This Agreement will automatically terminate upon the earlier of the below events:
- (a) the last Admitted Person ceasing to be an active member of any of the Schemes under this Agreement, provided that no Eligible Employee remains, in which case termination shall only occur when no Eligible Employee remains eligible to participate [SAVE AND EXCEPT THAT automatic termination of this Agreement shall not occur solely because there ceases to be Eligible Employees during the interim period between the First Effective Date and the subsequent effective date as set out in Schedule 1, provided always that this subsequent effective date as set out in Schedule 1 shall be no later than [insert date]];
 - (b) termination of the Contract unless the Admitted Body continues to provide the Service in whole or part including where these have been retendered by the Contracting Authority.

- 13.3 Termination or cessation of this Agreement will automatically end an Admitted Person's participation in the Schemes in respect of future service unless such Admitted Person/Eligible Employee:
- (a) has transferred to another body and is continuing to provide services which are covered by another admission agreement, or
 - (b) remains employed by the Admitted Body on services which have been agreed to be Additional Eligible Service and has transferred to another admission agreement.
- 13.4 Termination or cessation of this Agreement will not in any event affect rights, obligations or commitments intended to survive termination or cessation.
- 13.5 In the event of the Admitted Body ceasing to participate in the Schemes, the Admitted Body shall procure that all such records and data in relation to Admitted Persons or former Admitted Persons (as may be necessary for either the effective transfer of those persons, or the administration of the Schemes on their behalf), shall be handed to the Contracting Authority and copied to the Minister within 28 days.

14 Service of notices

- 14.1 A notice under this Agreement must be in writing and, unless the receiving party acknowledges receipt, is valid if (and only if) it complies with the following provisions:
- (a) the notice must be given by hand or sent by registered post or recorded delivery; and
 - (b) the notice must be served:
 - (i) where the receiving party is the Admitted Body and a company incorporated within Great Britain, at its registered office, or where the Admitted Body is not a company incorporated within Great Britain, at the Admitted Body's address shown in this Agreement or at any alternative address that is specified in a notice given in writing by that Party to the other Parties; or
 - (ii) where the receiving party is the Minister or the Contracting Authority, at that Party's address shown in this Agreement or at any alternative address that is specified in a notice given in writing by that party to the other Parties; or
 - (iii) by e-mail in accordance with sub-clause 14.3 below.
- 14.2 Unless it is returned through the Royal Mail undelivered, a notice sent by registered post or recorded delivery is to be treated as served on the third day after posting whenever and whether or not it is received.
- 14.3 Notice and other written communications sent by way of an email to a recognised e-mail address of the relevant Party together with proof of receipt, and/or the posting of such notice or communication via a secure web based portal in each case, shall constitute valid service. Text, SMS, MMS or Skype or similar applications or any other form of 'chat' messages will not constitute valid service.

15 Civil service compensation scheme & civil service injury benefits scheme

This Agreement does not cover benefits provided pursuant to either the Civil Service Compensation Scheme and/or the Civil Service Injury Benefits Scheme. Nothing in this Agreement shall be taken as representing that any Party shall provide any such benefit.

16 Rights of third parties

- 16.1 Subject to sub-clause 16.2 below, a person who is not a Party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 16.2 An Admitted Person or an Eligible Employee may enforce any rights to membership or continued membership of the Schemes against the Admitted Body.

17 Public inspection

This Agreement (with the exception of 1 and 4 once completed) shall be available for public inspection at the named offices of the Minister.

18 Waiver

The rights and remedies under this Agreement may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Agreement or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

19 Governing law and jurisdiction

Each of the Parties hereby irrevocably agrees that any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation shall be governed by and construed in accordance with English law. Further, each of the Parties hereby irrevocably submits to the exclusive jurisdiction of the English courts in respect of any claim or dispute arising out of or in connection with this Agreement.

20 Counterparts

This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement. No counterpart shall be effective until each Party has executed at least one counterpart.⁹

Signed in triplicate by the Parties

⁹ CSP requires, in all cases, for all signatories to sign the same Admission Agreement with original signatures

Schedule 1 - List of eligible employees [expected to transfer on the effective date (i.e. First Schedule 1 List)]

Surname	Initials	National Insurance Number

[Subsequent Schedule 1 lists of eligible employees must contain the following]

Surname	Initials	National Insurance Number	Date eligibility ceased (if appropriate) ¹⁰

¹⁰ This column only needs completing where eligible employee(s) have lost or given up eligibility during the period covered by the 0 list or under an earlier list if not notified on an earlier 0 list

Schedule 2 – The Schemes

- 1 The Principal Civil Service Pension Scheme (Classic, Classic Plus, Premium and Nuvos)
- 2 Public Service (Civil Servants & Others) Pensions Regulations 2014 (Alpha)
- 3 Civil Service Additional Voluntary Contributions Scheme
- 4 Partnership Pension Account
- 5 Partnership Pension Account III Health Benefits Arrangements (part of 2)
- 6 Partnership Pension Account Death Benefits Arrangements (part of 2)

Schedule 3 – Employer Contributions

Below are the current ASLC rates as at the date this Agreement is entered into. In accordance with sub-clause 7.1(g) above, these contributions may be amended from time to time on notice.

	Salary Band (£)	ASLC rate from 1 April 2020
Band 1	23,000 and under	26.6%
Band 2	23,001 to 45,500	27.1%
Band 3	45,501 to 77,000	27.9%
Band 4	77,001 and over	30.3%
Prison Officers with reserved rights (pre-Fresh Start)		30.3%

Schedule 4 – Admitted Body/Employer Confirmation to Scheme Manager

(FOR USE WHERE EMPLOYEES WISH TO WAIVE THEIR NEW FAIR DEAL PROTECTION)

In accordance with sub-clause 5.2.11 above: this is confirmation that we the Admitted Body have consulted with Eligible Employees [and their Trade Union/ employee representatives: DN delete as appropriate], in good time and in advance of the following changes to terms and conditions of employment which has the effect of ending their status as Eligible Employees, and have obtained signed waiver forms, in the format required by CSP in respect of each Eligible Employee so affected:

[Insert Employee's name(s)]

[Details of their Trade Union/ employee representatives]

[Date consultation took place]

[Subject matter of consultation: note the requirement to consult covers any matter which has the effect of ending an Eligible Employee's eligibility to participate in the Schemes. This includes, without limitation, moving away from the Services whether at the employee's request or the request of the Admitted Body and can include promotions and lateral moves]

[Date waiver form provided to CSP and the Contracting Authority.]

Signed by the Admitted Body

Dated

Signatures of Parties to the Agreement

Signed

(For and on behalf of the **Minister for the Cabinet Office**)

Print name Date

Signed

(For and on behalf of [**Name Of Admitted Body**])

In signing this Agreement the relevant party below confirms that it has read and understood the terms of this Agreement and that it will without limitation comply with the obligations as set out herein

Print name Date

Signed

(For and on behalf of the **Secretary of State for []**)

In signing this Agreement the relevant party below confirms that it has read and understood the terms of this Agreement and that it will without limitation comply with the obligations as set out herein

Print name.....Date

Part 5 of Schedule 10 – RN Personnel

[REDACTED]

Annex 1 to Part 5 of Schedule 10 – RN Programme

[REDACTED]

Annex 2 to Part 5 of Schedule 10 – Recording Categories for Annualised Hours

[REDACTED]

Annex 3 to Part 5 of Schedule 10 – Priority Posts

[REDACTED]

Schedule 11 – List of Leases and Licenses

[REDACTED]

Annex A to Schedule 11 – List of Leased and Licensed Areas

[REDACTED]

Annex B to Schedule 11 – Draft Lease

[REDACTED]

Appendix A – Draft Licence

[REDACTED]

Appendix B – Draft Surrender

[REDACTED]

Annex C to Schedule 11 – Draft Licence

[REDACTED]

Schedule 12 – Liabilities, Indemnities, Insurance and Conduct of Claims

1 Definitions

Default means any breach of the obligations (including abandonment of this Contract in breach of its terms, repudiatory breach or breach of a fundamental term) or negligence of the relevant Party, whether arising by reason of default, act, omission, negligence, statement or any other cause whatsoever, including:

- (a) in the case of the Authority, of its Representatives and, subject to the terms of Paragraph 2.2.2, any Authority Contractor or its employees, servants and agents; or
- (b) in the case of the Contractor, of any Contractor Personnel or any Sub-Contractor or Affiliate of the Contractor or their respective employees, servants and agents.

2 Liability Limits

2.1 Contractor's Liability

2.1.1 Subject to Paragraph 2.3 (*Unlimited Liability*), Paragraph 2.4 (*Irrecoverable Loss*) and Paragraph 3.4 (*Claims relating to Government Establishments*):

- (a) the Contractor's aggregate liability in respect of Losses relating to physical damage to Government Establishments or Third Party Contractor Property, that are caused by Defaults of the Contractor occurring in each and any Contract Year, including in the indemnity in Clause 25.1 (*Liability in Respect of Damage to Government Property*), shall in no event exceed [REDACTED] provided that such cap shall not apply to the extent that the Contractor is able to recover further Losses pursuant to the Required Insurances;
- (b) the Contractor's aggregate liability in respect of all Deductions incurred in any rolling period of twelve (12) months shall in no event exceed [REDACTED] of the Annual Service Price; and
- (c) the Contractor's aggregate liability in respect of all other Losses incurred by the Authority whether arising under contract, negligence, misrepresentation or otherwise under or in connection with this Contract as a result of Defaults by the Contractor shall in no event exceed:
 - (i) in relation to Defaults occurring in the first Contract Year (which, for the purposes of this Clause, includes any Mobilisation Period), an amount equal to [REDACTED] of the estimated Annual Service Price for that first Contract Year;
 - (ii) in relation to Defaults occurring during any subsequent Contract Year, an amount equal to [REDACTED] of the Annual Service Price in the Contract Year immediately preceding the occurrence of the Default; and
 - (iii) in relation to Defaults occurring after the end of the Contract Period, an amount equal to [REDACTED] of the Annual Service Price in the twelve (12) month period immediately prior to the last day of the Contract Period.

2.1.2 Deductions from the Annual Service Price shall not be taken into consideration when calculating the Contractor's liability under Paragraph 2.1.1(c).

2.1.3 Any liability under this Paragraph 2.1 and any payment of money in respect of such liability shall be borne by the Contractor and shall not form part of the Actual Costs, and shall not be recovered through the Schedule 4 (*Pricing and Payment*) or any other payment made to Contractor under this Contract.

2.2 Authority's liability

2.2.1 Subject to Paragraphs 2.2.2, 2.3 (*Unlimited Liability*) and Paragraph 2.4 (*Irrecoverable Loss*) the Authority's aggregate liability under or in connection with this Contract, whether arising from contract, negligence, misrepresentation or otherwise and without prejudice to the Authority's obligation to pay any amounts pursuant to Schedule 4 (*Pricing and Payment*):

- (a) for Losses incurred by the Contractor as a result of early termination of this Contract, shall not exceed the amount provided for in Clause 60 (*Voluntary Termination by the Authority*); and
- (b) for any other liability or Default, shall not exceed fifty per cent (50%) of the Total Contract Price.

2.2.2 The Authority shall not have any liability to the Contractor in respect of any Default of an Authority Contractor unless:

- (a) it results in the Authority breaching an obligation in this Contract; and
- (b) the relevant Authority Contractor is not a Contractor Group Member.

2.3 Unlimited Liability

2.3.1 Neither Party shall limit its liability in respect of the following:

- (a) death or personal injury;
- (b) fraud, fraudulent misrepresentation or corruption including, in respect of the Contractor, any Contractor Personnel or Sub-Contractors;
- (c) gross negligence, wilful default, or abandonment;
- (d) Not used; and
- (e) any liability which cannot be limited at Law including under the Consumer Rights Act 2015 or the Supply of Goods and Services Act 1982.

2.3.2 [REDACTED]

2.3.3 The Authority's liability in relation to the following shall be unlimited:

- (a) any breach of:
 - (i) Not used;
 - (ii) Clause 31 (*Staff Arrangements*) which is not expressed as a capped liability;
 - (iii) Clause 36 (*Environmental Provisions*);

(iv) Clause 46 (*Intellectual Property Rights*).

(b) Not used.

2.4 Irrecoverable Loss

2.4.1 Subject to Paragraphs 2.3 and 2.4.2 and save where expressly permitted under the terms of this Contract, neither Party may recover from the other Party or any of its officers, agents, or employees any Irrecoverable Loss.

2.4.2 Notwithstanding Paragraph 2.4.1 but subject to Paragraph 2.1, the Contractor acknowledges that the Authority may, amongst other things, recover from the Contractor the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Contractor:

- (a) any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
- (b) any wasted expenditure or charges;
- (c) the additional cost of procuring replacement Services for the remainder of the Contract Period and/or replacement Contractor Deliverables, which shall include any incremental costs associated with such replacement Services and/or replacement Contractor Deliverables above those which would have been payable under this Contract;
- (d) any compensation or interest paid to a third party by the Authority;
- (e) any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty; and
- (f) any identified anticipated savings.

3 Additional liability provisions

3.1 General

3.1.1 Where the Authority or the Contractor is indemnified by, as appropriate, the Contractor or the Authority under this Contract, the Authority or the Contractor (as the case may be) shall mitigate any Losses for which it is seeking indemnification.

3.1.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Contract.

3.1.3 Neither Party to this Contract shall be entitled to recover (by way of indemnity or otherwise) more than once in respect of the same Loss suffered by that Party under this Contract.

3.1.4 The provisions in this Schedule 12 shall survive, and remain in full force and effect, notwithstanding the expiration or other termination of this Contract.

3.2 Contractor responsible for Authority offence

Where a Default of the Contractor or any Contractor Personnel causes the Authority to commit an offence, then the Contractor shall immediately take any measure necessary to ensure that that act, omission or default no longer causes the Authority to commit that offence.

3.3 No impact on other Authority rights or remedies

3.3.1 The Contractor's liability to the Authority arising under any indemnity in this Contract shall be without prejudice to any other right or remedy available to the Authority and in particular shall not prejudice in any way the ability of the Authority to enforce any bond, guarantee or other security given pursuant to this Contract at any time and in any manner whatsoever.

3.3.2 The Parties acknowledge that any event, act or omission which results in a performance failure under Schedule 5 (*Performance Management and Measurement*) may also give rise to a separate remedy or cause of action against the Contractor. Accordingly the application of Schedule 5 (*Performance Management and Measurement*) in respect of the Contractor's failure of performance is without prejudice to any other Authority remedy or cause of action under, or in relation to, this Contract which arises from the same event, act or omission provided always that nothing in this Paragraph 3.3.2 shall entitle the Authority to recover any amount from the Contractor to the extent that recovery has previously been made by the Authority in respect of the same event, act, or omission, under Schedule 5 (*Performance Management and Measurement*).

3.4 Claims relating to Government Establishments

For the purposes of Clause 25.1 (*Liability in Respect of Damage to Government Property*) and Paragraph 2.1.1(a):

- (a) a Government Establishment shall not include Entitled Vessels; and
- (b) without prejudice to the Contractor's obligations to insure as contained in this Schedule there shall be no limit on the number of occurrences, or series of related occurrences arising out of the same cause or same event (in each case without any intervening cause), in respect of which the Contractor may incur liability under Clause 25.1 (*Liability in Respect of Damage to Government Property*).

3.5 Authority discretion to reinstate property

3.5.1 The Authority shall not be obliged to reinstate or replace any building, other structure, plant, machinery, equipment or furnishings comprised in the Leased and Licensed Areas which may be destroyed or damaged or to make any replacement or alternative provision available to the Contractor in the event of any such damage or destruction.

3.5.2 If the Authority elects not to reinstate or replace in accordance with Paragraph 3.5.1, and as a consequence the Contractor is unable to provide any of the Services in accordance with the requirements of this Contract without incurring additional costs which cannot reasonably be mitigated by the Contractor, the provisions of Clause 55.2 (*Compensation Events*) will apply.

3.5.3 All monies (including professional fees, demolition, removing debris, making safe and shoring up) payable under any Required Insurance (or by Contractor due to a failure to comply with its insurance obligations) in each case in respect of damage to or destruction of any part of the Leased and Licensed Areas shall be paid to the Authority for its own use and benefit.

3.5.4 Any monies received by the Authority pursuant to Paragraph 3.5.3 may, in the sole discretion of the Authority, be applied by the Authority in:

- (a) the reinstatement of the Leased and Licensed Areas; or
- (b) constructing such building or buildings or installations fixtures and fittings as the Authority may consider necessary, appropriate or desirable to construct.

3.5.5 If the Authority elects to construct new buildings, installations, fixtures or fittings, then if the Parties consider it to be necessary or appropriate, the Parties shall amend the terms of the Leases and the Licences to the extent to which the Authority allows the Contractor to occupy the same.

3.6 Not used

4 Indemnities

4.1 Indemnities under this Contract

4.1.1 The indemnities listed in Paragraph 1 of Annex 1 (*Indemnities*) to this Schedule are given by the Contractor to the Authority pursuant to this Contract.

4.1.2 The indemnities listed in Paragraph 2 Annex 1 (*Indemnities*) to this Schedule are given by the Authority to the Contractor pursuant to this Contract.

4.1.3 Annex 1 to this Schedule provides a list of key indemnities identified under this Contract. Indemnities contained elsewhere in this Contract but not expressly included in Annex 1 shall continue to be effective and shall not be affected by their absence from Annex 1.

4.1.4 The indemnities set out in this Contract shall be subject to Paragraph 2 (*Liability Limits*) of this Schedule 12.

4.2 Indemnified Claims

4.2.1 Subject to Paragraph 4.2.8, if either Party's Contract Manager becomes aware of any Claim made or threatened by a third party against the Party of which the individual is the Contract Manager (Party One), (a Third Party Claim) which the relevant Contract Manager considers:

- (a) would not have arisen other than as a result of the breach or negligent performance by the other Party (**Party Two**) of its obligations under this Contract; or
- (b) is in respect of any other matter that Party One may wish to rely on any provision of this Contract in order to seek recovery from the other Party in relation to any Losses arising from such claim or action,

the Contract Manager of Party One will promptly notify the Contract Manager of Party Two, providing particulars of the demands, damages and liabilities claimed or made by the third party, (a **Claims Notice**).

4.2.2 Party Two shall be entitled to serve a Notice on Party One within fifteen (15) Business Days of receipt of the Claims Notice that it wishes to dispute the Third Party Claim and take control of the defence against the third party (an **Adoption Notice**).

4.2.3 Subject to Paragraph 4.2.6, where an Adoption Notice has been served, Party One shall not settle any Third Party Claim without the prior written consent (not to be unreasonably withheld or delayed) of Party Two.

4.2.4 Party Two shall (subject to providing Party One with an indemnity to its reasonable satisfaction against all costs and expenses, including any damages or other award subsequently granted in favour of the third party, that it may incur by reason of such action) be entitled to dispute the Third Party Claim in the name of Party One at Party Two's own expense and take conduct of any defence, dispute, compromise or appeal of the Third Party Claim and any incidental negotiations. In these circumstances, Party One shall give Party Two all reasonable co-operation, access and assistance for the purpose of considering and resisting such Third Party Claim.

4.2.5 With respect to any Third Party Claim conducted by Party Two pursuant to Paragraph 4.2.4:

- (a) Party Two shall keep Party One fully informed and consult with it about material elements of the conduct of the Third Party Claim and the progress of any negotiation and proceedings;
- (b) Party Two shall not bring the name of Party One into disrepute; and
- (c) Party Two shall not pay or settle such Third Party Claim without the prior consent of Party One, such consent not to be unreasonably withheld or delayed.

4.2.6 Where:

- (a) Party One has granted conduct of settlement or any litigation in its name under Paragraph 4.2.4 to Party Two and Party Two is acting unreasonably either in the conduct of any negotiations or legal proceedings or is otherwise in breach of its obligations under Paragraph 4.2.5; or
- (b) Party Two does not exercise its entitlement under Paragraph 4.2.4 to dispute the Third Party Claim in the name of Party One within a reasonable time of being required so to do by Party One,

Party One shall have the right to intervene or re-assume responsibility for the conduct of such proceedings or any settlement of the Third Party Claim at any time.

4.2.7 If Party One becomes aware of a Third Party Claim which he considers may have arisen as a result of the acts or omissions of both Party One and Party Two then both Parties shall discuss in good faith the best way of conducting the defence of such Claim in such a way as to minimise the losses incurred by both Parties.

4.2.8 The above provisions of Paragraph 4.2.1 to 4.2.7 (inclusive) shall not apply in relation to any indemnity given under Schedule 8 (*Intellectual Property Rights*).

4.3 **Not used**

5 Insurance

5.1 Obligation on the Contractor to take out insurance

5.1.1 Without prejudice to its obligations to indemnify or otherwise be liable to the Authority under this Contract, the Contractor shall, from the Commencement Date, take out and maintain, or

procure the taking out and maintenance of the Required Insurances in accordance with the provisions of Annex 2 (*Required Insurances*) of this Schedule throughout the Contract Period and for such other periods as set out in Annex 2 (*Required Insurances*) of this Schedule. The Contractor shall ensure that the Required Insurances are effective in each case not later than the date on which the relevant risk commences.

- 5.1.2 Any change to this Paragraph 5.1 or the insurance requirements set out in Annex 2 (*Required Insurances*) of this Schedule shall be effected in accordance with Schedule 30 (*Change Procedure*).

5.2 Contractor insurance obligations

- 5.2.1 The Required Insurances referred to in Paragraph 5.1.1 shall be taken out and maintained with insurers who are of good financial standing, appropriately regulated and of good repute in the international insurance market.
- 5.2.2 Where specified in Annex 2 (*Required Insurances*) of this Schedule the Contractor shall ensure the policy shall contain an indemnity to principals clause, under which the Authority shall be indemnified in respect of claims made against the Authority arising from death or bodily injury or third party property damage, and for which the Contractor is legally liable in respect of this Contract.
- 5.2.3 The Contractor shall, upon the Effective Date and within fifteen (15) calendar days after the renewal of any of the Required Insurances, provide the Authority with evidence (in a form satisfactory to the Authority acting reasonably):
- (a) that the Required Insurances are being maintained in accordance with Paragraph 5.1.1 and are in full force and effect and meet the requirements of Paragraph 5.1.1 and Annex 2 (*Required Insurances*) of this Schedule; and
 - (b) that the premiums payable under them have been paid or are in the process of being paid to insurers.
- 5.2.4 The supply to the Authority of any evidence of insurance cover in compliance with the requirements of Paragraph 5.2.3 above shall not imply nor constitute acceptance by the Authority that the extent of insurance cover is sufficient or that the terms and conditions thereof are satisfactory, in either case, for the purposes of this Contract nor be a waiver of the Contractor's liability under this Contract.
- 5.2.5 The Contractor shall notify the Authority at least ten (10) calendar days prior to the cancellation, suspension, termination or non-renewal of any of the Required Insurances. The Contractor's obligation under this Paragraph 5.2.5 shall not apply where termination of any Required Insurance occurs purely as a result of a change of insurer in respect of any of the Required Insurances required to be taken out and maintained in accordance with Annex 2 (*Required Insurances*) of this Schedule.
- 5.2.6 If the Contractor receives notification from an insurer under any relevant Required Insurance of any actual cancellation, suspension or termination of such Required Insurance, or notice of its intention to take any such step, the Contractor shall, without prejudice to its obligation to maintain the Required Insurances, promptly notify the Authority in writing of receipt of such intended or actual cancellation, suspension, or termination.

- 5.2.7 Prior to any renewal of any Required Insurance, the Contractor shall notify the Authority of any proposed changes to the relevant policy. In such instances the Parties shall discuss and seek to agree any proposed changes. Where the Parties agree the Contractor shall effect the renewal on the terms of such agreement. To the extent that the Parties are unable to agree, the Contractor shall renew the relevant Required Insurance with effect from the relevant renewal date, without any such changes or, if that is not possible through the same insurers or on the same terms, renew or replace the same on terms as similar as can reasonably be achieved in the international insurance market.
- 5.2.8 The Contractor shall not (and the Contractor shall procure that none of its Sub-Contractors of any tier shall not) take any action or fail to take any action or, insofar as is reasonably within its power, permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Required Insurances.
- 5.2.9 The Contractor shall promptly notify to insurers any matter arising from, or in relation to, the Services and/or this Contract for which it may be entitled to claim under any of the Required Insurances. In the event that the Authority receives a claim relating to the Services or this Contract, the Contractor shall co-operate with the Authority and assist it in dealing with such claims including providing information and documentation in a timely manner.
- 5.2.10 Except where the Authority is the claimant party, the Contractor shall notify the Authority immediately (such notification to be accompanied by reasonable particulars of the incident or circumstances giving rise to such incident):
- (a) after occurrence or circumstances which may give rise to a claim amounting to or in excess of one hundred thousand pounds (£100,000) in connection with this Contract and the Required Insurances, of which the Contractor is or becomes aware; and
 - (b) if the occurrence or circumstances may give rise to any claim in connection with this Contract which may be in excess of the limits of Required Insurances in Annex 2 (*Required Insurances*) of this Schedule,
- and shall notify the Authority Contract Manager within ten (10) Business Days of making the relevant claim under any policy for the Required Insurances.
- 5.2.11 The Contractor shall maintain a written register of all losses or occurrences which result in a claim under the Required Insurances in connection with this Contract and shall allow the Authority to review such register at any time.
- 5.2.12 Where any Required Insurance requires payment of a premium, the Contractor shall be responsible for payment of, and shall pay, such premium.
- 5.2.13 The Contractor shall:
- (a) without limiting any specific requirements in this Contract, take or procure the taking of all reasonable risk management and risk control measures in relation to this Contract as it would be reasonable to expect of a contractor, acting in accordance with Good Industry Practice, including but not limited to the investigation and reporting of relevant insured claims to insurers;
 - (b) where relevant, discharge all its obligations under the Insurance Act 2015 when placing, renewing, amending or maintaining any insurances required by this Contract

including complying with the duty of fair presentation to insurers and taking the actions needed to protect the Authority's separate interests; and

- (c) use reasonable endeavours to procure that all insurance brokers through whom any Required Insurances to be effected by the Authority are effected or maintained shall maintain intact their files (including all documents disclosed and correspondence in connection with the placement of those Required Insurances and the payment of premiums and claims under such Required Insurances) until the date specified in Annex 2 (*Required Insurances*) of this Schedule.

5.2.14 Not used.

5.3 Consequences of failure by the Contractor to comply with Paragraphs 5.1 and 5.2

- 5.3.1 If the Contractor is in breach of Paragraph 5.1, the Authority may elect, but shall not be obliged, to purchase any insurance or pay any insurance premiums which the Contractor is required to maintain pursuant to this Contract but has failed to maintain in full force and effect, or itself procure, provide or arrange such insurance, and in either case the Authority shall be entitled to recover from the Contractor the cost of such premiums, insurance premium tax and other reasonable costs incurred in connection therewith as a debt due to the Authority from the Contractor.

5.4 Deductibles

Where any Required Insurance is subject to an excess or deductible, below which the indemnity from insurers is excluded, the Contractor shall be liable for such excess or deductible which would otherwise be insured but for the excess or deductible. The Contractor shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Required Insurances whether under the terms of this Contract or otherwise.

5.5 Not used

6 Not used

Annex 1 of Schedule 12 – Indemnities

1 Indemnities from Contractor

This Annex 1 provides a list of key indemnities identified under this Contract. Indemnities contained elsewhere in this Contract but not expressly included in this Annex shall continue to be effective and shall not be affected by their absence from this Annex.

Indemnity cross-reference
Required Consents (breach of consents obligations) – Clause 13.3.
Damage to Government Property – Clause 25.1.
Environmental Provisions (Contamination) – Clause 36.9.
Removal of Property (on termination) – Clause 65.12.
Assignment or novation – Clause 65.14.5.
IPR (Breach/infringement) – Schedule 8 Paragraph 6.2.1, 6.4.2 & 6.6.1.
Employees (Various) – Schedule 10 Part 1 Paragraph 2.6.5, 2.6.9, 2.6.10, 2.6.11, 2.9.3, 2.10.1, 3.1.1. Part 2 Paragraph 2.1.6, 2.3.1(c), 2.4.1. Part 4 Paragraph 2.4, 2.11, Part 5 Paragraph Error! Reference source not found.
Lease/Licence indemnities – see separate documents.

2 Indemnities from the Authority

Indemnity cross-reference
Measures in a Crisis (Contractor costs in this scenario) - Clause 57.9.1(b).
Voluntary Termination (Breakage fees/costs) – Clause 60.5(a).
IPR (Infringement/breach) – Schedule 8 Paragraph 6.4.1 and 6.6.2.
Employees (various) – Schedule 10 Part 1 Paragraphs 2.6.4, 2.6.7, 2.6.8. Part 2 Paragraphs 2.4.2, 2.4.3, 1.1. Part 5 Paragraph Error! Reference source not found.

3 Not used

Annex 2 of Schedule 12 – Required Insurances

1 Third Party Public and Products Liability Insurance

1.1 Insured

Contractor

1.2 Interest

To indemnify the Insured (as set out in Paragraph 1.1 above) in respect of all sums that the Insured (as set out in Paragraph 1.1 above) may become legally liable (whether under contract, tort or otherwise) to pay as damages (including claimants' costs and expenses) in respect of accidental:

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

happening during the period of insurance (as set out in Paragraph 1.5 below) and arising out of or in connection with the Services and/or this Agreement.

1.3 Limit of indemnity

Not less than ██████████ in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period, but ██████████ for any one occurrence and in the aggregate per annum in respect of products and pollution liability (to the extent insured by the relevant policy).

1.4 Territorial limits

As determined by the requirements of Lot 7.

1.5 Period of insurance

From the date of the Agreement for the duration of the Agreement and renewable on an annual basis unless agreed otherwise with the Authority.

1.6 Cover features and extensions

1.6.1 Legal costs in addition to the limit of indemnity.

1.6.2 Contingent motor vehicle liability insurance.

1.6.3 Indemnity to principals clause or additional insured equivalent under which the Authority shall be indemnified in respect of claims made against the Authority arising from death or bodily injury and/or third party property damage for which the Contractor is legally liable under this Agreement.

1.7 Principal exclusions

1.7.1 War and related perils exclusion.

1.7.2 Nuclear and/or radioactive risks exclusion.

1.7.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insured (as set out in Paragraph 1.1 above) arising out of the course of their employment.

- 1.7.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles.
- 1.7.5 Liability in respect of predetermined penalties or liquidated damages imposed under this Agreement.
- 1.7.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.
- 1.7.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- 1.7.8 Liability arising from pollution and contamination unless caused by a sudden, unintended, unexpected and accidental occurrence.
- 1.7.9 Cyber liability exclusion.
- 1.7.10 Liability in respect of loss or damage to property in the care, custody and control of the Insured (as set out in Paragraph 1.1 above) but this exclusion is not to apply to all property belonging to the Authority which is in the care, custody and control of the Insured (as set out in Paragraph 1.1 above).

1.8 Maximum deductible threshold

Not to exceed [REDACTED] each occurrence in respect of loss of or damage to third party property.

2 Compulsory Insurances (including Employers Liability Insurance and Motor Insurance)

- 2.1 The Contractor is required to meet United Kingdom and other territory statutory insurance obligations in full. Insurances required to comply with all statutory requirements relating to the Agreement including, but not limited to, United Kingdom employers' liability and motor third party liability insurances.
- 2.2 As appropriate the Employers Liability Insurance shall extend to include any relevant offshore work in connection with this Agreement.
- 2.3 Compulsory insurances shall contain an indemnity to principals clause or additional insured equivalent.
- 2.4 In respect of relevant motorised vehicles indemnity in respect of loss or damage happening during each annual period of insurance for the term of this Agreement to:
 - 2.4.1 Pay for damage to be repaired.
 - 2.4.2 Pay for an amount of cash to repair the loss or damaged item.
 - 2.4.3 Replace the lost or damaged item.

Schedule 13 – Transition Arrangements

In this Schedule 13, the following terms shall have the following meanings

Milestone means each milestone identified in the Transition Plan and set out in Annex 3 to Schedule 13.

Milestone Achievement Criteria means all of the tasks and criteria agreed and identified in the Transition Plan and set out in Annex 3 or which are required to be satisfied to successfully achieve a Milestone.

Milestone Achievement Certificate means a certificate issued pursuant to Paragraph 10.6 in respect of the satisfaction of a Milestone.

Milestone Completion Date means the dates set out in the Transition Plan and Annex 3 as the dates for achievement of the relevant Milestones.

Transition Deliverables means all deliverables agreed and identified in the Milestone Plan as set out in Annex 3 or which are otherwise required to achieve a Milestone.

SDD Milestone Achievement Certificate means the Milestone Achievement Certificate issued pursuant to Paragraph 10.10.

Transition means the process, period and activities necessary to enable the transition and delivery of services to the Authority from the Outgoing Contractor to the Contractor.

Transition Meetings means the meetings to be held between the Contractor and the Authority during the Mobilisation Period as specified in Paragraph 6 below.

Transition Payment means the amount identified in the Tendered Amounts to be payable in respect of the Mobilisation Period.

Transition Period means the period when the Transition Plan activities are being implemented.

Transition Plan means the initial Transition Plan set out in Annex 1 to this Schedule 13 as updated and/or revised by the Contractor from time to time in accordance with the requirements of this Schedule.

Transition Progress Reports means the reports to be delivered by the Contractor as specified in Paragraph 6 below.

Transition Project Manager means the manager appointed by the Contractor pursuant to Paragraph 8 below.

1 Introduction

1.1 This Schedule:

- (a) outlines the main activities and responsibilities of the Contractor in respect of and during the Mobilisation Period.
- (b) outlines the process for development and implementation of the Transition Plan;

- (c) identifies the Milestones (and associated deliverables) in respect of the Mobilisation Period; and
- (d) sets out the tests and/or criteria to be met in respect of each Milestone.

1.2 The purpose of the Mobilisation Period is to enable the Contractor to be in a position to provide the Services at the Planned Service Delivery Date.

2 Objectives

The Contractor shall:

- (a) coordinate with the Authority and the Outgoing Contractor to ensure a smooth transition of services and delivery of services without disruption to ongoing operational output;
- (b) implement the Transition Plan to ensure that governance and reporting is supported and delivery of customer requirements assured; and
- (c) commence provision of the Services by the Planned Service Delivery Date.

3 Timeline and Milestones

- 3.1 The timeline and Milestones for the Mobilisation Period as at the Commencement Date are set out, respectively, in Annex 2 and Annex 3 to this Schedule 13.
- 3.2 Any changes to such dates and Milestones will require the Authority's prior written approval pursuant to this Schedule.

4 General

- 4.1 The Contractor shall:
 - (a) comply, in all material respects, with the Transition Plan; and
 - (b) carry out its obligations during the Mobilisation Period in accordance with the Transition Plan and all associated Milestones to ensure that it is able to deliver the Services at the Planned Service Delivery Date.
- 4.2 The Authority may, at its option, provide reasonable assistance to the Contractor during the Mobilisation Period.
- 4.3 The Contractor shall capture lessons learned during the Mobilisation Period to assist in the preparation of its Exit Plan.
- 4.4 The Mobilisation Period and associated activities will take place across all of the Site and the Contractor shall collaborate with the Authority and other suppliers at the Site (including the parties to the Third Party FMSP Contracts) during the Mobilisation Period to ensure that it is aware of all other activities carried out or planned at the Site.
- 4.5 The Contractor acknowledges that the Services may be subject to government review at key stages and all other times. The Contractor shall cooperate with any bodies undertaking such review and shall allow for such reasonable assistance as may be required for this purpose at no extra cost to the Authority.

5 Transition Plan

Initial Transition Plan

- 5.1 The initial Transition Plan is set out in Annex 1 to this Schedule 13.
- 5.2 All changes to the Transition Plan are subject to the Authority's prior written approval in accordance with this Schedule.

Detailed Transition Plan

- 5.3 The Contractor shall submit an updated Transition Plan to the Authority for approval within ten (10) Business Days of the Commencement Date.
- 5.4 The Contractor shall ensure that the updated Transition Plan:
- (a) incorporates all matters identified by the Contractor during the period from the Commencement Date and which the initial Transition Plan did not fully envisage or adequately incorporate;
 - (b) includes all matters as notified to the Contractor which the Authority reasonably requires to be included;
 - (c) incorporates all Milestones and Milestone Dates as set out in the initial Transition Plan;
 - (d) clearly identifies all steps and criteria required to implement the Milestones and to provide the Services by the Planned Service Delivery Date;
 - (e) clearly outlines the roles and responsibilities of the Contractor, including staffing requirements, Site access and deliverables; and
 - (f) is produced using a software tool as specified, or agreed by the Authority (acting reasonably).
- 5.5 Prior to submission of the updated Transition Plan in accordance with Paragraph 5.3, the Authority is entitled to:
- (a) review any documentation produced by the Contractor in relation to the development of the updated Transition Plan, including:
 - (i) details of the Contractor's intended approach to the updated Transition Plan and its development;
 - (ii) copies of any drafts of the updated Transition Plan produced by the Contractor; and
 - (iii) any other work in progress in relation to the updated Transition Plan; and
 - (b) require the Contractor to include any reasonable changes or provisions in the updated Transition Plan.
- 5.6 Following receipt of the updated Transition Plan from the Contractor, the Authority shall:

- (a) review and comment on the updated Transition Plan as soon as reasonably practicable; and
- (b) notify the Contractor in writing that it approves or rejects the updated Transition Plan no later than ten (10) Business Days after the date on which the updated Transition Plan is first delivered to the Authority.

5.7 The Authority may be entitled to reject the updated Transition Plan if:

- (a) the Contractor's ability to perform its obligations under this Contract would (on the balance of probabilities) be adversely affected by the implementation of the updated Transition Plan;
- (b) the updated Transition Plan would (on the balance of probabilities) adversely affect any right or obligation of the Authority under this Contract or any Third Party FMSP Contract, or its ability to enforce any such right or comply with any such obligation;
- (c) any aspect of the updated Transition Plan would be:
 - (i) inconsistent with any Law, statutory duty, legal requirements or Regulations;
 - (ii) inconsistent with the Requirements or Method Statements;
 - (iii) inconsistent with any other provision of this Contract;
 - (iv) not in accordance with Good Industry Practice; or
 - (v) not practicable;

5.8 If the Authority rejects the updated Transition Plan:

- (a) the Authority shall inform the Contractor in writing of its reasons for its rejection; and
- (b) the Contractor shall then revise the updated Transition Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised updated Transition Plan to the Authority for the Authority's approval within ten (10) Business Days of the date of the Authority's Notice of rejection. The provisions of Paragraphs 5.4 to 5.7 shall apply to any resubmitted updated Transition Plan. Either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure.

5.9 If the Authority approves the updated Transition Plan it shall replace the previous Transition Plan from the date of the Authority's Notice of approval. All versions of the Transition Plan shall be clearly noted and recorded.

5.10 The Contractor acknowledges and confirms that the Authority's approval of the updated Transition Plan shall not act as an endorsement of the updated Transition Plan and shall not relieve the Contractor of its responsibility for complying with the terms of the Transition Plan and ensuring that the Services are provided by the Planned Service Delivery Date and to the standards required by this Contract.

Updates and maintenance of the Transition Plan

5.11 Following the approval of the updated Transition Plan by the Authority:

- (a) the Contractor shall submit a revised Transition Plan to the Authority each time it wishes to amend or update the activities, deliverables, or dates set out in the Transition Plan;
- (b) the Authority is entitled to request a revised Transition Plan at any time by giving Notice to the Contractor and the Contractor shall submit such draft revised Transition Plan to the Authority within ten (10) Business Days of receiving such request (or such longer period as the Parties may agree);
- (c) any such revised Transition Plan is to be submitted by the Contractor for approval in accordance with the procedure set out in Paragraphs 5.4 to 5.8; and
- (d) the Contractor's performance against the Transition Plan will be monitored at Transition Meetings.

5.12 Save for any amendments which are of a type identified and notified by the Authority (at the Authority's discretion) to the Contractor, the Contractor shall not make any amendments to the Transition Plan.

5.13 Any proposed amendments to the Transition Plan do not come into force until they have been approved in writing by the Authority.

6 Mobilisation Period Meetings and Reports

Transition Meetings

6.1 The Authority and the Contractor shall hold Transition Meetings to fully review and discuss Transition activities.

6.2 In preparation for Transition Meetings, the current Transition Plan shall be provided by the Contractor to the Authority not less than five (5) Business Days in advance of each Transition Meeting.

6.3 Such Transition Meetings shall:

- (a) be held at least weekly;
- (b) be held at Portsmouth Naval Base or virtually as notified by the Authority from time to time;
- (c) be attended by the Transition Project Manager and any other personnel reasonably specified by the Authority;
- (d) discuss and identify progress as against the Transition Plan and Milestones; and
- (e) monitor the achievement of the objectives set out in Paragraph 2 above.

6.4 The frequency of the Transition Meetings may vary depending on progress made by the Contractor during the Mobilisation Period and as against the Transition Plan and Milestones.

6.5 The Contractor shall maintain minutes of the Transition Meetings and issue copies of such minutes, containing agreed actions, to the Authority as soon as reasonably practicable after the Transition Meetings.

- 6.6 The final Transition Meeting will be held no later than ten (10) Business Days prior to the Planned Service Delivery Date, and will review in full the ability of the Contractor to provide the Services and implement and perform in accordance with the terms of this Contract as at the Planned Service Delivery Date. The Contractor will provide the Authority with such information and reports as the Authority may reasonably require in advance of such meeting.

Transition Progress Reports

- 6.7 The Contractor shall submit weekly Transition Progress Reports to the Authority to demonstrate progress in accordance with the Transition Plan.
- 6.8 The Contractor shall include the following in the Transition Progress Reports:
- (a) the progress of and outlook for the Contractor's activities in relation to the Transition Plan;
 - (b) key items for discussion with the Authority, including any actions or decisions required by the Authority;
 - (c) an assessment of overall progress against each Milestone and shown as either:
 - (i) red – the Milestone is unlikely to be achieved, or the Milestone has not been achieved;
 - (ii) amber – the Milestone is at risk of not being achieved; or
 - (iii) green – the Milestone is on target to be achieved, or the Milestone has been achieved, and
 - (d) such other matters as the Authority may reasonably require.

7 Delay

- 7.1 If the Contractor becomes aware that there is, or there is reasonably likely to be, a delay to any matters specified in the Transition Plan and/or Milestones (including any likely delay to the Planned Service Delivery Date) or if it appears to the Authority that there may be any such delay, the Contractor shall:
- (a) notify the Authority with full details of the relevant delay, including the causes and implications;
 - (b) comply with any reasonable requirements of the Authority in order to address the impact of the delay or anticipated delay; and
 - (c) use all reasonable endeavours to eliminate or mitigate the consequences of any delay or anticipated delay.

- 7.2 If appropriate, the Contractor shall submit an updated Transition Plan in accordance with Paragraph 5 to reflect any identified or anticipated delay.

8 Personnel

- 8.1 The Contractor shall appoint a Transition Project Manager in order to manage the effective implementation of the Transition Plan.

- 8.2 The Contractor shall confirm details (including contact details) of the Transition Project Manager to the Authority prior to the Commencement Date. The Contractor shall not remove or replace such Transition Project Manager without the prior written consent of the Authority, not to be unreasonably withheld.
- 8.3 The Contractor shall consult with the Authority and appoint key personnel to be employed throughout the Mobilisation Period.
- 8.4 The Contractor shall not remove such personnel from employment (except in circumstances of gross misconduct) without the prior written consent of the Authority, not to be unreasonably withheld. The Contractor shall provide the Authority with (i) job descriptions setting out roles and responsibilities; (ii) CVs; (iii) standard of qualifications (iv); specialist experience; and (v) personal attributes, of key personnel.
- 8.5 The Contractor shall agree and establish Transition teams with the Outgoing Contractor.
- 8.6 The Contractor shall provide the Authority with an organisational chart for the personnel referred to in this Paragraph 8.

9 Payment

- 9.1 The Contractor shall be entitled to receive (as part of the first Monthly Service Charge) payment of the Transition Payment following issue of the SDD Milestone Achievement Certificate, and completion of all Milestones.

10 Milestone Achievement

- 10.1 The Contractor shall ensure that:
- (a) each Milestone is achieved by the relevant Milestone Completion Date; and
 - (b) all elements of the Service will be fully implemented and performed in accordance with the terms of this Contract by the Planned Service Delivery Date.
- 10.2 The Contractor shall give the Authority not less than five (5) Business Days' Notice and not more than fifteen (15) Business Days' Notice of the date upon which the Contractor considers that a Milestone will be achieved in accordance with the Transition Plan and the terms of this Contract.
- 10.3 Following receipt of Notice pursuant to Paragraph 10.2, the Authority may be entitled to:
- (a) carry out such inspections and/or tests, and
 - (b) ask for such reports, records, statements or other information
- as it may consider appropriate or necessary to be satisfied that the Milestone may be achieved.
- 10.4 The Contractor shall notify the Authority of any outstanding matters, which, in its reasonable opinion, are required to be carried out or attended to before the Milestone can be considered to be achieved in accordance with the Transition Plan and the terms of this Contract. The Contractor shall attend to such matters and notify the Authority as soon as practicable when it is in a position to request a Milestone Achievement Certificate.

- 10.5 The Contractor shall be entitled to request that the Authority issues a Milestone Achievement Certificate once the Contractor is satisfied that all matters are or will be completed to achieve that Milestone.
- 10.6 The Authority shall issue a Milestone Achievement Certificate in respect of a given Milestone as soon as reasonably practicable following:
- (a) the issue to it of all relevant Transition Deliverables;
 - (b) the successful testing of and demonstration to the Authority of the achievement or satisfaction of all Milestone Achievement Criteria; and
 - (c) performance by the Contractor, to the reasonable satisfaction of the Authority of any other tasks and/or tests identified in the Transition Plan as associated with that Milestone or as may otherwise be required (which may include the submission of deliverables, documents and/or information).
- 10.7 The grant of a Milestone Achievement Certificate shall not:
- (a) operate to transfer any risk that the Milestone has been achieved or completed, or
 - (b) affect the Authority's right subsequently to reject any Transition Deliverables or any Milestone to which a Milestone Achievement Certificate relates.
- 10.8 Notwithstanding the issue of a Milestone Achievement Certificate, the Contractor shall remain responsible for ensuring that:
- (a) the Contractor will deliver the Services in accordance with the requirements or the terms of this Contract, and
 - (b) each KPI or PI is met in accordance with the terms of this Contract.
- 10.9 If a Milestone is not achieved, the Authority shall immediately issue a Report to the Contractor setting out:
- (a) the applicable issues, and
 - (b) the reasons for the relevant Milestone not being achieved.
- 10.10 Subject to Paragraphs 10.7 and 10.8, the Authority will issue the SDD Milestone Achievement Certificate when the Contractor has demonstrated (to the satisfaction of the Authority) that all elements of the Service will be fully implemented and performed in accordance with the terms of this Contract on and from the Planned Service Delivery Date.

11 Spanning Contracts

- 11.1 The Parties acknowledge that there may be contracts which the Outgoing Contractor or the Authority have entered into with third parties, before the Commencement Date and which expire after the Commencement Date, and which may be relevant to the Services (**Spanning Contracts**).
- 11.2 As part of the smooth transition of services, it is agreed that it may be beneficial for the Contractor to continue with such Spanning Contracts after the Service Delivery Date. Accordingly, the Authority will:

- (a) identify all Spanning Contracts as soon as reasonably practicable (and to the extent not identified before the Commencement Date);
 - (b) provide details of all Spanning Contracts to the Contractor, including copies of such Spanning Contracts; and
 - (c) inform the Contractor of the terms on which it proposes that such Spanning Contracts should be continued by the Contractor (including any terms for payment, duration, and transfer).
- 11.3 As soon as reasonably practicable after notification of the Spanning Contracts pursuant to Paragraph 11.2, the Parties shall meet to discuss and agree (acting reasonably) the terms on which the Spanning Contracts should be continued by the Contractor.
- 11.4 Following agreement pursuant to Paragraph 11.3, the Parties will enter into such documents as may be required to enable the Contractor to continue the Spanning Contracts.

Annex 1 of Schedule 13 – Transition Plan

[REDACTED]

Annex 2 of Schedule 13 – Timeline

[REDACTED]

Annex 3 of Schedule 13 – Milestones

[REDACTED]

Annex 4 of Schedule 13 – Milestone Achievement Certificate

To: *[Name of Supplier]*

From: The Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland

Date:

Dear Sirs

MILESTONE ACHIEVEMENT CERTIFICATE

We refer to the Contract (the "**Contract**") relating to the provision of the Service between The Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland (the "**Authority**") and *[name of Contractor]* (the "**Contractor**").

Capitalised terms used in this certificate have the meaning given to them in Schedule 1 (*Definitions*) of the Contract.

We confirm that:

- all the Transition Deliverables relating to Milestone *[number]* have been tested and/or successfully delivered; and
- we are satisfied that all Milestone Achievement Criteria have been met or satisfied in accordance with the Transition Plan, the terms of Schedule 13 (*Transition Arrangements*) of the Contract and other provisions of the Contract.

This Milestone Achievement Certificate is granted pursuant to Paragraph 10.6 of Schedule 13 (*Transition Arrangements*) of the Contract.

Yours faithfully

NAME

POSITION

acting on behalf of The Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland

Schedule 14 – Supply Chain and Sub-Contracting Strategy

Part 1 - Introduction and Interpretation

1 Introduction

1.1 In managing its supply chain, the Contractor shall encourage the following:

- (a) improvement of the quality, effectiveness and efficiency of supply chain relationships through good practice;
- (b) development and use, where appropriate, in supply chain relationships of:
 - (i) team working;
 - (ii) openness;
 - (iii) common goals; and
 - (iv) opportunities for improvements;
- (c) fair and open competition; and
- (d) elimination of duplication and waste.

1.2 When considering how to perform the Services the Contractor shall give due consideration to:

- (a) the use of sub-contracting as a means to:
 - (i) promote the Commercial Purpose; and
 - (ii) improve value for money (where practicable by minimising) the Authority's liability in respect of the Total Contract Price; and
- (b) the Authority's view that competition in the supply chain is the preferred means of delivering value for money particularly in relation to prime contracting arrangements.

2 Interpretation

2.1 In this Schedule:

- (a) reference to:
 - (i) the **value** of a sub-contract or procurement of any sub-contract means the total of the price and other remuneration paid or reasonably expected to be paid under the sub-contract during its entire duration;
 - (ii) the **Threshold Value** in relation to a procurement or sub-contract means a value of two hundred thousand pounds (£200,000),

and if there are any two or more procurements or sub-contracts with values that in aggregate exceed the Threshold Value and that can reasonably be considered to be part of the same transaction, each shall be deemed to meet the Threshold Value;

- (b) **Approved Key Sub-Contract Terms** means terms and conditions for a Sub-Contract between the Contractor and a Key Sub-Contractor which are substantially the same as those in the agreed form for such Sub-Contract;
- (c) **Behavioural Principles** means the requirements and principles set out in Paragraph 2.1 of Part 2 of this Schedule 14;
- (d) **Competitive Sub-Contract** means an order or Sub-Contract that has been or is to be awarded as the result of a “competitive process” as defined in Regulation 59 or Regulation 60, as appropriate, of the SSCR;
- (e) **First Tier Sub-Contract** means a Sub-Contract entered into by the Contractor;
- (f) **Initial Key Sub-Contracts** means the Key Sub-Contracts referred to in sub-Paragraphs (i) and (ii) of the definition of Key Sub-Contract.
- (g) **Key Sub-Contract** means any of:
 - (i) a contract with a Key Sub-Contractor;
 - (ii) not used;
 - (iii) not used;
 - (iv) any other First Tier Sub-Contract related to the subject matter of the Sub-Contracts in (i); and
 - (v) which the Authority reasonable determines to be a Key Sub-Contract for the purposes of this Contract.
- (h) **Key Subcontractor** means any person with whom the Contractor contracts in respect of the performance of any part if its obligations under this Contract (i) whose costs are equal to or over thirty percent (30%) of the Total Contract Price; and/or (ii) who is the only supplier in the market able to provide any of the relevant Services set out in Schedule 2 of this Contract (such sub-contracted part of the Contractor's obligations being **Key Sub-Contracted Scope**), and any person that contracts at any tier to perform any part of, or provide goods or services in respect of **Key Sub-Contracted Scope**, and **Key Sub-Contract** shall be construed accordingly.
- (i) **Lower Tier Sub-Contract** means a Sub-Contract other than a First Tier Sub-Contract;
- (j) **Non-Competitive Sub-Contract** means an order or Sub-Contract that is not a Competitive Sub-Contract;
- (k) **Procurement Plan** has the meaning given to that term in Paragraph 3.1 of Part 2 of this Schedule 14;
- (l) **Relevant Amendment** has the meaning given to that term in Paragraph 2.2.4 of Part 3 of this Schedule 14;
- (m) **Relevant Sensitive Procurement** means a that is Sensitive procurement that has or is likely to have a value equal to or greater than the Threshold Value;

- (n) **Sensitive** means in relation to an actual or proposed procurement by the Contractor that its subject matter is such that (whether for reasons of national security, political sensitivity or otherwise) the Authority considers that such procurement is or will be politically sensitive;
- (o) **SME** means an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises;
- (p) **Supplier Management Information** has the meaning given to that term in Paragraph 9.2 of Part 3;
- (q) **Supported Business** means an establishment or service where more than fifty per cent (50%) of the workers are disabled persons who by reason of the nature or severity of their disability are unable to take up work in the open labour market (details of Supported Businesses in the United Kingdom can be found on the Supported Business Directory entitled British Association for Supported Employment at Unit 4, 200 Bury Road, Tottington, Lancashire BL8 3DX (Telephone: 01204 880733) or <http://business.base-uk.org/directory>); and
- (r) **VCSE** means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives.

Part 2 – Supply Chain Management

1 Policies and Procedures

1.1 The Contractor shall:

- (a) establish, maintain, and implement, policies and procedures to:
 - (i) promote compliance with Paragraph 1.1 of Part 2 of this Schedule 14; and
 - (ii) give effect to the Behavioural Principles;
- (b) from time to time, and at least once each year:
 - (i) assess its compliance with Paragraph 1.1 of Part 2 of this Schedule 14, and the extent to which the Behavioural Principles have been given effect;
 - (ii) make any changes to the policies and procedures referred to in Paragraph 1.1(a) of this Part 2 that are reasonably necessary to promote compliance with Paragraph 1.1 of Part 2 of this Schedule 14, and give effect to the Behavioural Principles.

1.2 The Authority may time to time but in each case no more frequently than two (2) times each year request the Contractor to:

- (a) provide the Authority with access to and copies of the assessments, policies and procedures referred to in Paragraph 1.1 of this Part 2;
- (b) consult with the Authority regarding such assessments, policies and procedures.

1.3 The Contractor shall comply with any request by the Authority made in accordance with Paragraph 1.2 of this Part 2.

2 Behavioural Principles

2.1 In managing its supply chain in relation to this Contract, the Contractor shall:

- (a) use supply chain management policies and procedures that encourage innovation, cost reduction and continuous improvement;
- (b) strive to maintain:
 - (i) healthy and robust competition (wherever possible); and
 - (ii) enduring supplier agreements within its supply chain in delivery of this Contract;
- (c) strive to deliver value to the Authority and to improve competitiveness (where there is competition) in line with recognised benchmarks of best practice;
- (d) implement effective risk identification and reduction processes at all stages of the supplier acquisition process, throughout the supply chain;
- (e) use appropriate risk-sharing arrangements;

- (f) ensure that the Authority is kept informed of the development and continued implementation of its obligations under this Schedule 14 (*Supply Chain and Sub-Contracting*);
- (g) adopt strategies which encourage engagement of small and medium-sized enterprises; and
- (h) give consideration, as far as possible, to placing work with Sub-Contractors that are Supported Businesses.

2.2 The Contractor shall in its dealings with Sub-Contractors and potential Sub-Contractors:

General

- (a) be fair, efficient, firm and courteous;
- (b) maintain the highest standards of honesty, integrity, impartiality and objectivity;
- (c) avoid improper business practices;
- (d) use supply chain mapping to drive efficiencies throughout the supply chain;
- (e) use sustainable procurement practices;
- (f) use reasonable endeavours to maximise value for money;
- (g) use competition within the supply chain where it is appropriate and reasonable to do so taking into account:
 - (i) the needs of the Contractor to meet its obligations under this Contract;
 - (ii) the likely value of any procurement;
 - (iii) ownership of intellectual property rights in any good to be procured;
 - (iv) its strategic partnering objectives and strategies; and
 - (v) any other relevant factors.

Pre-procurement

- (h) make available as much information as reasonably practicable and responsible on future procurement plans to facilitate business decisions;
- (i) before commencing a procurement of goods or services, enter into early consultation with potential suppliers of those goods or services about applicable draft specifications, statements of requirements, special terms of trading, and contract conditions to:
 - (i) identify improvements to those documents;
 - (ii) encourage innovation;
 - (iii) identify, evaluate and optimise trade-offs between:

- (A) operational performance;
 - (B) reliability;
 - (C) delivery; and
 - (D) through-life costs;
- (j) provide clear specifications of requirements which:
- (i) encourage innovation; and
 - (ii) refer where appropriate to relevant technical and other standards;
- (k) use reasonable endeavours to protect commercially-sensitive information acquired from pre-contract discussions with suppliers, unsolicited proposals and formal tenders, and respect the intellectual property rights of suppliers;
- (l) provide opportunities on an even handed basis for suppliers to participate in competitions, but, in the interests of both customer and suppliers, limit numbers to ensure optimum economy, while honouring (and testing, where appropriate) preferred supplier status and strategic alliances;

Conduct of procurement

- (m) make effective use of technology during the procurement process;
- (n) strive for the highest professional standards in the award of contracts so as to maximise efficiency;
- (o) endeavour to make available sufficient time and information for suppliers to respond to the bidding process appropriate for the procurement, and to define and publicise amongst its supplier community contact points for the handling of enquiries and complaints;
- (p) manage the bidding process so as to:
- (i) minimise the burdens on suppliers;
 - (ii) preserve genuine competition; and
 - (iii) avoid undue discrimination;
- (q) assess supplier performance in an objective and open manner and apply those assessments coherently in the process of supplier selection and tender evaluation;
- (r) use incentivisation techniques to encourage innovation and improve performance;

Contract management

- (s) strive for the highest professional standards in the management of contracts;

- (t) respond promptly to suggestions, enquiries and complaints, seeking an open exchange of information on all technical and commercial issues based on mutual trust;
- (u) establish and implement an effective system of identifying and handling actual and potential complaints by and disputes with suppliers, with the objective of resolving such complaints and disputes quickly by negotiation at the lowest level of delegation appropriate to the nature of the issue, and its effect on the parties, or otherwise escalating the matter within each party's management structure, before resorting to arbitration or other forms of dispute resolution; and
- (v) establish and implement an effective system for identifying and managing risks arising from the solvency or performance of its Sub-Contractors.

3 Annual Procurement Plan

- 3.1 The Contractor shall (in accordance with this Paragraph 3) prepare, maintain, revise and update from time to time, and implement, a detailed and accurate plan for performing and sub-contracting its obligations under this Contract, and for managing its supply chain for the purposes of this Contract (a Procurement Plan).
- 3.2 The Contractor shall:
 - (a) prepare its first Procurement Plan, and issue a copy thereof to the Authority, within one (1) month of the Commencement Date; and
 - (b) revise and update the Procurement Plan, and issue a copy thereof to the Authority:
 - (i) no later than one (1) month after the Service Delivery Date;
 - (ii) at least once each Contract Year;
 - (iii) no later than the earlier of:
 - (A) twelve (12) months after the last update; and
 - (B) the next quarter end date following any significant change to the Contractor's plan for performing and sub-contracting its obligations.
- 3.3 The Contractor shall if so requested at any time provide a copy of the latest Procurement Plan to the Authority.
- 3.4 The Contractor shall include (without limitation) the following in the Procurement Plan:
 - (a) a work breakdown structure and product breakdown structure;
 - (b) a description of items and services to be procured;
 - (c) an overview of the Contractor's proposed purchasing strategy for all Sub-Contracts;
 - (d) a purchasing plan for procurements that have a value above the Threshold Value;
 - (e) Competitive Sub-Contracts and Non-Competitive Sub-Contracts that have a value above the Threshold Value that have been, or are expected to be, entered into;

- (f) any Sub-Contract entered into or proposed to be entered into with any of the Contractor's Affiliates;
- (g) actual spend to date on Sub-Contractors; and
- (h) details of any procurement that it considers is or will be Sensitive and its reasons for that belief.

3.5 The Procurement Plan shall detail the following in respect of each actual or proposed Competitive Sub-Contract that has a value above the Threshold Value:

- (a) its approximate value;
- (b) the actual or proposed pricing model;
- (c) a description of the services, goods and/or obligations procured or to be procured;
- (d) the actual or proposed list of tenderers;
- (e) the appointed Sub-Contractor;
- (f) the programme of activity, including approximate key dates of the competitive and contracting process;
- (g) where relevant, the delivery programme; and
- (h) any other relevant factors.

3.6 The Procurement Plan shall detail the following in respect of each actual or proposed Non-Competitive Sub-Contract that has a value above the Threshold Value:

- (a) its approximate value;
- (b) the actual or proposed pricing model;
- (c) the Contractor's reasons for not following a competitive tendering process;
- (d) a description of the services, goods and obligations procured or to be procured;
- (e) the name and address of the actual or proposed Sub-Contractor;
- (f) the appointed Sub-Contractor;
- (g) the programme of activity, including approximate key dates of the competitive and contracting process;
- (h) the means by which it shall be ensured and/or verified that the Sub-Contract prices are fair and reasonable. Such means might include incorporation into the Sub-Contract of relevant Authority DEFCONs such as 643;
- (i) Not used;
- (j) where relevant, the delivery programme; and
- (k) other relevant factors.

- 3.7 The Procurement Plan shall include information on how the Contractor will organise and/or conduct the following:
- (a) creation and management of the Contractor's own supply chain management organisation;
 - (b) identification of commodities and services to be procured;
 - (c) planning of procurement and related activities;
 - (d) selection of Sub-Contractors;
 - (e) management of Sub-Contractors;
 - (f) identification and development of key suppliers;
 - (g) managing of defects, returns and supply chain quality; and
 - (h) management of logistics.
- 3.8 The Procurement Plan shall detail any opportunities advertised by the Contractor in Defence Contracts Online.
- 3.9 If at any time the Authority wishes to discuss any matter in the Procurement Plan with the Contractor, the Contractor shall as soon as reasonably practicable meet with the Authority to discuss such matter.
- 3.10 The Contractor shall:
- (a) take reasonable steps to remedy or improve any non-compliance with the matters set out in this Part 2 of Schedule 14 notified to it by the Authority; and
 - (b) provide supporting information to the Authority to demonstrate that its proposed action is reasonable.
- 3.11 Without prejudice to the other provisions of this Paragraph 3, if so requested by the Authority, the Contractor shall:
- (a) provide to the Authority in writing a list of all Sub-Contracts with a value equal to or less than the Threshold Value that are in existence or are proposed;
 - (b) provide the information which would be required under the Procurement Plan in respect of such Sub-Contract if it had a value above the Threshold Value (to the extent available).

Part 3 – Sub-Contracting Obligations

1 Introduction

- 1.1 The Contractor may sub-contract its obligations under this Contract, subject to the requirements of this Schedule 14.
- 1.2 The Contractor shall remain responsible and liable to the Authority at all times for the performance of its obligations under this Contract and for the acts and omissions of its Sub-Contractors and suppliers of any tier in respect thereof, notwithstanding the terms of this Schedule 14 or any consent to or approval of the appointment of any Sub-Contractor or supplier, or the terms or amendment of any Sub-Contract.
- 1.3 The Contractor shall, as between itself and the Authority, be responsible for selecting all Sub-Contractors and for the pricing of, and payment under, each Sub-Contract, save as expressly provided otherwise.

2 Entry into and amendment of Sub-Contracts

2.1 Non discrimination

The Contractor shall maintain and implement supply chain management and procurement policies and procedures that ensure that procurement is conducted in accordance with the following principles:

- (a) equal treatment of tenderers without undue discrimination;
- (b) transparency; and
- (c) proportionality.

2.2 Key Sub-Contracts

2.2.1 Without prejudice to Paragraphs 2.3 to 2.5 inclusive, the Contractor shall not enter into a Key Sub-Contract other than the Initial Key Sub-Contracts unless:

- (a) it has obtained the Authority's written approval of:
 - (i) the identity of the proposed counterparty; and
 - (ii) the terms of the proposed Key Sub-Contract; and
- (b) a Direct Agreement has or shall come into effect on or before such Key Sub-Contract comes into effect.

2.2.2 The Authority shall not unreasonably delay or withhold its written approval of the identity of a proposed Key Sub-Contractor or the terms of a proposed Key Sub-Contract.

2.2.3 It shall (without limitation) be reasonable for the Authority to withhold approval under Paragraph 2.2.2 for one or both of the following reasons:

- (a) the proposed Key Sub-Contractor is a person whose appointment would, in the opinion of the Authority, pose a threat to national security;

- (b) the proposed Key Sub-Contractor is a person that is, or is domiciled in a jurisdiction that is, subject to economic sanctions.

2.2.4 Without prejudice to Paragraphs 2.3 to 2.5 (inclusive), the Contractor shall not make or agree to any supplement, amendment, waiver of performance or variation of the terms of any Key Sub-Contract (each a **Relevant Amendment**) unless the Relevant Amendment has been approved in writing by the Authority.

2.2.5 The Authority shall not unreasonably delay or withhold its written approval of a proposed Relevant Amendment.

2.3 Not used

2.4 Contracts Involving Secret Information

The Contractor shall not enter into any Sub-Contract or collaborate with:

- (a) a person domiciled outside the United Kingdom on work involving information classified "Official Sensitive" or above; or
- (b) any person on work involving information classified "Secret" or above,

in each case without the prior written consent of the Authority.

2.5 Authority Nomination of Sub-Contractors

2.5.1 The Authority shall be permitted to request that the Contractor consults it regarding any proposed procurement process (whether notified to it through the Procurement Plan, pursuant to any provision of Paragraph 3 or Paragraph 4 or otherwise).

2.5.2 The Contractor shall participate in any consultation requested by the Authority under Paragraph 2.5.1. Such consultation shall concern (at the Authority's discretion) any one or more of the following:

- (a) using a Sub-Contractor nominated by the Authority;
- (b) using a different procurement route than proposed by the Contractor;
- (c) involving more or fewer tenderers than proposed by the Contractor;
- (d) amendment of the Contractor's tender selection criteria;
- (e) making selection of any Sub-Contractor conditional on the Authority's approval; and
- (f) allowing the Authority to oversee the conduct of the tender.

2.5.3 Where proposals made by the Authority in relation to any matter in Paragraph 2.5.2(a) to (f) (inclusive) cannot be agreed, the Authority may require the Contractor to proceed as instructed by the Authority in relation to the matter concerned (including as to the identity of a Sub-Contractor), and the Contractor shall implement such instruction.

2.5.4 If:

- (a) the Authority issues requirements under Paragraph 2.5.3 above, the Authority and the Contractor shall consult and endeavour to agree whether, as a consequence of such Authority action, there is any additional risk and cost that should be allocated to the Authority, such allocation to be fair and proportionate in the context of the items or services to be procured; and
- (b) the Authority and the Contractor do not agree on the appropriate Authority risk allocation and any consequential changes required to this Contract, the matter shall be referred for resolution pursuant to the Dispute Resolution Procedure.

2.5.5 The Contractor shall endeavour to "pass down" appropriate risks to the relevant Sub-Contractor rather than transfer risk to the Authority under Paragraph 2.5.4.

3 Conduct of Procurement

3.1 Sensitive Procurement

- 3.1.1 The Contractor shall notify the Authority of any proposed procurement that it reasonably considers is or may be Sensitive unless it has already done so within the Procurement Plan.
- 3.1.2 If the Authority considers that any procurement proposed by the Contractor is Sensitive (whether or not identified as potentially Sensitive by the Contractor in the Procurement Plan or under Paragraph 3.1.1), it shall notify the Contractor.

3.2 Authority review of tender and evaluation procedure

- 3.2.1 If requested by the Authority, the Contractor shall make available to the Authority the criteria it will use for evaluation of tenders for any Sub-Contract.
- 3.2.2 The Authority shall have the right to be assured that the tendering and evaluation processes to be carried out by the Contractor in respect of any Relevant Sensitive Procurement are (in the Authority's opinion) appropriate. To provide such assurance, the Contractor shall:
 - (a) provide prior Notice of and details about its proposed procurement procedures;
 - (b) if requested by the Authority, attend discussions with the Authority about such procedures;
 - (c) implement the Authority's reasonable proposals for conducting such tendering and evaluation processes; and
 - (d) if requested by the Authority, ensure that information relating to the procurement is not disclosed beyond a designated group of persons.

3.3 Procurement Procedures

- 3.3.1 The Contractor shall:
 - (a) advertise in the Defence Contracts Online, and conduct competitively, any procurement of a Sub-Contract that will have a value above two hundred thousand pounds (£200,000) unless:

- (i) there are reasonable grounds for not doing so (whether because it is Sensitive, because required intellectual property rights are owned by a single supplier, or otherwise); and
 - (ii) the Contractor has obtained the Authority's prior written consent (not to be unreasonably withheld);
- (b) prepare lists of prospective tenderers, on the basis of:
- (i) its knowledge of the market place for the items which are the subject of the Sub-Contract in question;
 - (ii) any responses to any advertising in the Defence Contracts Online or other medium; and
 - (iii) any specific provisions of United Kingdom Government policy formally notified to it by the Authority; and
- (c) in respect of opportunities to be advertised on Defence Contracts Online:
- (i) provide all information required by Defence Contracts Online in respect of each and such Sub-Contract opportunity; and
 - (ii) within thirty (30) calendar days after the date on which the relevant Sub-Contract shall have been awarded update the relevant advertisement on Defence Contracts Online in respect of such Sub-Contract identifying the name and registered office address details of the Sub-Contractor so appointed under such Sub-Contract and providing a description of the subject matter and the value (excluding VAT) of such Sub-Contract;
- (d) provide reports to the Commercial Officer, if so requested, on the number, type and value of Sub-Contract opportunities placed on Defence Contracts Online and awarded in its supply chain during the Contract Period and promote Defence Contracts Online to all Sub-Contractors and encourage those operators to register on it.

3.3.2 The Contractor shall:

- (a) give prior Notice to the Authority of its intention to conduct a procurement process;
- (b) promptly notify the Authority, if the Contractor intends to award a Sub-Contract;
- (c) produce appropriate set(s) of terms and conditions governing each planned Sub-Contract and shall include these in an invitation to tender;
- (d) provide the Authority, on request, with a copy of the invitation to tender in respect of each Sub-Contract and a complete statement of the requirement in respect of that proposed Sub-Contract;
- (e) provide the Authority, promptly on request, with a copy of the final tender requirements prior to issue to tenderers (including invitations to tender, proposed contract terms (including any compensation terms), selection criteria and tender evaluation processes); and

- (f) allow the Authority to send a representative to any tender evaluation sessions organised by the Contractor and provide the Authority, on request, with copies of the evaluation report on each submitted tender on request.

3.3.3 The Contractor shall (within the bounds of commercial confidentiality) if requested provide a debrief about the outcome of any procurement process to those that did not succeed in it. Such debrief shall include the reasons the person concerned was (as the case may be) not selected to bid or (having submitted a bid) unsuccessful.

3.3.4 The Authority may issue guidance to the Contractor on how to advertise sub-contract opportunities on Defence Contracts Online from time to time and the Contractor shall comply with such guidance so issued in relation to the advertisement of any Sub-Contract.

4 Retention of Records

The Contractor shall:

- (a) retain detailed records of its tendering procedures for each Sub-Contract until the earliest of:
 - (i) the date falling seven (7) years from the date of the Sub-Contract; and
 - (ii) the date the Authority grants permission in writing for them to be disposed of,
- (b) comply with all reasonable requests from the Authority for access to such records at any time.

5 Management of Equal Treatment

5.1 Without prejudice to the generality of Paragraph 2.1 of this Part 3 the Contractor shall in relation to any competitive procurement:

- (a) if requested by the Authority, provide details of the procedures it will apply to ensure equality of treatment and non-discrimination (including by avoiding bias and any conflict of interest);
- (b) consider (acting reasonably) those reasonable and proportionate proposals made by the Authority to ensure equality of treatment and non-discrimination (including by avoiding bias and any conflict of interest), whether by involvement of, or oversight by, the Authority, or otherwise.

5.2 The Contractor shall notify actual or potential participants in any competitive procurement that, if they have reasonable grounds for believing there is a risk that their commercial interests may be harmed by unequal treatment or undue discrimination (including as a result of bias or any conflict of interest) in the conduct of that procurement by the Contractor, they may make formal written representations to the Contractor and/or the Authority about any changes that such actual or potential participant considers (in good faith) are necessary to the competition procedures to avoid such risk. The Contractor and the Authority shall consider any such representations made to it, and if representations are made to the Authority, then the Parties shall discuss such representations and endeavour to agree what steps (if any) are necessary to avoid any unequal treatment or undue discrimination.

5.3 If any actual or potential tenderer for any Competitive Sub-Contract can demonstrate to the Authority that there are reasonable grounds for believing that unequal treatment or undue

discrimination (including as a result of bias or any conflict of interest) exists and that (in the Authority's opinion) the Contractor cannot avoid or mitigate these grounds sufficiently, then the Contractor shall, if the Authority requests, provide to the Authority such reasonable and proportionate role in the bid evaluation process as is necessary to ensure an equal and fair competitive process. Such role may (without prejudice to Paragraph 1.3 of this Part 3) include the Authority taking control of, and keeping confidential to itself, the pricing sections of tenders for competitive Sub-Contracts until the final assessment of all other elements of the tenders have been completed, or implementing such other controls that will, in the Authority's reasonable opinion, secure a fair and competitive process.

6 Sub-Contract Terms

6.1 Supply Chain Payment Terms

6.1.1 The Contractor shall ensure that all First Tier Sub-Contracts contain provisions that:

- (a) require that any amount that is required by that Sub-Contract to be paid by one party to it (the **Paying Party**) to another other party to it, such amount shall be paid by the Paying Party on or before the date (the **Due Date**) falling thirty (30) calendar days after the date of receipt by the paying party of:
 - (i) in the case of payments of contract price, an invoice; and
 - (ii) In the case of any other amount, a demand in writing from the other party.
- (b) require that the Paying Party shall only withhold payment of any amount invoiced in respect of the Total Contract Price beyond the Due Date if and for so long as such amount is disputed in good faith for bona fide reasons (the **Disputed Amount**);
- (c) require that where an amount invoiced in respect of contract price is in part a Disputed Amount and in part not, the undisputed part shall be paid by the Due Date;
- (d) require that any party thereto (the **Sub-Contract Defaulting Party**) shall pay interest (after as well as before judgment, calculated on the basis of the actual number of days elapsed at the rate of statutory interest (as that term is defined in the Late Payment of Commercial Debts (Interest) Act 1998)), to the other party on any amount due from the Sub-Contract Defaulting Party to such other party which is not paid on the Due Date, for the period commencing on the first (1st) day after the Due Date and ending on (and including) the date of actual payment in full;
- (e) require that any invoices submitted by a Sub-Contractor:
 - (i) shall be considered and verified by the Contractor as soon as reasonably possible; and
 - (ii) deemed to be valid and undisputed to the extent the Contractor has not notified the Sub-Contractor that the invoiced amount is disputed within a reasonable time; and
- (f) conferring a right on the Contractor to permit the Authority to publish details of the Sub-Contractor's compliance or non-compliance with its obligation to pay undisputed invoices within the specified payment period.

- 6.1.2 The Contractor shall use all reasonable endeavours to ensure that each Lower Tier Sub-Contract contains provisions that have the same effect between the parties thereto (subject to necessary changes) as those provided for in Paragraph 6.1.1.

6.2 Supply Chain Governance Terms

- 6.2.1 The Contractor shall:

- (a) ensure that each Key Sub-Contract contains a provision that subject to the prior agreement of the Key-Subcontractor and the Contractor (not to be unreasonably withheld or delayed) the Authority be permitted to attend any meeting or discussion between the Contractor and the Key Sub-Contractor;
- (b) use reasonable endeavours to ensure that each First Tier Sub-Contract that is not a Key Sub-Contract contains a provision that, subject to the prior agreement of the First Tier Sub-Contractor and the Contractor (not to be unreasonably withheld or delayed) the Authority be permitted to attend any meetings or discussions between the Contractor and the Sub-Contractor.

6.3 Supply Chain Flow Down - General

Without prejudice to the express provisions elsewhere in this Contract requiring the Contractor to impose any contractual obligation on a Sub-Contractor, the Contractor shall ensure that each Sub-Contract contains provisions that impose on the Sub-Contractor obligations that are equivalent (subject to necessary changes) to the obligations of the Contractor in this Contract under the following Clauses:

- (a) Clause 12 (*Observance of Law and Regulations*);
- (b) Clause 20 (*Access to Facilities*);
- (c) Clause 25 (*Contractor's Personnel at the Service Delivery Locations and other Government Establishments*);
- (d) Clause 28.5.4 (*Persons with Access to Secret Matters*) (and Appendix (C) *Security Measures to be included in Relevant Sub-Contracts*) is the Appendix referred to in such Clause 28.5.4);
- (e) Clause 29 (*Equality*);
- (f) Clause 36 (*Environmental Provisions*), where applicable;
- (g) Clause 48 (*Cyber*) where it is applicable to the CSM Risk Assessment Process;
- (h) Clause 62 (*Termination for Prolonged Force Majeure*);
- (i) Clause 64 (*Corrupt Gifts and Expenses*);
- (j) Part 22 (*Change*);
- (k) Clause 75 (*Confidentiality and Freedom of Information*);
- (l) Clause 76 (*Transparency*);

- (m) Clause 77 (*Data Protection*); and
- (n) Clause 82 (*Public relations and publicity*).

6.4 Not used

6.5 Supply Chain Flow Down – Other Matters

6.5.1 Open Book on sub-contracts

- (a) Except where the Authority expressly agrees otherwise in writing, the Contractor shall use reasonable endeavours to include in any Material Single Source Sub-Contract the terms specified in Part 1 (*Open Book on sub-contracts*) of Appendix A (*Single Source Flow Down Terms*) to this Schedule 14 (inserting relevant party names and/or definitions where appropriate).
- (b) Before entering into a Material Single Source Sub-Contract the Contractor shall promptly notify the Authority where it is unable to include the terms specified in Part 1 (*Open Book on sub-contracts*) of Appendix A (*Single Source Flow Down Terms*) to this Schedule 14, or where it believes that the inclusion of those terms will prevent the achievement of a fair and reasonable price for that Sub-Contract.

6.6 Not used

6.7 Supply Chain Flow Down – Third Party Rights

Where under any provision of this Contract the Contractor is required to include a provision in a Sub-Contract (an **Authority Benefit Provision**) that confers or purports to confer a right on the Authority, the Contractor shall ensure that such Sub-Contract shall also include a provision that expressly refers to that Authority Benefit Provision and permits the Authority to enforce the same pursuant to the Contracts (Rights of Third Parties Act) 1999.

7 Sub-Contract Payments

7.1 The Contractor shall:

- (a) consider and verify any invoices submitted to it by a Sub-Contractor as soon as reasonably possible; and
- (b) pay any amount of contract price that is required to be paid by it to a Sub-Contractor under a Sub-Contract on or before the date falling thirty (30) calendar days after the date of receipt by it of an invoice for such amount.

7.2 The Contractor shall:

- (a) provide information about the extent to which it has complied with Paragraph 7.1 (invoice by invoice, and broken down by quarter and Sub-Contractor); and
- (b) permit the Authority to audit its compliance with Paragraph 7.1.

7.3 Notwithstanding any provision of Clause 77 (*Data Protection*) if the Sub-Contractor notifies the Authority that the Contractor has failed to pay an undisputed Sub-Contractor's invoice within thirty (30) calendar days of receipt, or the Authority otherwise discovers the same, the

Authority shall be entitled to publish the details of the late payment or non-payment (including on Government websites and in the press).

8 Audit

8.1 The Authority shall be permitted to audit any Sub-Contract procurement process where it has reasonable grounds to believe either that the award of the Sub-Contract has been made to a tenderer which has not complied with the tender requirements or that the successful tender does not represent best value for money. In such circumstances, the Authority shall:

- (a) provide the Contractor with such details that it is reasonably able to explaining such audit (but shall not be required to justify requiring the audit to the Contractor); and
- (b) upon completion of such audit, share the results with the Contractor and notify the Contractor of any corrective actions that the Authority considers appropriate in relation to procurement or supply chain management by the Contractor.

8.2 The Contractor shall:

- (a) comply with all reasonable requests for information and access to records from the Authority associated with any audit by the Authority under Paragraph 8.1; and
- (b) give reasonable consideration to any corrective actions proposed by the Authority pursuant to Paragraph 8.1.

9 Information on Sub-Contractors and suppliers

9.1 If requested, the Contractor shall provide the Authority with unredacted copies of any Sub-Contract placed in connection with this Contract.

9.2 The Contractor as soon as reasonably practicable after a request by the Authority (and in any event within twenty-one (21) calendar days of such request) provide the Authority with the following information (together with the **Supplier Management Information**):

- (a) up-to-date details of any Sub-Contract including price and incentive arrangements;
- (b) the total contact revenue received directly on a specific Sub-Contract;
- (c) the total values of all revenues sub-contracted under Sub-Contracts (including revenues for non-SMEs and non VCSEs);
- (d) the total values of all revenues sub-contracted under Sub-Contracts to SMEs and VCSEs;
- (e) up-to-date details of payments made to any Affiliate of the Contractor in relation to this Contract by any Sub-Contractor and/or supplier; and
- (f) an up-to-date list of services or goods that any Sub-Contractor or supplier will provide.

9.3 The Contractor shall provide all Supplier Management Information in the form of any template notified to it by the Authority from time to time.

10 Supply Chain Monitoring

- 10.1 The Contractor shall hold a launch meeting with each Key Sub-Contractor within one (1) month of the later of the Commencement Date and the date the relevant Key Sub-Contract comes into effect. Such launch meeting shall among other things be used to:
- (a) confirm each parties' understanding of the required deliverables;
 - (b) identify dependencies;
 - (c) agree reporting and meeting protocols;
 - (d) agree the communications plan;
 - (e) launch risk management activities;
 - (f) Not used; and
 - (g) discuss any other matter relating to the Sub-Contract that the Authority specifies.
- 10.2 The Contractor shall invite the Authority to attend each governance or review meeting to be held between the Contractor and a Sub-Contractor that is party either to a Key Sub-Contract or one that has a value equal to or above the Threshold Value, in each case providing at least ten (10) Business Days prior Notice of the meeting.
- 10.3 If (following an invitation under Paragraph 10.2) the Authority has confirmed its intention to attend a governance or review meeting:
- (a) the Contractor and the Authority shall endeavour to agree the purpose of the Authority's attendance in advance of the meeting; and
 - (b) the Contractor shall provide all supporting information and preparatory material to the Authority no less than five (5) Business Days in advance of the meeting.

Appendix A – Single Source Flow Down Terms

Part 4 – Open Book on sub-contracts

These are the terms referred to in Paragraph 6.5.1 (*Open Book on sub-contracts*) of Part 3 of this Schedule 14:

- 1 The following words and expressions shall have the following meaning given to them, except where the context requires a different meaning:
 - (a) **Group undertaking** has the meaning given by section 1161 of the Companies Act 2006.
 - (b) **Material Single Source Sub-Contract** means a sub-contract entered into by the Sub-Contractor where:
 - (i) the sub-contract is entered into at the same time as, or after, the date on which this Sub-Contract was entered into;
 - (ii) the sub-contract is entered into for the purposes of the Sub-Contract;
 - (iii) 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);
 - (iv) Not used;
 - (v) the value of the sub-contract is of or above one million pounds (£1,000,000); and
 - (vi) Not used.
 - (c) **Relevant records** means accounting and other records:
 - (i) which the Sub-Contractor may reasonably be expected to keep; and
 - (ii) which are sufficiently up-to-date and accurate for use by the Authority for any of the purposes listed in Paragraph 3 below.
 - (d) **Representatives** means employees, agents, officers, advisers and other representatives of the Authority.
 - (e) **Sub-Contract Completion Date** means:
 - (i) the date described in the sub-contract as the contract completion date; or
 - (ii) 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;
 - (iii) if the sub-contract is terminated before the date described in Paragraph 1(e)(i) and (ii) above, the date on which the sub-contract is terminated.

- 2 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.
- 3 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:
 - (a) verifying whether a cost of the Sub-Contractor is an Actual Cost;
 - (b) verifying the reason for any difference between an estimated and Actual Cost;
 - (c) verifying any other matter relating to the price payable under the Sub-Contract; and
 - (d) monitoring the Sub-Contractor's performance of its obligations under the Sub-Contract.
- 4 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.
- 5 The Authority may only examine the records on any Business Day between the hours of 09:00 and 17:00.
- 6 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.
- 7 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.
- 8 The Authority agrees that, where exercise of the rights granted at Paragraphs 3 and 7 of this Condition 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.
- 9 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 Condition (inserting relevant party names where appropriate).
- 10 Before entering into a Material Single Source Sub-Contract the Sub-Contractor shall promptly notify the Authority where it is unable to include equivalent terms to those specified in this Condition, or where it believes that the inclusion of those terms will prevent the achievement of a fair and reasonable price for that Sub-Contract.
- 11 The Contractor and Sub-Contractor agree that terms have been included in this Condition 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.

Part 5 – Not used

Part 6 – Not used

Part 7 – Not used

Appendix B – Security Measures Provisions to be included in Relevant Sub-Contracts

1 Definition

1.1 In this Condition:

Secret Matter means any matter connected with the Contract, 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; and

Security Policy Framework means the HMG Security Policy Framework relating to the Government Security Classification policy as published by the Cabinet Office.

2 The Official Secrets Acts

2.1 The Second Party shall:

- (a) take all reasonable steps to ensure that all Employees engaged on any work in connection with the Contract have notice that the Official Secrets Acts 1911-1989 apply to them and will continue so to apply after the completion or termination of the Contract; and
- (b) 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 Contract and after its completion or termination, he is bound by the Official Secrets Acts 1911-1989 (and where applicable any other legislation).

3 Security Measures

3.1 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 Contract, do or permit to be done anything which they know or ought reasonably to know may result in Secret Matter being disclosed to or acquired by a person in any of the following categories:

- (a) who is not a British citizen;
- (b) who does not hold the appropriate authority for access to the protected matter;
- (c) 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;
- (d) who is not an Employee of the Second Party;
- (e) who is an Employee of the Second Party and has no need to know the information for the proper performance of the Contract.

3.2 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 Contract, take all reasonable steps to ensure that:

- (a) 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 Contract;
- (b) 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.

3.3 The Second Party shall:

- (a) provide to the Authority:
 - (i) upon request, such records giving particulars of those Employees who have had at any time, access to any Secret Matter that is required to be kept in accordance with sub-clause 4(b);
 - (ii) 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 Condition, including the measures taken or proposed by the Second Party so as to comply with his obligations and to prevent any breach of them;
 - (iii) full particulars of any failure by the Second Party and his Employees to comply with any obligations relating to Secret Matter arising under this Condition immediately upon such failure becoming apparent;
- (b) ensure that, for the purpose of checking the Second Party's compliance with the obligation in sub-clause 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 Contract and inspect any document or thing in any such premises, which is being used or made for the purposes of the Contract. Such representative shall be entitled to all such information as he may reasonably require.

3.4 If at any time either before or after the completion or termination of the Contract, 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.

4 Sub-Contracts

4.1 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:

- (a) 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;

- (b) incorporate into the sub-contract the terms of this Condition and such secrecy and security obligations as the Authority shall direct;
- (c) 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 Contract.

5 Termination

5.1 The First Party shall be entitled to terminate the Contract immediately if:

- (a) the Second Party is in breach of any obligation under this Condition; or
- (b) the Second Party is in breach of any secrecy or security obligation imposed by any other contract 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.

Schedule 15 – GFA and Issued Property

[REDACTED]

Annex A to Schedule 15 - IT Services

[REDACTED]

Annex B to Schedule 15 – Management Systems/Information Sources

[REDACTED]

Schedule 16 – Collaboration and Integration

The schedule is divided into the following 3 parts:

1. Collaboration;
2. Integration; and
3. FMSP Incentive Fee.

Sections 1 and 2 are contractual requirements and will be included regardless of whether the Authority decides to include an FMSP Incentive Fee. Sections 1 and 2 are linked to the Service Delivery Plan B – Integration Plan referred to in section 5 of the ITN.

Section 3 is indicative of what will be measured in calculating whether the FMSP Incentive Fee should be paid (if the MOD decides to proceed with an FMSP Incentive Fee). The actual measures will be developed with the bidders, in conjunction with their proposals, during the negotiation phase.

Part 1 Collaboration

1 General

- 1.1 Portsmouth Naval Base delivers a broad and diverse portfolio of activity on behalf of UK Defence and occupies sites across the large urban community of the City of Portsmouth. The Naval Base's primary tasks are the delivery of Maritime Force Elements to Defence and the provision of key services for up to 2,000 servicemen and women on a daily basis. Given its geographical footprint in the heart of the city, the Authority closely collaborates with local authority governing bodies to ensure a symbiotic relationship is maintained to deliver Naval Base outputs in harmony with regional development goals now, and into the future. Within the Naval Base, our shared culture, under the banner of 'Team Portsmouth' and the behaviours that underpin it, are the critical elements that will ensure the future Enterprise under FMSP delivers the Naval Base's stated outputs within the Base's broader Portsmouth City context. Some elements will be delivered by the institution of contractual and organisational frameworks. In addition, the Parties will invest significant effort in fostering open and positive relationships across the Enterprise, which will be embedded by robust joint ways of working.
- 1.2 Collaboration is the process of two or more people or organisations working together to complete a task or achieve a goal. It is a sense of shared purpose and direction; a cooperative 'best for enterprise' approach including collaboration with the Authority and other suppliers.
- 1.3 The Parties have created a set of Collaboration Principles to: (i) inform Service delivery; (ii) govern the interaction between the Authority and the Contractor; (iii) ensure that at all times there is a best for the Maritime Support Enterprise including in relation to the Contractor's interaction with the Service Delivery Location Suppliers; and (iv) deliver the FMSP Strategic Benefits.

2 Collaboration Principles

- 2.1 The Parties shall:
 - (a) work as one team regardless of employer;

- (b) be flexible in approach;
- (c) operate in the best interests of the Maritime Support Enterprise;
- (d) seek opportunities to continuously improve;
- (e) work together to ensure there is a sense of equitable 'give and take';
- (f) support their personnel and each other to ensure delivery of the best performance at the most affordable price;
- (g) enable and empower their personnel to facilitate timely decision making at the right level;
- (h) be open, honest and transparent with Third Party FMSP Contractors and the Authority including sharing all relevant information;
- (i) work in a collaborative, principled and proactive way to resolve issues and problems at the lowest level before seeking to escalate;
- (j) demonstrate a commitment for: (i) the work they are engaged in; and (ii) fostering a positive relationship between the Parties; and
- (k) ensure that, at all times, they have personnel readily available with the correct qualifications and experience to perform their obligations through training and succession planning.

collectively the "**Collaboration Principles**".

3 Collaboration Behaviours

3.1 In order to adhere to the Collaboration Principles the Parties shall demonstrate the undernoted behaviours:

- (a) ensure that their personnel are fully aware of the Collaboration Principles and adhere to them in everything they do;
- (b) ensure that their sub-contractors comply with the Collaboration Principles by including them in their agreements;
- (c) proactively engage and participate in all Naval Base coordinated planning and delivery activity, by highlighting potential issues that may affect delivery of the Services or the services of the Service Delivery Location Suppliers;
- (d) consider operational improvements that are "best for Maritime Support Enterprise" and raise them at the appropriate forum; and
- (e) ensure that their personnel wear identifying items (lanyards etc.) provided by the Authority that display the naval base common brand to build and sustain a 'one team' ethos,

collectively the "**Collaboration Behaviours**".

Part 2 Integration

1 Interface and Integration

1. The Parties agree and acknowledge that there will be multiple suppliers and contractors working at the Naval Base and that interfaces exist between them.
2. The Contractor confirms that it is aware of the interfaces in relation to its Service provision as identified in the Interface Matrix attached as Appendix A to this Schedule 16. In the event of any conflict with the provisions of this Part 2 of Schedule 16 (*Integration*) and **Error! Reference source not found.** (Requirements) and **Error! Reference source not found.** (*Lot Specific Conditions*) the provisions of **Error! Reference source not found.** and **Error! Reference source not found.** shall take precedence.
3. The Contractor undertakes to collaborate and work with the other contractors and suppliers to ensure that it does not have a negative impact on the delivery of their services.
4. The Contractor will ensure attendance of appropriately qualified and empowered representative(s) at all mandated Naval Base governance meetings including (but not limited to) those listed in Schedule 6 (*Governance*) of this Contract.
5. The Contractor will proactively engage and participate in all Naval Base coordinated planning and delivery activity, highlighting potential issues that may affect delivery of the Services or the services of Service Delivery Location Suppliers.
6. The Contractor undertakes to deliver the Integration Plan.

Part 3 of Schedule 16 – FMSP Incentive Fee

Definitions

In addition to those definitions contained in Schedule 1 (*Definitions*) the following words and expressions shall have the meanings set respectively against them:

FMSP Incentive Fee means an amount up to [REDACTED] payable to the Contractor for achieving the performance level required under each of the Incentive Fee Measures.

Incentive Fee Measures means the measures identified at paragraph 1.2 below, and being: (i) the Relationship Measures, detailed at Appendix B, (ii) delivery of the Service Delivery Plan B – Integration Plan, detailed at Appendix C; and (iii) management of cross Lot risks, detailed at Appendix D.

Lot means each Lot listed in the definition of FMSP Contract.

2 General

2.1 The Authority shall evaluate the Contractor's performance against the Incentive Fee Measures for a full Contract Year in order to determine whether the Incentive Fee Measures have been met and the FMSP Incentive Fee shall be paid. The Contractor must score a Pass on all three of the Incentive Fee Measures to be eligible for the FMSP Incentive Fee.

2.2 The scoring methodology for each Incentive Fee Measure is:

Incentive Fee Measure	Scoring methodology to achieve a Pass
1. Relationship Measurement Matrix	Four categories scored 'Green' including mandatory measure (5) and no Reds
2. Delivery of the Service Delivery Plan B – Integration Plan	All milestones, commitments and obligations met for the relevant Contract Year in accordance with the Contractor's Integration Plan
3. Management of cross Lot risks	Contractor has demonstrated effective identification, reporting and management of risk at Contractor level and at a cross Lot level where a risk impacts on another party/ other parties.

2.3 Immediately following the Lot Delivery Board that is held in each quarter of the Contract Year, the Authority will provide the Contractor with comments on the Contractor's performance against each of the Incentive Fee Measures for that period. This is intended to assist the Contractor in complying with such Incentive Fee Measures and identifying any area(s) where there may be concerns over performance. No scores will be awarded at such quarterly meetings.

2.4 The Contractor and the Authority shall meet during the first ten (10) Business Days of the first month of each Contract Year (other than the first Contract Year) (the **Integration and Collaboration Annual Review**). At such meeting, the Authority shall: (a) inform the Contractor of the scores it has awarded for each Incentive Fee Measure for the immediately preceding Contract Year, (b) provide the Contractor with a copy of the scoring template (in the

form set out in Table 2 in Appendix B), and (c) discuss the Contractor's compliance with the terms of this Schedule 16.

- 2.5 In advance of the Integration and Collaboration Annual Review, the Authority shall (with reference to the scoring template and reports from the quarterly Lot Deliver Board meetings) propose, to the Naval Base Commander, the Incentive Fee Measure scores for the Contractor for the immediately preceding Contract Year. The Naval Base Commander shall then either accept such proposed scores or, at his absolute discretion, adjust the scores in determining whether the Incentive Fee Measures have been met and the Contractor has been awarded a Pass (or otherwise) for each Incentive Fee Measure.
- 2.6 Where the Contractor has been awarded a Pass for each Incentive Fee Measure, the Authority shall make payment of the FMSP Incentive Fee in the Monthly Service Charge immediately following such award.
- 2.7 This Part 3 of Schedule 16 is intended to incentivise collaborative behaviours and integration. Nothing in Part 3 of Schedule 16 shall relieve or excuse the Contractor from performance of its obligations under any part of the Contract.
- 2.8 This Part 3 of Schedule 16 is not subject to the Dispute Resolution Procedure and all matters are to be determined in the absolute discretion of the Authority.

Appendix A – Interface Matrix

[REDACTED]

Appendix B to Schedule 16 - Relationship Measurement Matrix

1.The Authority will measure the Contractor's behavioural and collaborative performance using the Relationship Measurement Matrix as set out in Table 1 below.

2.The level of performance shall be assessed using a Red, Amber, Green (RAG) methodology.

3.The Contractor will be assessed, by the Authority, using six behavioural categories –

- 1) Decision Making.
- 2) Communication.
- 3) Leadership & Management.
- 4) External Interfaces.
- 5) Commercial Behaviours & Alignment.
- 6) Flexibility.

4.The scoring criteria is divided into three categories:

'Help Needed' - which scores 'Red'

'Good/Satisfactory' - which scores 'Amber' and

'Very Good/Excellent' which scores - 'Green'; on the RAG Status.

5.A score of 'Very Good/Excellent' is representative of the Contractor achieving the standard of collaboration and behavioural performance the Authority requires at the Naval Base.

6.The Contractor must achieve a minimum of four categories as "Green" RAG status with no "Red" scores and which must include the single mandatory measure (5 - Commercial Behaviours & Alignment) in order to "pass" this FMSP Incentive Measure.

Table 1 Criteria

Relationship Measures	Help Needed Team need support from senior management	Good/Satisfactory Performance is good/satisfactory but could be improved	Very Good/Excellent Teams to specify best practice to be shared.
<p>1) Decision Making; Consider the approach to decision making and the way in which the Contractor achieves resolution.</p>	<p>Contractor takes decisions in a silo or fails to make decisions. No communication involved.</p>	<p>Issues are spotted early and explored with relevant parties. Decisions are reached based on a deep understanding of other contractors and the objectives of the FMSP Programme.</p>	<p>Strategic decisions are made with relevant parties with long term mutual benefit in mind; and demonstrate a commitment for the work they are engaged in; and fostering a positive relationship between the Parties; and work together to ensure there is a sense of equitable 'give and take'; and operate in the best interests of the Maritime Support Enterprise ; and support their personnel, and each other, to ensure delivery of the best performance at the most affordable price; enable and empower their personnel to facilitate timely decision making at the right level; and which has made a positive contribution to the enterprise to reduce cross lot risk , Naval Base Outcomes and Strategic objectives.</p>
<p>2) Communication; Consider what communication channels are used, is feedback received and acted on? Is communication open and consistent?</p>	<p>Contractor communication is limited and infrequent with little engagement or awareness of its purpose. Communication is largely limited to formal meetings. Core messages are unclear, inconsistent and there are often surprises.</p>	<p>Formal and informal communication ensures wide engagement. Common communication channels are used and elicit feedback.</p>	<p>Communications are clear and concise messages, use all appropriate channels, receive and act on feedback. There is a culture of open, honest and transparent with other contractors and the Authority, including sharing all relevant information; and which has made a positive contribution to the enterprise to reduce cross lot risk, Naval Base Outcomes and Strategic objectives.</p>
<p>3) Leadership and Management; Consider leaders approach to change and their method towards delivering</p>	<p>Leaders focus little or no effort on challenging collective/joint performance.</p>	<p>Leaders are working effectively across boundaries and are responsive to the needs of the project. Leaders consistently model desired</p>	<p>Leaders provide vision and motivation and drive the team to deliver success outcomes, including challenging policy and procedures. The team are working jointly and making the best use of resources across boundaries. The Contractor ensures its teams</p>

Relationship Measures	Help Needed Team need support from senior management	Good/Satisfactory Performance is good/satisfactory but could be improved	Very Good/Excellent Teams to specify best practice to be shared.
significant benefits. Consider deployment of skills and resources	Resource issues are not addressed. No evidence of empowerment.	behaviours and communicate them to their teams. Resources deployed to reasonable effect Joint working is evident in a number of areas	are empowered ;and ensure that, at all times, they have personnel readily available with the correct qualifications and experience to perform their obligations through training and succession planning; and work in a collaborative, principled and proactive way to resolve issues and problems at the lowest level before seeking to escalate; and which has made a positive contribution to the enterprise to reduce cross lot risk , Naval Base Outcomes and Strategic objectives.
4) External Interfaces; Consider the relationship outside of the joint team with respect to suppliers, stakeholders and portfolio management teams	Little/no evidence of supply chain control. Key suppliers are rarely engaged at the optimum time. Limited visibility of supply chain issues. Supply chain has no/limited understanding of overall requirement. Little awareness of identity, role and impact of stakeholders. Stakeholders rarely engaged.	Relevant suppliers driven to appreciate the needs of the customer. Good visibility of supply chain issues. Clear processes in place for supplier development. Regular engagement with most stakeholders allowing proactive action on requirements.	All key suppliers have full understanding of customer’s needs. Excellent visibility down the supply chain. Supplier strategies in place and being implemented. Key suppliers/stakeholders are always engaged at the optimum time; Full awareness of stakeholders needs and full buy in to achieve goal; and which has made a positive contribution to the enterprise to reduce cross lot risk, Naval Base Outcomes and Strategic objectives.
5) Commercial Behaviours & Alignment; Consider whether all parties have an understanding of each other’s business drivers, the proposed/resultant contract, and that appropriate 'commercial	Relationship is adversarial and breaks down under pressure. Commercial staff have no relationship with the Project Team. No delegated powers to deliver requirements of contract. Project work is compartmentalised and inward looking. Commercial staff are	Shared values and ways of working are being developed. Relationship improvement activities planned/underway. Joint goals agreed between Commercial and Project staff. Delegated powers match requirements of project. Good understanding	Shared values and ways of working are embedded. Relationship improvement activities are well established and successful. All stakeholders have a full understanding of the contract/business drivers. Future changes in the business/operating environments are well planned and managed. Commercial staff are available, and engage in an optimum way; and demonstrate a commitment for the work they are engaged in; and fostering a positive relationship

Relationship Measures	Help Needed Team need support from senior management	Good/Satisfactory Performance is good/satisfactory but could be improved	Very Good/Excellent Teams to specify best practice to be shared.
tools' are used effectively to optimise delivery.	rarely available when required and usually engage late.	of the contract and business drivers. Commercial staff are usually available and usually engage early to maximum effect.	between the Parties; and work together to ensure there is a sense of equitable 'give and take' and operate in the best interests of the Maritime Support Enterprise ; and support their personnel, and each other, to ensure delivery of the best performance at the most affordable price; enable and empower their personnel to facilitate timely decision making at the right level; and which has made a positive contribution to the enterprise to reduce cross lot risk , Naval Base Outcomes and Strategic objectives.
6) Flexibility Consider the ability to assess and react effectively to changes in the business/operating environment with agility and innovation	Rarely demonstrates evidence and/or unwilling to consider flexibility in the business or operating environment. Is prepared to show some flexibility but only when challenged. Lack of willingness to introduce innovation. Innovation rarely considered unless at a cost. New or improvement opportunities are sometimes considered. some creativity demonstrated but with limitations. Value added at a cost.	Is proactive in showing a flexible approach to most issues / situations. New or improvement opportunities are usually strived for as part of normal business. Solutions are creative, well focused, and are highly valued by customers/users.	Continuously reviewing standard approaches for improvement opportunities. New or improvement opportunities are always strived for as part of normal business with a clear focus on continuous improvement. Solutions are creative, inspirational, and highly valued by customers/users; and operate in the best interests of the Maritime Support Enterprise; and seek opportunities to continuously improve; and which has made a positive contribution to the enterprise to reduce cross lot risk, Naval Base Outcomes and Strategic objectives.

Table 2 Scoring Template

Date:		Overall Score: RAG =	
FMSP Contract Number/Description:		Reviews comments /Justification	

Relationship indicators	Help Needed Team need support from senior management	Reviews comments /Justification	Good/Satisfactory Performance is good/satisfactory but could be improved	Reviews comments /Justification	Very Good/Excellent Teams to specify best practice to be shared.	Reviews comments /Justification
1) Decision Making; Consider the approach to decision making and the way in which the joint team achieve resolution	Teams take decisions independently of each other, or no decisions. No communication involved.		Issues are spotted early and explored together. Decisions are reached based on a deep mutual understanding of each other and the objectives of the FMSP Programme.		The contractor proactively engages with the MoD to support Strategic decisions with long term mutual benefit in mind ; and demonstrate a commitment for the work they are engaged in; and fostering a positive relationship between the Parties; and work together to ensure there is a sense of equitable 'give and take'; and operate in the best interests of the Maritime Support Enterprise ; and support their personnel, and each other, to ensure delivery of the best performance at the most	

Relationship indicators	Help Needed Team need support from senior management	Reviews comments /Justification	Good/Satisfactory Performance is good/satisfactory but could be improved	Reviews comments /Justification	Very Good/Excellent Teams to specify best practice to be shared.	Reviews comments /Justification
					affordable price; enable and empower their personnel to facilitate timely decision making at the right level; and which has made a positive contribution to the enterprise to reduce cross lot risk , Naval Base Outcomes and Strategic objectives.	
<p>2) Communication; Consider what communication channels are used, is feedback received and acted on? Is communication open and consistent?</p>	<p>Communication across the Team is limited and infrequent with little engagement or awareness of its purpose. Communication is largely limited to formal meetings. Teams regularly surprise each other; core messages are unclear and inconsistent.</p>		<p>Formal and informal communication ensures wide engagement. Common communication channels are used and elicit feedback.</p>		<p>Communications are clear and concise messages, use all appropriate channels, receive and act on feedback. There is a culture of open, honest and transparent with other contractors and the Authority, including sharing all relevant information; and which has made a positive contribution to the enterprise to reduce cross lot risk, Naval Base Outcomes and Strategic objectives.</p>	

Relationship indicators	Help Needed Team need support from senior management	Reviews comments /Justification	Good/Satisfactory Performance is good/satisfactory but could be improved	Reviews comments /Justification	Very Good/Excellent Teams to specify best practice to be shared.	Reviews comments /Justification
<p>3) Leadership and Management; Consider leaders approach to change and their method towards delivering significant benefits. Consider deployment of skills and resources</p>	<p>Teams have separate leaders who can act independently. Leaders focus little or no effort on challenging collective/joint performance. Resource issues are not addressed. No evidence of empowerment.</p>		<p>Leaders are working effectively across boundaries and are responsive to the needs of the project. Leaders consistently model desired behaviours and communicate them to their teams. Resources deployed to reasonable effect Joint working is evident in a number of areas</p>		<p>Leaders provide vision and motivation and drive the team to deliver success outcomes, including challenging policy and procedures. The team are working jointly and making the best use of resources across boundaries. The team are empowered ;and ensure that, at all times, they have personnel readily available with the correct qualifications and experience to perform their obligations through training and succession planning; and work in a collaborative, principled and proactive way to resolve issues and problems at the lowest level before seeking to escalate; and which has made a positive contribution to the enterprise to reduce cross lot risk , Naval Base Outcomes and Strategic objectives.</p>	

Relationship indicators	Help Needed Team need support from senior management	Reviews comments /Justification	Good/Satisfactory Performance is good/satisfactory but could be improved	Reviews comments /Justification	Very Good/Excellent Teams to specify best practice to be shared.	Reviews comments /Justification
<p>4) External Interfaces; Consider the relationship outside of the joint team with respect to suppliers, stakeholders and portfolio management teams</p>	<p>Little/no evidence of supply chain control. Key suppliers are rarely engaged at the optimum time. Limited visibility of supply chain issues. Supply chain has no/limited understanding of overall requirement. Little awareness of identity, role and impact of stakeholders. Stakeholders rarely engaged.</p>		<p>Relevant suppliers driven to appreciate the needs of the customer. Good visibility of supply chain issues. Clear processes in place for supplier development. Regular engagement with most stakeholders allowing proactive action on requirements.</p>		<p>All key suppliers have full understanding of customer's needs. Excellent visibility down the supply chain. Supplier strategies in place and being implemented. Key suppliers/stakeholders are always engaged at the optimum time; Full awareness of stakeholders needs and full buy in to achieve goal; and which has made a positive contribution to the enterprise to reduce cross lot risk, Naval Base Outcomes and Strategic objectives.</p>	
<p>5) Commercial Behaviours & Alignment; Consider whether all parties have an understanding of each other's business drivers, the proposed/resultant</p>	<p>Relationship is adversarial and breaks down under pressure. Commercial staff have no relationship with the Project Team. No delegated powers to deliver</p>		<p>Shared values and ways of working are being developed. Relationship improvement activities planned/underway. Joint goals agreed between</p>		<p>Shared values and ways of working are embedded. Relationship improvement activities are well established and successful. All stakeholders have a full understanding of the contract/business drivers. Future changes in the</p>	

Relationship indicators	Help Needed Team need support from senior management	Reviews comments /Justification	Good/Satisfactory Performance is good/satisfactory but could be improved	Reviews comments /Justification	Very Good/Excellent Teams to specify best practice to be shared.	Reviews comments /Justification
contract, and that appropriate 'commercial tools' are used effectively to optimise delivery.	requirements of contract. Project work is compartmentalised and inward looking. Commercial staff are rarely available when required and usually engage late.		Commercial and Project staff. Delegated powers match requirements of project. Good understanding of the contract and business drivers. Commercial staff are usually available and usually engage early to maximum effect.		business/operating environments are well planned and managed. Commercial staff are available, and engage in an optimum way; and demonstrate a commitment for the work they are engaged in; and fostering a positive relationship between the Parties; and work together to ensure there is a sense of equitable 'give and take' and operate in the best interests of the Maritime Support Enterprise ; and support their personnel, and each other, to ensure delivery of the best performance at the most affordable price; enable and empower their personnel to facilitate timely decision making at the right level; and which has made a positive contribution to the enterprise to reduce cross	

Relationship indicators	Help Needed Team need support from senior management	Reviews comments /Justification	Good/Satisfactory Performance is good/satisfactory but could be improved	Reviews comments /Justification	Very Good/Excellent Teams to specify best practice to be shared.	Reviews comments /Justification
					lot risk , Naval Base Outcomes and Strategic objectives.	
<p>6) Flexibility Consider the ability to assess and react effectively to changes in the business/operating environment with agility and innovation</p>	<p>Rarely demonstrates evidence and/or unwilling to consider flexibility in the business or operating environment. Is prepared to show some flexibility but only when challenged. Lack of willingness to introduce innovation. Innovation rarely considered unless at a cost. New or improvement opportunities are sometimes considered. some creativity demonstrated but with limitations. Value added at a cost.</p>		<p>Is proactive in showing a flexible approach to most issues / situations. New or improvement opportunities are usually strived for as part of normal business. Solutions are creative, well focused, and are highly valued by customers/users.</p>		<p>Continuously reviewing standard approaches for improvement opportunities. New or improvement opportunities are always strived for as part of normal business with a clear focus on continuous improvement. Solutions are creative, inspirational, and highly valued by customers/users; and operate in the best interests of the Maritime Support Enterprise; and seek opportunities to continuously improve; and which has made a positive contribution to the enterprise to reduce cross lot risk, Naval Base Outcomes and Strategic objectives.</p>	

Appendix C to Schedule 16 - Service Delivery Plan B – Integration Plan

[REDACTED]

Appendix D to Schedule 16 – Management of Cross Lot Risks

1.The Contractor is required to demonstrate effective reporting and management of risks at Contractor level (including its supply chain) and cross Lot where a risk may impact on another party(s). The effective identification, reporting and management of risks must be demonstrated through a collaborative risk management approach.

2.The Contractor shall identify cross Lot risks in the prescribed risk reporting template format provided by the Authority (and as specified in Figure 2 below). Such risks shall also be recorded in a cross Lot risk register to be maintained by the Contractor (the **Unpriced Contractor Risk Register**).

3.The Contractor shall (in the prescribed form) report such risks to the Authority and other relevant party(s) promptly upon becoming aware of same, and shall also provide a monthly report (and copy of the Unpriced Contractor Risk Register) to the Authority in advance of each monthly meeting of the Ops Co-ordination Group.

4.The Contractor shall manage and mitigate the risks and update the risk report (in the manner set out in the risk reporting template) and Unpriced Contractor Risk Register to identify the action taken and outcome.

5.The Authority shall consolidate the cross Lot risks identified by each Service Delivery Location Supplier into a Combined Lots Unpriced Cross Contractor Integrated Risk Register.

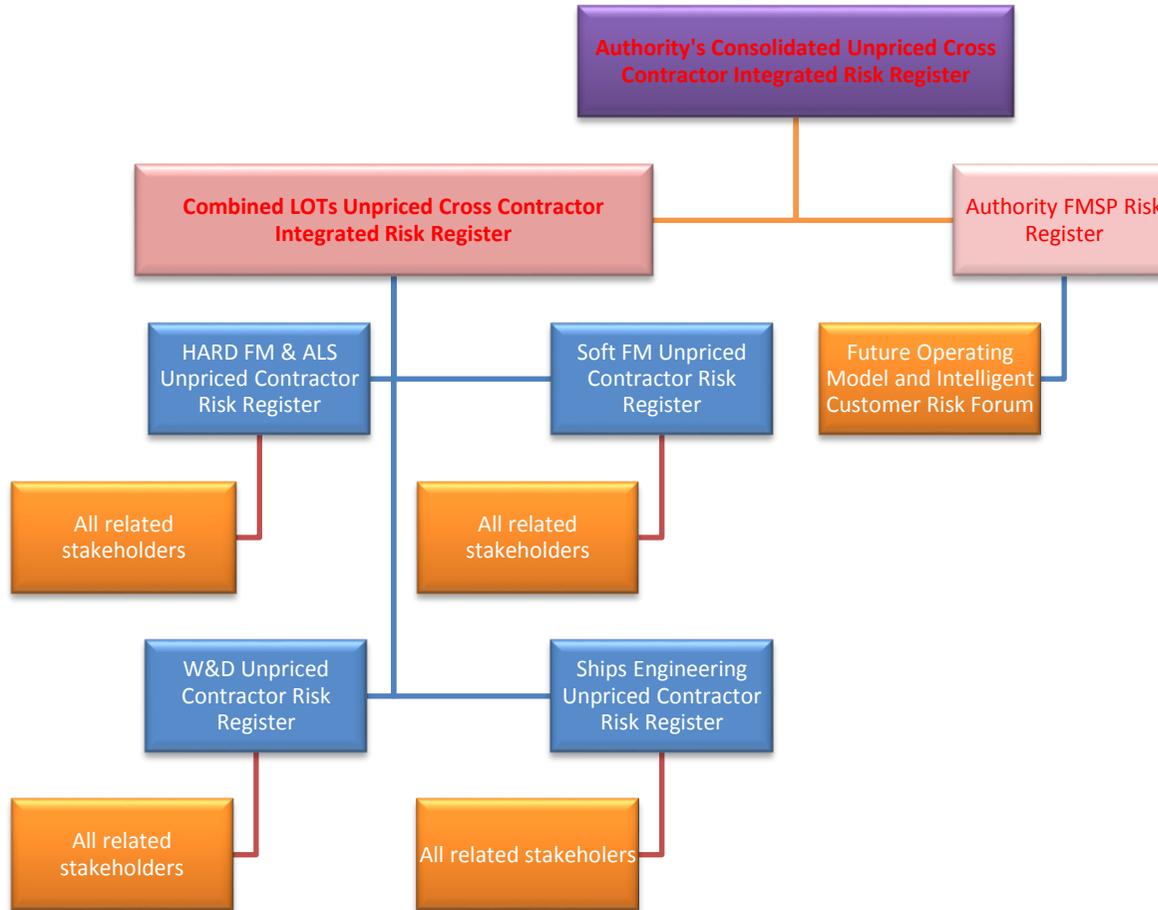
6.The Combined Lots Unpriced Cross Contractor Integrated Risk Register will be consolidated with the Authority's FMSP Risk Register to create the Authority's Consolidated Unpriced Cross Contractor Integrated Risk Register.

7.The Authority will assess the Contractor's performance by assessing the effective identification, reporting and management of cross-Lot risks with other relevant Lots and the Authority.

8.The Contractor's performance will be scored, by the Authority, on a Pass/Fail basis.

Figure 1 below provides an outline structure of the risk register hierarchy.

Figure 1: Bottom-up Unpriced cross contractor risk register hierarchy



[Short risk title]

Further information

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Instructions on completing the MOD risk reporting template

1. Short title by which the risk will be referred to
2. The CTR (**Contractor**) submitting the risk 2b **LOT**.
3. The individual **accountable** for the management of the risk 3b. **Others** affected by Risk.
4. The **date** on which the risk was identified 4b. **Unique Identifier**, where the risk is Cross-LOT then this number must feature in other LOTs risk registers.
5. Amend diagram to show the inherent, residual and target risk on the diagram
6. A description of the risk cause, event and consequences. The description should not require any technical or specific MOD understanding and should be sufficiently specific to allow an assessment of likelihood and impact
7. The 'best fit' category for the risk being submitted
8. The likelihood of the risk on a reasonably foreseeable worst case basis, assuming existing controls and mitigations do not exist or are ineffective
9. The impact of the risk on a reasonably foreseeable worst case basis, assuming existing controls and mitigations do not exist or are ineffective
10. The largest inherent impact area (Financial / Reputational / Impact on outputs / capability / HS&E)
11. The likelihood of the risk when existing controls and mitigations work as intended
12. The impact of the risk when existing controls and mitigations work as intended
13. The largest residual impact area (Financial / Reputational / Impact on outputs / capability / HS&E)
14. An assessment of the desired likelihood of the risk (the amount MOD is comfortable tolerating)
15. An assessment of the desired impact of the risk (the amount MOD is comfortable tolerating)
16. A description of the activities currently in place that are expected to reduce the impact or likelihood of the risk occurring
17. A summary list of the planned response activities (additional to those already in place) to further reduce the likelihood and/or impact of the risk
18. The individuals who are responsible the execution of each of the listed planned response activities
19. Date by which each of the listed planned response activities should be delivered
20. Risk response plan status (on schedule / behind schedule / ahead of schedule)

Instructions on completing the MOD risk reporting template (cont'd)

21. Description of the reason, where applicable, why the risk response plan is behind schedule
22. Revised date by which the overall risk response plan will be completed
23. The reason for escalation of the risk to the FMSP Board (FYI / For FMSP decision/action)
24. Description of the decision required from the FMSP Board (where applicable)
25. Risk trend, compared to the last quarter (risk increased / stable / decreased)
26. Optional page where additional context / background information can be included. Page 1 of the reporting **must** be self explanatory / a stand alone template. The Defence Board will only look at page 2 if they want further information.

Schedule 17 – Contract Pricing Statement

[REDACTED]

Schedule 18 – Forms

This Schedule 18 includes:

- (a) at Part 1, the TAF and the location in this Contract where the prescribed form of that TAF can be found; and
- (b) at Part 2, a list of all other forms referenced in this Contract, where such forms are referenced in this Contract and where the prescribed form can be found, whether in this Contract or in an external source.

Part 1 - TAF

No.	Form Name	Location
1.	Task Approval Form	Schedule 3 Annex 1

Part 2 - Other Forms

No.	Form Name	Contract References	Location
Pricing and payment			
1.	DEFFORM 129J (Edition 09/17)	Schedule 4 Part 5 Clause 3.2	Appendix B to Part 2 of this Schedule 18
2.	DEFFORM 647	Part 1 of Schedule 22 Appendix B and Appendix C	Appendix B and Appendix C to Part 1 of Schedule 22
Change			
3.	DEFFORM 10B (Edition 03/14)	Clause 74.3	Appendix A to Part 2 of this Schedule 18
Transition			
4.	Milestone Achievement Certificate	Schedule 13	Annex 4 to Schedule 13
Data Protection			
5.	DEFFORM 532 (Edition 10/19)	Schedule 33	Schedule 33, Part 1
Parent Company Guarantee			

No.	Form Name	Contract References	Location
6.	Form of Parent Company Guarantee	Clause 68.1	Schedule 25
Electronic Information Sharing Agreement (EISA) (If required)			
7.	DEFFORM 687C (Edition 06/01)	Clause 49.3	Appendix C to Part 2 of this Schedule 18
Other			
8.	DEFFORM 111 (Edition 03/21)	Clause 81.1	Appendix D to Part 2 of this Schedule 18

Appendix A – DEFFORM 10B

(Edn 03/14)

Ministry of Defence

Acceptance of Offer of Amendment to Contract

Offer and Acceptance	
<p>Section A) Offer</p> <p>Contract Amendment [xx] to Contract [insert reference] constitutes an offer by the Authority for the supplier to supply / provide the Contractor Deliverables. This is open for acceptance by the supplier until [insert date 10 working days (or more) from date of signature].</p> <p>By signing this DEFFORM 10B (Edition 03/14) the Contractor agrees to be bound by the attached contract amendment, and they acknowledge that all other terms and conditions remain unchanged.</p> <p>Signed by:</p> <p>Name (Block Capitals):</p> <p>Position:</p> <p>For and on behalf of the Authority</p> <p>Authorised Signatory</p> <p>Date:</p>	<p>Section B) Acceptance of Offer of Amendment</p> <p>I acknowledge receipt of the Departments Contract Amendment Letter No [].</p> <p>I confirm that I accept the Offer it contains and agree to be bound by its terms and I acknowledge that all other terms and conditions of the Contract remain unchanged.</p> <p>Signed by:</p> <p>Name (Block Capitals):</p> <p>Position:</p> <p>For and on behalf of</p> <p>Authorised Signatory</p> <p>Date¹¹:</p>
<p>Section C) Tier 1 Sub-Contractor SME data:¹²</p> <p>Name value of work (£ ex VAT) SME Yes / No</p> <p>Name value of work (£ ex VAT) SME Yes / No</p> <p>Name value of work (£ ex VAT) SME Yes / No</p> <p>Name value of work (£ ex VAT) SME Yes / No</p>	

¹¹ The date of unqualified acceptance by signature is the effective date of the amendment.

¹² The MOD is required to report to Government spend with Small and Medium-sized Enterprises (SMEs) including sub-Contractors. This is currently required at Tier 1 only. SMEs are defined by the EU on <http://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition/>.

Appendix B – Shipping Form Design

Use the following design and complete the fields in accordance with Annex A:

DEFFORM 129J		Edn 09/17
From: 777 ANGEL ROAD St PAULS EDENVILLE HE6 40N		Unique Identifier:  823456- 8234/823458234/82349245
Via:	To:	
Demand / Task Reference:  *BC278787*		
Description:		
RDD:	SPC:	UN Haz Code:
Date Shipped:	Batch Number:	Piece Number:
Weight:	Dimensions:	
NSN:  *5120996260953*		
IMC/DMC:	D of Q:	Qty in Package: Total this Delivery:

NB Four fields have been completed for illustration purposes only.

Annex A to Appendix B to Schedule 18 - DEFFORM 129J (Edition 09/17)

Shipping Form Attributes

The following table details the shipping form fields.

Field	Field Name	Field Description		Field Size	Data Type	Format	Mandatory for:
A	From	Details of the supplier providing the Goods or Service.		256	alphanumeric		Goods & Services
B	Unique Identifier (UOI, URR1 or EUPI)	Unique Order Identifier (UOI) Produced by the Contracting, Purchasing and Finance (CP&F) electronic procurement tool for non inventory Purchase Orders	The identifier that CP&F uses to uniquely identify a specific shipment within a Purchase Order Line. These fields are joined together in the UOI. This field should be provided in both Bar Code Symbology 39 and human readable text.	30	Alphanumeric and Bar Code Symbology 39	The PO Number, PO Line Number and PO Shipment Number are separated by the forward slash character '/' If the PO Number is for a Blanket Purchase Agreement (BPA) then the format of the Number is: BPA Number and BPA Release Number delimited by the hyphen character '-' Example of a UOI for a BPA: <i>123456-1234/12345/1234</i> If the PO Number is for a Standard PO and Contract Purchase Agreement (CPA) then the format of the Number is: Numeric Example of a UOI for a Standard PO or CPA: <i>23456/12345/1234</i>	Goods & Services

Field	Field Name	Field Description		Field Size	Data Type	Format	Mandatory for:
		<p>Unique Receipt Reference Identifier (URRI) Produced by CP&F for Inventory Orders</p>	<p>An alpha/numeric sequence that links the item received to original Purchase Order/Dues-In. For each full or part item delivery the Trading Partner will add an alpha suffix to the Unique Receipt Reference Number.</p>	6		<p>5 or 6 alphanumeric in the following formats:</p> <p>For deliveries to Sea: Sxxxxxa e.g. S1234AA</p> <p>For deliveries to Land: Lxxxxxa e.g. L1234BA</p> <p>For deliveries to Air: xxxxxA e.g. 12345A</p>	Goods and Services

Field	Field Name	Field Description		Field Size	Data Type	Format	Mandatory for:

Field	Field Name	Field Description		Field Size	Data Type	Format	Mandatory for:
		Electronic Business Capability Unique Package Identifier (EUPI)	An alphanumeric sequence generated by the supplier.	12	alphanumeric		Goods
C	Via	Intermediate Address responsible for forwarding the package to the final destination. The address to which the supplier should send the delivery if filled in.		256	alphanumeric		Goods and Services
D	To	The Final Address to which the package shall be delivered or, in the case of a service, the address of the receipting authority. Unit name Delivery Address 1 Delivery Address 2 Delivery Address 3 Delivery Address 4 Delivery Address 5 Delivery Address Post Code Country		256	alphanumeric		Goods and Services
E	Demand / Task Reference	Orders from CP&F (Where the Unique Identifier is either the UOI or URR)	Contract Number identifying the MoD contract placed on a supplier responsible for the supply of specific goods	12	alphanumeric		Goods and Services

Field	Field Name	Field Description		Field Size	Data Type	Format	Mandatory for:
		Inventory Orders from CP&F (where the Unique Identifier is the URRI)	<p><i>And if an inventory order</i></p> <p>Order Number identifying Purchase Order / warrant Order / Requisition placed against an Enabling Contract for the delivery of goods against that Contract.</p> <p>This attribute is provided in both Bar Code 39 and human readable test format.</p>	20	alphanumeric & Barcode 39		Goods
		Non CP&F electronic Orders (Where the Unique Identifier is the EUPI)	Demand Date + Serial Number + Line number + UIN	8+5+6+6	alphanumeric	DDMMYYYY + 12345678 + 12345 + 123456 + 123456	Goods
F	Description	Description of the item or service as defined in the contract.		240	alphanumeric		Goods and Services
G	RDD	Required Delivery Date (RDD) that the package is required at the demander's point of delivery.		8	numeric	DD/MM/YYYY	Goods
H	SPC	The Standard Priority Code denoting at what speed the package should be handled within MoD Supply Chain.		2	numeric		Goods
J	UN Haz Code	<p>UN Hazard Class. Denotes the potential hazard of the items within the package</p> <p>References: DEFCON 68 and DEFCON 129</p>		2	alphanumeric		Goods

Field	Field Name	Field Description	Field Size	Data Type	Format	Mandatory for:
K	Date Shipped	Date package dispatched from the supplier or service provided.	8	Numeric	DD/MM/YYYY	Goods and Services
L	Batch Number	Batch Production Number indicated on the goods if required				Goods
M	Piece Number	The specific number of the package as a constituent of a number of packages delivered to complete one order. i.e. 1 of 1, 2 of 2 or 4 of 10	6	alphanumeric		Goods
N	Weight	The gross weight of the package in metric format.	8	numeric		Goods
P	Dimensions	The size of the package in L x B x H in metric format	15	alphanumeric		Goods
Q	NSN	The NATO Stock number. The NATO supply Classification code (NSC), Nation Code (NC) and Item Identity Number (IIN) that denotes the unique identification of a line item within the inventory system. This 13 character attribute (NSC 4, NC2, IIN 7) is provided in both Barcode 39 and human readable test format.	13	numeric & Barcode 39		Goods
R	IMC/DMC	The Inventory Management Code (IMC) / Domestic management Code (DMC) code given to a range of like or linked items managed by MoD Inventory manager	6	alphanumeric		Goods
S	DofQ	Denomination of Quantity of the items in the package	2	alphanumeric		Goods
T	Qty in Package	The total quantity of the item contained within the package	7	numeric		Goods

Field	Field Name	Field Description	Field Size	Data Type	Format	Mandatory for:
T	Total This Delivery	The total quantity of the item being delivered for a specific order shipment	9	numeric		Goods

Appendix C – DEFFORM 687C

Ministry of Defence

Electronic Information Sharing Agreement (EISA)

THIS AGREEMENT, reference [reference number] relates to the use of the Shared Data Environment (SDE) Service to be provided under MOD contract number [title of contract] (the Contract) between the Secretary of State for Defence (the Authority) and [name of SDE service provider] (the Contractor),

The Authority and the Contractor have entered into the Contract, which is subject to DEFCON 687A and, where applicable, DEFCON 687B, to provide a Shared Data Environment Service. The terms of the Agreement govern the use of the Service.

It is agreed as follows:

Clause 1	Definitions and Interpretations
Clause 2	Scope
Clause 3	Duration
Clause 4	Designation of Users
Clause 5	Withdrawal and Exclusion from the Agreement
Clause 6	Marking of Information
Clause 7	Provision of Information
Clause 8	Obligations of the Contractor
Clause 9	User Obligations
Clause 10	Disaster Recovery Plan
Clause 11	Withdrawal of Information
Clause 12	Intellectual Property, Confidentiality and Protection of Information
Clause 13	Additional Users
Clause 14	Amendments
Clause 15	Notices
Clause 16	Audit
Clause 17	Liability
Clause 18	Law
Clause 19	Dispute Resolution
Clause 20	Entire Agreement
Clause 21	Severability
Clause 22	Transfer
Clause 23	Waiver
Annex A	Project Description
Annex B	User Protocol

Schedule 1 Primary and Secondary Users

Schedule 2 Marking Scheme

1 Definitions and Interpretations

The following words and expressions shall have the meanings given to them. Words derived therefrom shall have the appropriate related meaning, except where the context requires a different meaning:

- (a) "Access" means communication with the SDE by Users, including Loading and Retrieval of Information;
- (b) "Agreement" means this agreement including its Annexes, Schedules and any other documentation expressly made part of the Agreement;
- (c) "Contracted Information" means Information which a User delivers or provides to another User or Users as a specific requirement of an underlying Project contract, including the Contract;
- (d) "Data" means Information represented in digital form;
- (e) "Disaster" means a significant unplanned event which causes the SDE to be unavailable, or which causes the Data to be corrupted, lost, or unavailable;
- (f) "Expunge" means the removal of Data from the SDE whilst ensuring that a record of its existence is maintained in the Log;
- (g) "Fidelity" means the extent to which the SDE System maintains Data without corruption or disturbance to its content as it is processed;
- (h) "Information" means any information, in any form, disclosed or acquired under or in connection with the Agreement;
- (i) "Integrity" means the extent to which the SDE System safeguards and properly processes Data;
- (j) "Load" means to place Information on the SDE or make it accessible to the SDE so that it can be Retrieved by one or more Users;
- (k) "Log" means the record of communication with the SDE involving Access;
- (l) "Mark" means a designation permanently associated with a piece of Information, whether in tangible or digital form;
- (m) "Non-Contracted Information" means all Information other than Contracted Information which a User makes available to another User or Users;
- (n) "Primary User" means a User so designated in Schedule 1;
- (o) "Project" means the project, of which the Contract forms a part, described in Annex A;
- (p) "Project Implementation" means all activities conducted for the purpose of implementing the Project;
- (q) "Project Purposes" means all activities conducted for the purposes of implementing the Project, but excluding use for competitive purposes or tendering, manufacture,

repair, overhaul or maintenance purposes except as provided in any contract under which the Information is provided;

- (r) "Retrieve" means retrieval of Information or other communication with the SDE other than Loading;
- (s) "Secondary User" means a User sponsored by a Primary User and so designated in Schedule 1;
- (t) "Shared Data Environment (SDE)" means the SDE System together with
 - (i) Information Accessed via the SDE System, and
 - (ii) any part of the computer and software infrastructure which is controlled by a User other than the Contractor;
- (u) "Shared Data Environment Service (SDE Service)" means the SDE Service specified in the Contract, including the provision of an SDE System by means of which Information may be Accessed;
- (v) "Shared Data Environment System (SDE System)" means the computer and software infrastructure required for the SDE Service including the computer systems, networks, software, business processes and rules but excluding:
 - (i) Information Accessed via that infrastructure, and
 - (ii) any part of the computer and software infrastructure which is controlled by a User other than the Contractor;
- (w) "Supply" means to make Information available for Loading;
- (x) "User" means a party to the Agreement;
- (y) "User Protocol" means the document at Annex B which describes the overall architecture of the SDE, including the elements provided by the Contractor and those provided by other Users, the shared business processes, Information management arrangements, technical interface requirements and administrative procedures necessary for Users to operate effectively within the SDE; and
- (z) "Working Day" means any day excluding:
 - (i) Saturdays, Sundays and public and statutory holidays in the jurisdiction of the User concerned, and
 - (ii) privilege days notified in writing by the Authority to the Users at least 10 Working Days in advance.

2 Scope

- (a) The Agreement is created for the purposes of establishing the SDE for the Project, providing for Users secure Access and assurance as to the security of Information.
- (b) The Agreement defines the responsibilities, rights and obligations of Users in relation to the SDE and the User Protocol.

3 Duration

- (a) The Agreement shall remain in force until:
 - (i) the Contract expires or is terminated, or
 - (ii) [date]whichever occurs soonest.
- (b) The Contractor shall notify all Users:
 - (i) immediately on receipt of a notice of termination, of the date of termination of the Contract, and
 - (ii) in good time, and within not less than 30 calendar days, of the impending expiry of the Contract.
- (c) Clauses 12 and 19 shall survive the expiry or termination of the Agreement.

4 Designation of Users

- (a) Each User shall be designated as a Primary User or a Secondary User and so identified in Schedule 1.
- (b) Each additional Secondary User must be sponsored by a Primary User with whom he has, or intends to establish, a Project-related contractual relationship. Notice of his sponsorship shall be sent to all Users by the Contractor and shall constitute an application for an additional User in accordance with the provisions of Sub Clause 13.b).

5 Withdrawal and Exclusion from the Agreement

- (a) Without prejudice to any contractual obligations a User, with the exception of the Authority or the Contractor, may withdraw from the Agreement on giving 15 calendar days' notice to the Contractor.
- (b) The Authority may require the exclusion of a User from the Agreement, after consultation with the Contractor and that User, in the following circumstances:
 - (i) the underlying contract under which he was engaged with the Project has expired or is terminated; or
 - (ii) where there is no contractual relationship, his association with the Project has ceased; or
 - (iii) where a User's actions or omissions have caused him to have prejudiced the effective operation of the SDE.
- (c) A User may request the Authority to exclude another User if he has good cause to believe that a circumstance outlined in sub-Clause 5.b) applies.
- (d) The Contractor shall immediately notify all Users of any withdrawal or exclusion of a User.

- (e) In the event of exclusion under sub-Clause 5.b)iii), and on expiry of the notice period under sub-Clause 5.a), the Contractor shall immediately withdraw that excluded User's Access rights to the SDE.
- (f) If a User withdrawing or excluded from the Agreement under the provisions of this Clause 5 is a Primary User sponsoring a Secondary User, the withdrawal or exclusion of the Primary User shall include the withdrawal or exclusion of the Secondary User and the conditions of this Clause 5 shall apply to the Secondary User.
- (g) The Primary User with whom a Secondary User has had a project-related contractual relationship shall cause the Secondary User's Access rights to be discontinued as soon as the Project-related contractual relationship expires or is terminated.
- (h) In the event that a User is excluded or withdraws from the Agreement under this Clause 5, he shall be subject to the continuing obligations set out in Clauses 11 and 12. Withdrawal or exclusion from the Agreement shall have no effect on his liabilities arising under the Agreement.

6 Marking of Information

- (a) Prior to the Supply of Information, each User shall apply Marks to that Information, in accordance with Schedule 2.
- (b) In addition to the Marks in Schedule 2, the User may mark Information to be Supplied with a copyright and/or other proprietary legend.
- (c) No User shall remove or modify any Mark or legend on Information Loaded or Retrieved and each User shall retain those Marks or legends on any copies or extracts of the Information that he makes, unless otherwise agreed by the User who applied those Marks or legends.

7 Provision of Information

- (a) Each originating User who Loads or Supplies Information shall ensure that:
 - (i) the Data conforms with the requirements specified in the User Protocol;
 - (ii) the Data has been verified in accordance with the virus control policy provided by the Contractor in accordance with DEFCON 687A;
 - (iii) the Information is Marked in accordance with the provisions of Clause 6 and Schedule 2; and
 - (iv) he has all necessary entitlements or permissions in respect of any material within the Information not originated by him, to Load the Information and permit its Retrieval and use under the terms of the Agreement by those Users to whom Access is permitted.
- (b) All requests by Users for further Information to be Loaded shall be directed to the Contractor and considered by the Authority. Where agreed with the originating User of that new Information, it shall be Loaded and subjected to the provisions of the Agreement.

8 Obligations of the Contractor

Subject to Users obtaining, where required, necessary licences from third parties, the Contractor grants Users the right to utilise the SDE System for Project Implementation and shall owe the following obligations to each of the other Users:

- (a) to enable Access exclusively for the Users who are from time to time parties to the Agreement;
- (b) to provide service support facilities to all Users;
- (c) to ensure that the SDE System operates and is operated in accordance with the security and confidentiality requirements set out in the Agreement;
- (d) to use all reasonable endeavours to ensure that the Information processing systems deployed to support the SDE System:
 - (i) maintain Loaded Information without corruption to its content as it is processed, and
 - (ii) properly process the Information;
- (e) to provide a secure user authentication method;
- (f) to provide the means for Users to establish Access permissions for their Information;
- (g) to provide Users with controlled Access;
- (h) to ensure, as far as is reasonably practical, that all Loaded Information, including associated marks and legends, is Accessible only by Users authorised to have Access and is not altered, lost or destroyed;
- (i) to implement and maintain a virus control policy and make details thereof available to all Users;
- (j) to ensure that, if any part of the SDE Service or SDE System is changed, the Users' ability to Access Information is not adversely affected; and
- (k) all Data, when stored in the SDE System, is maintained from the date of being loaded into the SDE for the period specified in the User Protocol, after which time it shall be Expunged unless:
 - (i) a specific request for its retention in the SDE is made by any current User, or
 - (ii) it is withdrawn by a User in accordance with Clause 11, or
 - (iii) it is Archived.

These obligations are to be implemented in accordance with Annex B.

9 User Obligations

- (a) Each User, other than the Contractor, shall designate an individual in his organisation who shall be the principal point of contact for matters relating to the management and organisation of Information within his organisation's control.
- (b) Users shall comply with the requirements set out in the User Protocol.
- (c) Originating Users shall establish the Access permissions for their Information and, without prejudice to their contractual commitments, have the right to change or require the Contractor to change those Access permissions at any time.
- (d) If the Contractor determines that a User is in breach of any of the obligations under the Agreement which prejudices the effective operation of the SDE, then he may deny the provision of the SDE Service to that User.
- (e) If a User gains Access to any Information which he has reason to believe is not intended for his Access he shall, without delay, inform the Contractor and request that the Access permission is referred to the originating User for confirmation or alteration.
- (f) If a User becomes aware of an instance of unauthorised Access or a breach of the Agreement in relation to any associated procedures or systems (including, but without limitation, unauthorised Access to his own systems or accidental Access to another User's systems), he shall immediately notify the Authority and the Contractor.
- (g) If notification is given under sub-Clause 9.f) Users shall, on request, provide reasonable assistance to the Authority and the Contractor in respect of any investigation and rectification that may be necessary.
- (h) In the event that a User is unable to Access the SDE through no fault of his own, or he becomes aware of any fault or inaccessibility of his own system which may affect Loading or Retrieval, he shall immediately inform the Contractor.
- (i) Within the scope of the Agreement, sponsoring Primary Users shall be responsible for the actions of their Secondary Users.

10 Disaster Recovery Plan

Users other than the Contractor shall participate in a disaster recovery plan for parts of the SDE within their control as required by the User Protocol.

11 Withdrawal of Information

- (a) Except as provided in sub-Clause 11.b) and upon giving 15 calendar days' notice, any originating User shall have the right to withdraw his Information from the SDE.
- (b) An originating User shall have no right to withdraw from the SDE Contracted Information which has been Supplied or Loaded, unless the Authority or other User to whom Information was provided consents to that withdrawal.
- (c) Where an originating User has the right under sub-Clause 11.a) to withdraw his Information and where Information which that User Supplied or Loaded is contained in the Data under the direct control of another User, the originating User may require

that other User to Expunge the Data to the extent that it contains the Information which he is entitled to withdraw.

- (d) Subject to giving 15 calendar days' notice, a withdrawing or excluded User shall have the right to require the denial of Access to Contracted Information for those Users having no contractual right to hold or use that Information.

12 Intellectual Property, Confidentiality and Protection of Information

- (a) The Supply or Loading of Information shall not create or imply any of the following:
- (i) any transfer of ownership of Information or of underlying IPR or any collective ownership of the same;
 - (ii) any grant of a licence permitting use of Information or of underlying IPR other than a permission to use Information for Project Purposes, but this shall not prejudice any pre-existing or separately acquired rights of any User; or
 - (iii) any limitation on the right of any User to exert his rights in Information he has originated and in underlying IPR for any breach of the terms of the Agreement.
- (b) No User shall claim, or exert against another User, IPR of any description in respect of any database or collective work resulting from the Loading or ordering of Data within the SDE.
- (c) All Information that is Loaded is provided in confidence by the originating User to one or more other Users to whom he has granted Access, for use solely as identified below:
- (i) Contracted Information – for use in accordance with the contractual arrangement under which it is provided or if no use is stated in the underlying contract arrangement, or there is no underlying contract with the User Accessing Information, then use shall be solely for Project Purposes;
 - (ii) Non-Contracted Information – for use by Users for Project Purposes.
- (d) Each User who Retrieves Information shall be bound by an obligation of confidence under the Agreement, in respect of the Information, to the originating User and/or third party owner identified in the Marking or any IPR legend, subject to the exclusions in sub-Clause 12.f) and subject to any pre-existing or separately acquired rights.
- (e) Each User shall ensure that Information he Retrieves is disclosed to his employees, only to the extent necessary for the purposes permitted by Clause 12 and is treated in confidence by them. He shall ensure that his employees are aware of his arrangements for discharging the obligations at sub-Clause 12.d) before Retrieving Information and shall take reasonable steps to enforce them.
- (f) The limitations imposed by sub-Clauses 12.c) and 12.d) in regard to Information shall not apply to any Information Retrieved by a User to the extent that he can show:

- (i) that the Information was or has become publicly available for use otherwise that in breach of any provision of the Agreement or any agreement which he has with the originating User;
- (ii) that the Information was already known to him (without restrictions on disclosure or use) prior to Retrieving it from the SDE;
- (iii) that the Information was received without restriction on further disclosure from a third party who lawfully acquired it and who is himself under no obligation restricting its disclosure; or
- (iv) from his records that the same Information was derived independently of that Retrieved from the SDE;

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

- (g) The provision of sub-Clauses 12.a) through to 12.f) shall continue to apply to withdrawn Information and Expunged Data.

13 Additional Users

- (a) Applications for additional Users shall be made to the Contractor, who shall consult the Authority on each application.
- (b) With the approval of the Authority, additional Users may enter into the Agreement, subject to each existing User being notified by the Contractor of the proposed introduction and having the opportunity to raise any objection with the Authority. Failure by a User to respond to that notification within 15 calendar days of receipt shall be deemed to signify consent by that User to the addition of the proposed User.
- (c) The Authority and the Contractor in deciding whether to admit the proposed User to the Agreement shall take objections into account. An objection shall not constitute a right of veto, except in relation to Access to or Retrieval of Information in which the User raising objection has rights or shall be entitled to claim rights.

14 Amendments

- (a) Amendments to the Agreement, except for the addition of a User under Clause 13, may be made only with the express agreement of all Users. Changes to the User Protocol shall not be unreasonably refused. Any proposals to amend the Agreement shall, in the first instance, be submitted to the Authority, who shall consult all other Users.
- (b) The authoritative version of the Agreement shall be maintained by the Contractor in the SDE System for Retrieval by all Users.

15 Notices

- (a) All notices, orders, or other forms of communication required to be given in writing (“Notices”) under or in connection with the Agreement shall:
 - (i) be given in writing;
 - (ii) be authenticated by signature, either physical or electronic, as appropriate;

- (iii) be marked for the attention of the appropriate department or officer; and
 - (iv) be marked in a prominent position with the Agreement reference or relevant contract number.
- (b) Notices should be delivered by:
- (i) hand;
 - (ii) first-class prepaid post (or airmail, in the case of Notices to or from overseas);
 - (iii) facsimile;
 - (iv) telex; or
 - (v) electronic mail, including the delivery of a message by means of the SDE.
- (c) Notices shall be deemed to have been received if;
- (i) delivered by hand, on the day of delivery if it is the recipient's Working Day and otherwise on the first Working Day of the recipient immediately following the day of delivery;
 - (ii) sent by first-class prepaid post (or airmail, if appropriate), on the third Working Day (or on the tenth Working Day, in the case of airmail) after the day of posting; or
 - (iii) sent by facsimile, telex or other electronic means;
 - (A) if transmitted between 09.00 and 17.00 hours on a Working Day (recipient's time) on completion of receipt by the sender of verification of the transmission from the receiving instrument; or
 - (B) if transmitted at any other time, at 09.00 on the first Working Day (recipient's time) following the completion of receipt by the sender of verification of the transmission from the receiving instrument.
- (d) The address (including electronic addresses) of each User to which all Notices shall be sent is that specified in the Agreement, or such other address as a User may by written Notice specify to the other Users for the purpose of this Clause 15.
- (e) Where a User requests written confirmation of any communication which does not constitute a Notice such request shall not unreasonably be refused.

16 Audit

- (a) A User may, at any time, and upon giving a reason, request the Authority to audit the Integrity, Fidelity, infrastructure and organisation of the SDE. The Authority shall not unreasonably refuse a request and shall make the conclusions of the audit report available to the User within [10] Working Days of completion of the audit.

- (b) A User may, at any time, request from the Contractor a certified extract from the Log relating to his own Access to Information or Access by other Users to Information Supplied by him.

17 Liability

- (a) The liability of the originating User to another User, in respect of Contracted Information Supplied, shall be determined by reference solely to the express terms of the contract or subcontract under which the Information is provided.
- (b) An originating User shall have no liability to other Users whether in contract, tort or otherwise except as provided in sub-Clause 17.a), including liability for negligence to any other User in respect of any loss or damage incurred by a User whether:
 - (i) directly or indirectly as a result of use of Loaded Information, or
 - (ii) as a result of reliance on that Information
- (c) No User shall have any liability to another User in respect of any breach of this Agreement except:
 - (i) as provided in sub-Clause 17.a);
 - (ii) in respect of Clause 12; or
 - (iii) in cases of wilful misconduct.
- (d) Nothing in sub-Clauses 17.b) and 17.c) shall exclude any liability in respect of personal injury or death arising from negligence which may not by law be excluded.

18 Law

- (a) The Agreement shall be considered as an agreement made in England and subject to English Law.
- (b) Subject to Clause 19 and without prejudice to the dispute resolution process set out in that Clause, each User 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.
- (c) Other jurisdictions may apply solely for the purpose of giving effect to this Clause 18 and for the enforcement of any judgement, order or award given under English jurisdiction.

19 Dispute Resolution

- (a) Users in dispute will attempt in good faith to resolve any dispute or claim arising out of or relating to the Agreement through negotiations between the respective representatives of the Users in dispute having authority to settle the matter, which attempts may include the use of any Alternative Dispute Resolution (ADR) procedure on which the Users in dispute may agree.

- (b) In the event that the dispute or claim is not resolved by negotiation, or where the Users in dispute have agreed to use an ADR procedure, by the use of such procedure, the dispute shall be referred to arbitration.
- (c) The User or Users initiating the arbitration shall give a written Notice of Arbitration to the other User or Users party to the dispute, specifically stating that the dispute is in relation to the Agreement and is referred to arbitration.
- (d) Unless otherwise agreed in writing by the Users in dispute, the arbitration and the Agreement shall be governed by the provisions of the Arbitration Act 1996.
- (e) It is agreed between the Users that for the purposes of the arbitration, the arbitrator shall have the power to make provisional awards as provided for in Section 39 of the Arbitration Act 1996.
- (f) For the avoidance of doubt it is agreed between the Users that the arbitration process and anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential as between the Users in arbitration, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise. No report relating to anything said, done or produced in or in relation to the arbitration process may be made beyond the tribunal, the Users in dispute, their legal representatives and any person necessary to the conduct of the proceedings, without the concurrence of all the parties to the arbitration.

20 Entire Agreement

The Agreement represents the entire agreement between the Users with respect to its subject matter and no other agreement between Users or action of a User shall be taken to amend, alter or exclude any part of the Agreement.

21 Severability

If any term, condition or provision contained in the Agreement shall be held to be invalid, unlawful or unenforceable to any extent, that term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of the Agreement.

22 Transfer

No User shall give, bargain, sell, assign, or otherwise dispose of the Agreement or any part of it, or the benefit or advantage of the Agreement or any part of it, without the previous consent in writing of the other Users.

23 Waiver

- (a) No act or omission of any User shall by itself amount to a waiver of any right or remedy unless expressly stated by that User in writing. In particular, no reasonable delay in exercising any right or remedy shall by itself constitute a waiver of that right or remedy.
- (b) No waiver in respect of any right or remedy shall operate as a waiver in respect of any other right or remedy.

AGREED

For and on behalf of the Secretary of State for Defence (“the Authority)

Signature

Name

Position.....

Date

For and behalf of (“the Contractor”)

Signature

Name

Position.....

Date

For and behalf of (“a User”)

Signature

Name

Position.....

Date

Annex A to Appendix C to Schedule 18 - DEFFORM 687C

Annex A

Project Description

Annex B to Appendix C to Schedule 18 - DEFFORM 687C

Annex B

User Protocol

Schedule 1 to Appendix C to Schedule 18 - DEFFORM 687C

Primary and Secondary Users

Primary User [Name], sponsoring:

- Secondary User [Name]
- Secondary User [Name]
- Secondary User [Name]

Primary User [Name], Sponsoring

- Secondary User [Name]
- Secondary User [Name]
- Secondary User [Name]

Schedule 2 to Appendix C to Schedule 18 - DEFFORM 687C

Marking Scheme

- (i) the name of the User originating the Information;
- (ii) the national security classification ;
- (iii) a commercial privacy designation;
- (iv) the Information type;
- (v) the Data category, ie. Contracted or Non-Contracted Information. In the case of Contracted Information, the User to whom the contractual obligation is owed must be specified;
- (vi) an identification number;
- (vii) the name of each Primary User to whom Access is granted;
- (viii) any other Marks

Appendix D to Schedule 18 - DEFFORM 111

DEFFORM 111 (Edn 03/21)	
Appendix - Addresses and Other Information	
<p>1. Commercial Officer Name: [REDACTED] Address: [REDACTED] Email: [REDACTED] ☎ [REDACTED]</p>	<p>8. Public Accounting Authority 1. Returns under DEFCON 694 (or SC equivalent) should be sent to DBS Finance ADMT – Assets In Industry 1, Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD ☎ 44 (0) 161 233 5397 2. For all other enquiries contact DES Fin FA-AMET Policy, Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD ☎ 44 (0) 161 233 5394</p>
<p>2. Project Manager, Equipment Support Manager or PT Leader (from whom technical information is available) Name: [REDACTED] Address: [REDACTED] Email: [REDACTED] ☎ [REDACTED]</p>	<p>9. Consignment Instructions The items are to be consigned as follows: [REDACTED]</p>
<p>3. Packaging Design Authority Organisation & point of contact: [REDACTED] (Where no address is shown please contact the Project Team in Box 2) ☎ [REDACTED]</p>	<p>10. Transport. The appropriate Ministry of Defence Transport Offices are: A. DSCOM, DE&S, DSCOM, MoD Abbey Wood, Cedar 3c, Mail Point 3351, BRISTOL BS34 8JH <u>Air Freight Centre</u> IMPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943 EXPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943 <u>Surface Freight Centre</u> IMPORTS ☎ 030 679 81129 / 81133 / 81138 Fax 0117 913 8946 EXPORTS ☎ 030 679 81129 / 81133 / 81138 Fax 0117 913 8946 B. JSCS JSCS Helpdesk No. 01869 256052 (select option 2, then option 3) JSCS Fax No. 01869 256837 Users requiring an account to use the MOD Freight Collection Service should contact DESWATERGUARD-ICS-Support@mod.gov.uk in the first instance.</p>
<p>4. (a) Supply / Support Management Branch or Order Manager: Branch/Name: [REDACTED] ☎ [REDACTED] (b) U.I.N. [REDACTED]</p>	<p>11. The Invoice Paying Authority Ministry of Defence ☎ 0151-242-2000 DBS Finance Walker House, Exchange Flags Fax: 0151-242-2809 Liverpool, L2 3YL Website is: https://www.gov.uk/government/organisations/ministry-of-defence/about/procurement/invoice-processing</p>
<p>5. Drawings/ Specifications are available from [REDACTED]</p>	<p>12. Forms and Documentation are available through*: Ministry of Defence, Forms and Pubs Commodity Management PO Box 2, Building C16, C Site Lower Arncott Bicester, OX25 1LP (Tel. 01869 256197 Fax: 01869 256824) Applications via fax or email: Leidos-FormsPublications@teamleidos.mod.uk</p>
<p>6. Intentionally Blank</p>	<p>* NOTE 1. Many DEFCONs and DEFFORMs can be obtained from the MOD Internet Site: https://www.aof.mod.uk/aofcontent/tactical/toolkit/index.htm 2. If the required forms or documentation are not available on the MOD Internet site requests should be submitted through the Commercial Officer named in Section 1.</p>
<p>7. Quality Assurance Representative: [REDACTED] Commercial staff are reminded that all Quality Assurance requirements should be listed under the General Contract Conditions. AQAPs and DEF STANs are available from UK Defence Standardization, for access to the documents and details of the helpdesk visit http://dstan.gateway.isg-r.r.mil.uk/index.html [intranet] or https://www.dstan.mod.uk/ [extranet, registration needed].</p>	

Schedule 19 – Referenced Documents

The following are the Referenced Documents for this Contract:

AQAP 2105 2105 Edition C Ver 1	NATO Requirements for Deliverable Quality Plans
BS 10008:2014	Electronic Information Management
DEFCON 602A (Edition 12/17)	Quality Assurance (with Deliverable Quality Plan)
DEFCON 609 (Edition 08/18)	Contractor's Record
DEFCON 643 (Edition 12/14)	Price Fixing (Non-qualifying contracts)
DEFCON 694 (Edition 07/18)	Accounting for Property of the Authority
DEFFORM 10B (Edition 03/14)	Acceptance of Offer of Amendment to Contract
DEFFORM 111 (Edition 03/21)	Appendix - Addresses and other Information
DEFFORM 129J (Edition 09/17)	Use of the Electronic Business Delivery Form
DEFFORM 532 (Edition 10/19)	Personal Data Particulars
DEFFORM 687C (Edition 06/01)	Electronic Information Sharing Agreement
DEF STAN 05-099 Part 1 & 2, Issue 01 (Edition 07/17)	Managing Government Furnished Equipment in Industry
DEF STAN 05-138 Issue 02 (Edition 09/17)	Cyber Security for Defence Suppliers
DEF STAN 81-041 (Part 6) Issue 10	Packaging of Defence Materiel
ISN 2014/02	Incident Reporting
ISO 140001:2015	Environmental Management Systems
ISO 17011: 2004	Conformity Assessment
ISO 22301	Business Continuity
ISO 9001	Quality Management Systems
ISO Guide 65:1996	Bodies Operating Product Certification Systems (Edition 45011:1998)
ISO/IEC 27002:2013	Information Technology, Security Techniques (Code of Practice)
JSP 456	Defence Catering Manuals
SyOps	Security Operating Procedures
Schedule 16	Cross-Lot Dependencies Matrix
Schedule 15	Soft Facilities Management Location Asset Register
Schedule 15	White Fleet (BMT) Asset Register
Schedule 10	FMSP TUPE Data Portsmouth HMS Nelson ESS (Junior Rates)
Schedule 10	FMSP TUPE Data Portsmouth MSDF SFM

BRd 18	Royal Navy Trophies (Chapter 7)
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BRd 18	Management and Accounting Instruction Non-Public Funds (Full Paper)
JSP 367	Defence Postal and Courier Services
JSP 371	MOD Manual on Pest Management
JSP 375	Manual of Health and Safety in Defence
JSP 418	Management of Environmental Protection in Defence
JSP 440	Defence Manual of Security
JSP 456	Defence Catering Manuals
JSP 462	Defence Financial Management and Charging Policy Manual
JSP 472	Financial Accounting and Reporting Manual
JSP 503	MOD Business Continuity Management
JSP 507	Investment Appraisal and Evaluation
JSP 800	Defence Movements and Transport Regulations (Volume 5)
JSP 950	Operational Patient Care Pathway
024	DIO Specification 24
024	DIO Specification 24 (Annex F)
ISO8000	ISO8000 Corporate Licence to Defence (ref 2017DIN05-011)
DIN	2017DIN05-011 (ISO8000 Corporate Licence to Defence)
ISSP 311	Information Systems Security Policy (Telephone Operations)
Document	Responsibilities Matrix
ECS	Exterior Cleaning Standards
CSCSS	(Internal) Cleaning Services Common Service Standard
Document	Sustainable MOD Strategy Act and Evolve (2015/2025)
Document	Sustainable MOD Strategy Waste Management (2015/2025)
EWC	European Waste Catalogue (Appendix A)
DESA	Defence Equipment Sale Authority Framework
Document	Snow and Ice Clearance Plan
Schedule 17	Contract Pricing Statement

Schedule 20 – Authority Responsibilities

[REDACTED]

Schedule 21 – Essential Services

[REDACTED]

Schedule 22 – Reports

1 Defined Terms

- 1.1 In this Schedule 22 the following words and expressions shall have the meaning given to them, except as expressly provided otherwise:

Management Information Ambition means the aim of the Authority to create a more robust, wide-reaching and dynamic library of Management Information Metrics in order to best manage the services supplied to the Authority under FMSP.

- 1.2 **Management Information Metrics** means the measures set out in Appendix D of Part 2 to this Schedule 22.

2 Introduction

- 2.1 The Contractor shall provide periodic, ad hoc and other Reports in respect of this Contract, the Services and the Requirements in accordance with this Contract including Part 1 to this Schedule 22.
- 2.2 The Contractor shall provide Management Information Metrics in respect of this Contract, the Services and the Requirements in accordance with this Contract including Part 2 to this Schedule 22.

Part 1 of Schedule 22 – Reports

1 Introduction

- 1.1 Appendix A of Part 1 to this Schedule 22:
- (a) sets out a non-exhaustive list of those Reports which the Contractor is required to submit to the Authority under this Contract (whether in relation to the Services, the Requirements or otherwise) which have been identified at the Effective Date;
 - (b) refers to the relevant Paragraphs and Schedules to, and where appropriate Clauses of, this Contract where the details of the relevant Reports are set out;
 - (c) describes the frequency at which the Contractor must submit Reports; and
 - (d) is non-exhaustive and without prejudice to any other requirement in this Contract for preparation or submission of reports or plans.
- 1.2 Appendix B of Part 1 to this Schedule 22 sets out the Financial Management Reports to be provided by the Contractor to the Authority as a minimum requirement.
- 1.3 Appendix C of Part 1 to this Schedule 22 sets out the form to be taken by a Financial Management Report by way of an example submission.
- 1.4 Wherever practicable, the Authority and the Contractor shall align their reporting processes to improve efficiency and to prevent the proliferation of reporting formats.

Part 2 of Schedule 22 – Management Information

2 Introduction

- 2.1 The Contractor shall compile the Management Information Metrics for use in supporting business decisions and for provision to the Authority in accordance with Paragraph 2.2 of this Part 2 to this Schedule 22.
- 2.2 The Contractor shall provide the Management Information Metrics to the Authority in the format required by the Authority and as notified to the Contractor from time to time.
- 2.3 The Contractor shall provide a full update of all Management Information Metrics within fourteen (14) calendar days of the end of the Contract Year and whenever requested by the Authority from time to time.
- 2.4 The Authority is permitted to review the Management Information Metrics on an ongoing basis with a view to continuous improvement and reserves the right to specify revised or additional Management Information Metrics from time to time acting reasonably to be provided by the Contractor. When specifying any additional Management Information Metrics to be used by the Contractor, the Authority will have regard to the Management Information Ambition. The Contractor shall provide to the Authority supporting information to any of the Management Information Metrics upon request from the Authority.

Appendix A – Reporting Requirements

This Appendix contains a non-exhaustive summary of the Reports which the Contractor is required to submit to the Authority. This summary is for guidance only. If there are any inconsistencies with the Clauses or Schedules mentioned below (including any Appendix or Annex), those other Clauses or Schedules shall prevail.

[REDACTED]

Appendix B – Minimum Requirement – Financial Management Reports to be Provided by Contractors

**DEFCON 647
ANNEX A**

Minimum Requirement - Financial Management Reports to be Provided by Suppliers

1		Provision of Information
	a	1st Report to be provided within twenty (20) Business Days of the start of the contract.
	b	Report to be provided as stated in the contract on UK MOD Business Day three (3) or by exception thereafter.
	c	Requirement does not substitute or replace any requirements under EVM, Clause 37 (GFA) or any other Clause or DEFCON, providing that delivery of that information is linked to key performance indicators and cash payments to the supplier.
	d	Financial Information to be provided VAT Exclusive.
	e	All reports to be endorsed by the contractor representative, recognising that accruals are estimates, but confirming that the report reflects their judgement of the activity on the contract
2		Contract Summary Information
	a	Contract Number.
	b	Contract Title.
	c	Supplier Name.
	e	Original contract price excluding VAT (at contract start date).
	f	Revised contract price (to reflect any contract amendments) excluding VAT.
	g	Nature of Pricing - e.g. firm, fixed, target cost incentive fee.
	h	Currency.
	i	Report Date.
3		Information to be Provided
	a	Minimum granularity is contract schedule lines. [May be extended to reflect, for example, KPI, Milestones, Activities, Items, NSNs.] It is noted that in some circumstances contract schedule lines may not be appropriate (e.g. commodity items) and may need to be grouped.
	b	Inventory information (if applicable) to separately identify service charge and purchases of inventory [required for all on-Statement of Financial Position, Off System Inventory CLS arrangements].
	c	Description.
	d	Value (Ex VAT) - contractual value of the activity.
	e	Progress % work completed on the activity as at report date.
4		Financial Profile - The report is to collect information on actual and planned accruals: that is the contractual value of work undertaken (earned value of work) within a period, for which the MOD will be [was] liable to pay. It includes work undertaken by sub-Contractors. It includes work completed and invoiced. The total value of work [to be] completed is expected to be comparable to the contract price. If a fixed or firm price has been agreed for the contract then the value of work should be assessed on this basis.

	a	Prior Years: Work completed (value to sales) in previous financial years.
	b	Earned Value: Work completed (value to sales) in month - this is the value of work done (accrued/earned value) during that calendar month.
	c	Earned Value: Cumulative Work Completed (value to sales) - this is the value of work done (accrued/earned value) on the activity to date.
	d	MOD Current Financial Year monthly - this will be a mix of actual completed to the end of the current period and forecast beyond that date.
	e	After the Current Financial Year an annual estimate by MOD Financial Year (Apr XX to Mar XY) until contract end date - Forecast periods show the expected work to be undertaken during each period on the activities in the contract. Insert additional years as required.

Note: Accruals represent the earned value or work the contractor has completed to date.

				Cumulative Work completed											
Total Work Complete															

Contractor representative:

This document is an estimate of work completed on this contract, and is based on my best judgement reflecting the information available to me.

Name

Signature

Position

Date

Appendix D – Management Information Requirements

This Appendix contains a non-exhaustive summary of the Management Information which the Contractor is required to submit to the Authority. This summary is for guidance only. If there are any inconsistencies with the Clauses or Schedules mentioned below (including any Appendix or Annex), those other Clauses or Schedules shall prevail.

[REDACTED]

Schedule 23 – Not used

Schedule 24 - Financial Distress

[REDACTED]

Schedule 25 – Form of Parent Company Guarantee

[REDACTED]

Schedule 26 – Not used

Schedule 27– Form of Direct Agreement

Direct Agreement

Dated

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

[] Limited
(Contractor)

[] Limited
(Sub-Contractor)

Re: *[insert description of relevant sub contract]*

Direct Agreement

Delivered as a deed and dated

Between

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

[*Insert name of primary Subcontractor*] Limited a company incorporated in [] with registered number [] having its registered office at [] (the **Contractor**); [and]

[*Insert name of sub Subcontractor*] Limited a company incorporated in [] with registered number [] having its registered office at [] (the **Subcontractor**)[.]/[;and]

[*insert name of Subcontractor Guarantor*] Limited a company incorporated in [] with registered number [] having its registered office at [] (the **Subcontractor Guarantor**)

Recitals

- (A) The Contractor has entered into the Future Maritime Support Programme Contract with the Authority dated [] for the provision by the Contractor to the Authority of the Services (as defined therein) (**FMSP**).
- (B) The Contractor has engaged or is to engage the Subcontractor under a [*insert contract reference/description*] dated [] (as amended from time to time) (the **Contract**), regarding the [*insert details of the contract role in the project*] in order that the Subcontractor may support the Contractor in the delivery of the Services.
- (C) It is a condition of FMSP that the Authority, the Subcontractor and the Subcontractor enter into this Direct Agreement.
- (D) The Authority shall be entitled to rely and is deemed to have relied on the Subcontractor's reasonable skill, care and diligence in respect of all matters covered by this Direct Agreement insofar as they relate to the [*services provided*]/[*goods supplied*] by the Subcontractor under the Contract.
- (E) [The Subcontractor Guarantor has guaranteed the obligations of the Subcontractor under the Contract and is party to this Direct Agreement for that purpose].

It is agreed

1 Definitions and Interpretation

1.1 Definitions

1.1.1 Unless defined herein, capitalised terms and expressions used in this Direct Agreement shall have the meaning as attributed to them in the Contract.

1.1.2 In this Direct Agreement the following definitions shall apply:

Appointed Representative means a Representative that has been granted rights in respect of the Contract under Clause 4.1;

Business Day means a day (other than a Saturday or Sunday) on which banks in England are open for the transaction of general business;

Contract Termination Notice means a notice of termination served by the Sub-Contractor under the Contract;

Contractor Default means a contractor default as defined in FMSP;

Enforcement Action means:

- (a) taking any steps to terminate or serve any notice for the purposes of terminating the Contract;
- (b) presenting, or taking any steps leading to the presentation of, any petition for the administration, insolvency or winding-up (or equivalent in any jurisdiction) of the Contractor;
- (c) commencing any execution or other legal process or proceedings (in any jurisdiction) against the Contractor; or
- (d) taking any steps to enforce any judgment or order against the Contractor.

Enforcement Date means the date on which the Authority gives notice to the Contractor of a Contractor Default under the relevant provisions of FMSP;

FMSP has the meaning given to it in Recital 1;

Good Industry Practice means the exercise of that degree of skill, diligence, prudence, foresight and practice which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same type of undertaking as that to which the relevant Service relates under the same or similar circumstances to those in which that Service is to be provided.

Representative means:

- (a) the Authority;
- (b) an administrative receiver, receiver or receiver and manager of the Contractor appointed under FMSP;
- (c) an administrator of the Contractor or an administrator of the Sub-Contractor;
- (d) a person directly or indirectly owned or controlled by the Authority; or
- (e) any other person approved by the Sub-Contractor under the Contract;

Required Period means the period starting on the date of a Termination Notice and ending sixty (60) calendar days later;

Step-In Date means the date on which the Authority takes any action under Clause 4.5;

Step-In Period means the period from the Step-In Date up to and including the earlier of:

- (a) the Step-Out Date;

- (b) the date of any termination of the Contract under Clause 4.1;
- (c) the date of completion of any transfer under Clause 7; and
- (d) the date of expiry of the Contract;

Step-Out Date means the expiry of the thirty (30) calendar day notice period in any notice given under Clause 6.1;

Sub-Contractor Document(s) means any document issued by the Sub-Contractor in connection with its performance of or pursuant to its obligations under the Contract.

Suitable Substitute means a person:

- (a) having the legal capacity, power and authority to become a party to and perform the obligations and assume the liabilities of the Contractor under the Contract; and
- (b) having, or employing persons having, the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and sub-contracts) which are sufficient to enable it to perform the obligations of the Contractor under the Contract; and

Termination Notice has the meaning given in Clause 3.1.

1.2 Interpretation

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

- (a) any Party, the Subcontractor, [the Subcontractor's Guarantor,] the Contractor, the Authority shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- (b) assets includes present and future properties, assets, intellectual property rights, real property, heritable property, personal property, rights, revenues, uncalled capital and any rights to receive, or require delivery of, or exercise direct control over any of the foregoing;
- (c) the term including shall be construed as meaning including without limitation;
- (d) an obligation means any duty, obligation or liability of any kind;
- (e) a person includes any individual, firm, Contractor, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
- (f) a regulation includes any present or future law, regulation, rule, official directive, request or guideline having the force of law of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- (g) a right means any right, privilege, power, immunity or other interest or remedy of any kind;

- (h) the winding up, dissolution, administration or bankruptcy of a person shall be construed as to include any equivalent or analogous procedures under the laws of any jurisdiction in which such person is incorporated or resident in any jurisdiction in which such person carries on business or in which any of its assets are located (including the seeking of a liquidation, winding up, appointment of bankruptcy trustee, reorganisation, dissolution, administration, arrangement, adjustment, protection or relief of debtors, insolvency and suspension of payments);
- (i) a provision of law or regulation shall be a reference to that provision as amended, supplemented, replaced or re-enacted;
- (j) a time of day shall be a reference to London, England time; and
- (k) clauses and schedules are to be construed as references to clauses of and schedules to this Direct Agreement; and
- (l) a Business Day is any day which is not a Saturday a Sunday a bank holiday or a public holiday in England.

1.2.2 Section, clause and Schedule headings are for ease of reference only and shall be ignored in the interpretation of this Direct Agreement.

2 Acknowledgement

Nothing in this Direct Agreement shall prejudice the Authority's common law rights.

3 Notice of repudiation, termination or suspension and existing liabilities

3.1 The Subcontractor shall not repudiate, terminate or suspend its performance under the Contract or serve a Contract Termination Notice or take any other Enforcement Action prior to the expiry of a time period (being equal in length at least to the Required Period) specified in a notice given by it to the Authority (a **Termination Notice**) stating:

- (a) the proposed date of repudiation, termination or suspension and/or details of other Enforcement Action; and
- (b) the grounds for repudiation, termination or suspension or taking other Enforcement Action in reasonable detail.

3.2 Not later than the date falling fourteen (14) calendar days after the date of receipt by the Authority of a Termination Notice or, if earlier, the date falling fourteen (14) calendar days after the date on which the Authority informs the Sub-Contractor that a Contractor Default has occurred, the Subcontractor shall give to the Authority a notice (a **Liabilities Notice**) containing details of any amount owed by the Contractor and of any other existing liabilities or unperformed obligations of the Contractor to the Subcontractor of which the Subcontractor is aware (having made reasonable enquiry):

- (a) as at the date of the Termination Notice or the notification of the relevant Contractor Default; and
- (b) which will fall due to be paid or discharged under the Contract on or prior to the end of the Required Period or if no Termination Notice has been given, which will fall due to be paid or discharged under the Contract on or prior to the end of a period of days

equivalent to the Required Period calculated from the date of the notification of the relevant Contractor Default.

- 3.3 If the Subcontractor becomes aware that the information contained in a Liabilities Notice is untrue, incomplete and/or inaccurate, or any information relevant to such notice has yet to be disclosed to the Authority, the Subcontractor shall give the Authority a notice updating the Liabilities Notice as soon as reasonably practicable.
- 3.4 The Authority may instruct the Subcontractor to verify, at the Contractor's cost, the information set out in any Liabilities Notice.
- 3.5 After receiving notifications from the Authority that a Contractor Default has occurred, the Subcontractor shall accept, as validly given by the Contractor any notices or demands given or made by the Authority pursuant to, and in accordance with, the Contract, provided such notice or demand would have been valid if given by the Contractor.

4 **Representative**

4.1 Without prejudice to the Authority's rights under FMSP, at any time:

- (a) after a Contractor Default or the Enforcement Date, whether or not a Termination Notice has been served; or
- (b) during the Required Period,

the Authority may give notice to the Subcontractor that a Representative shall be appointed to administer the Contract who shall have the same rights as if it had at all times been party to a contract on the same terms as the Contract in place of the Contractor (the **Appointed Representative**). The Subcontractor agrees to the appointment of the Appointed Representative, subject only to any challenge by the Subcontractor in accordance with Clause 4.2 below.

4.2 The Sub-Contractor may only object to the identity of the Appointed Representative if:

- (a) the person proposed does not fall within limbs (a) to (d) of the definition of Representative; and
- (b) the Subcontractor's objection is reasonable in all the circumstances; and
- (c) the Subcontractor's objection is notified to the Authority within five (5) Business Days of receipt of notice from the Authority under Clause 4.1,

in which case the Authority shall propose an alternative Appointed Representative.

4.3 For the purposes of Clause 4.2, the Subcontractor's objection will not be deemed reasonable if the Appointed Representative:

- (a) has the legal capacity, power and authority to become a party and perform the obligations and assume the liabilities of the Contractor under the Contract; and
- (b) has or employs persons having, the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and sub-contracts) which are sufficient to enable it to perform the obligations of the Contractor under the Contract.

- 4.4 The Authority shall give the Subcontractor no less than five (5) Business Days' prior notice of any action to be taken pursuant to this Clause 4.
- 4.5 The date on which the Appointed Representative is appointed shall be the **Step-In Date**.
- 4.6 Any sums or obligations not duly notified to the Authority in a Liabilities Notice pursuant to Clauses 3.2 and 3.3 and
- (a) on or before the date specified in Clause 3.2; or
 - (b) in the case of a notice given by the Sub-Contractor under Clause 3.3, on or before the date falling three (3) calendar days prior to the Step-In Date

shall not be assumed by the Appointed Representative during the Step-In Period.

5 Step In Period

- 5.1 The Subcontractor shall deal with the Appointed Representative and not the Contractor during the Step-In Period. During the Step-In Period, the Appointed Representative is entitled to exercise the rights of the Contractor under the Contract and is irrevocably authorised and entitled to act on behalf of, and to bind, the Contractor under and pursuant to the Contract. The Subcontractor agrees that payment to it by the Appointed Representative of any sums due under the Contract or performance by the Appointed Representative of any other of the Contractor's obligations under the Contract comprises good discharge of the Contractor's payment obligations and other obligations under the Contract.
- 5.2 Notwithstanding Clause 3.1 and subject to Clause 5.3, the Subcontractor shall during the Step-In Period be entitled to terminate the Contract only:
- (a) by written notice to the Contractor, the Authority and the Appointed Representative, if any amount referred to in the Liabilities Notice issued in accordance with Clauses 3.2 or 3.3 above has not been paid to the Subcontractor on or before the Step-In Date, provided that such amount has been agreed between the Sub-Contractor and the Contractor or the Subcontractor and the Authority to be due or has otherwise been determined to be due in accordance with the terms of the Contract; or
 - (b) by written notice to the Contractor, the Authority and the Appointed Representative, if amounts which become payable under the terms of the Contract after the date referred to in Clause 3.2 have not been discharged on or before the date falling thirty (30) calendar days after the Step-In Date, provided that such amounts have been agreed between the Subcontractor and the Contractor or the Subcontractor and the Authority to be due or have otherwise been determined to be due in accordance with the terms of the Contract; or
 - (c) on grounds arising after the Step-In Date permitting termination under the terms of the Contract, and following compliance by the Subcontractor with any procedures applicable to termination under the Contract, as if the Appointed Representative had been named in place of the Contractor.
- 5.3 The Subcontractor may not terminate the Contract during the Step-In Period on any of the following grounds:
- (a) on any grounds for termination that arose prior to the Step-In Date, although such grounds may be taken into account after the Step-Out Date;

- (b) on the grounds that the Appointed Representative has not discharged any outstanding performance or payment obligations of the Contractor which have arisen or fallen due prior to the Step-In Date, unless such sums or obligations have been specified in the Liabilities Notice issued in accordance with Clause 3.2;
- (c) by reason of the Authority having taken any action referred to in Clause 5; or
- (d) on any grounds arising solely in relation to the Contractor as opposed to the Appointed Representative.

6 Step Out

- 6.1 The Appointed Representative or the Authority may give the Subcontractor thirty (30) calendar days' prior written notice of the date on which the Appointed Representative will step out (the **Step-Out Date**).
- 6.2 Upon the Step-Out Date:
- (a) all rights of the Appointed Representative against the Subcontractor will be cancelled, other than those relating to circumstances arising prior to the Step-Out Date; and
 - (b) the Appointed Representative will be released from all obligations and liabilities to the Subcontractor under the Contract and this Direct Agreement which may have arisen prior to the Step-Out Date, howsoever arising (including tort, misrepresentation or unjust enrichment).
- 6.3 Subject to Clause 7.3, the Contractor or the Subcontractor shall continue to be bound by the terms of the Contract (as the case may be), notwithstanding the occurrence of the Step-Out Date.

7 Novation

- 7.1 Subject to Clause 7.2, at any time:
- (a) after an Enforcement Date; or
 - (b) during the Required Period; or
 - (c) during a Step-In Period,

the Authority may give written notice to the Subcontractor and any Appointed Representative, that it wishes to procure the transfer of the Contractor's rights under the Contract to a Suitable Substitute. Such written notice shall contain details of the proposed Suitable Substitute.

- 7.2 The Sub-Contractor may only object to the identity of the Suitable Substitute if:
- (a) the Subcontractor's objection to such person is reasonable in all the circumstances; and
 - (b) the Subcontractor's objection is notified to the Authority within ten (10) calendar days of receipt of the notice under Clause 7.1,

in which case the Authority may propose an alternative Suitable Substitute. The procedure outlined in this Clause 7.2 may be repeated until the Subcontractor does not object to the identity of the proposed Suitable Substitute.

7.3 As soon as the identity of the Suitable Substitute is determined in accordance with Clauses 7.1 and 7.2 above, the Subcontractor, the Contractor and the Authority shall procure that the Suitable Substitute shall enter into a deed of novation within five (5) Business Days of the Authority's request which provides for the following:

- (a) the Contractor to be released from and the Suitable Substitute to assume:
 - (i) any obligations or liabilities of the Contractor arising on or after the date of the deed of novation under or in connection with the Contract; and
 - (ii) any outstanding liabilities arising prior to the date of the deed of novation which have been notified to the Authority in accordance with Clause 3.2, provided such amounts have been agreed between the Contractor and the Subcontractor or the Subcontractor and the Authority (as the case may be) to be due or have otherwise been determined to be due in accordance with the terms of the Contract;
- (b) the Suitable Substitute to have the same rights and benefits of the Contractor (or the Appointed Representatives thereof) arising in connection with the Contract as if he had at all times been party to a contract on the same terms as the Contract in place of the Contractor;
- (c) any then subsisting ground for termination of the Contract by the Subcontractor to be deemed to have no effect and any subsisting Termination Notice to be automatically revoked; and
- (d) the Subcontractor to enter into a direct agreement with the Authority lending to the Suitable Substitute on substantially the same terms as this Direct Agreement.

7.4 Without limiting the application of Clause 3.1, the Subcontractor shall not take any Enforcement Action during the period between receipt of the notice of proposed transfer in accordance with Clause 7.1 and the date of the deed of novation entered into pursuant to Clause 7.3.

8 Insurance

8.1 The Subcontractor shall maintain throughout the duration of the Contract, or if earlier the date of termination of the Contract, professional indemnity insurance in an amount of not less than [INSERT PI LEVEL] million pounds (£[INSERT FIGURE],000,000) sterling on an each and every claim basis and for any one occurrence or series of occurrences arising out of any one event with an insurer of good repute [carrying on business in the European Union] provided always that such insurance is available at rates which are commercially reasonable to sub-contractors.

8.2 In determining whether or not insurance is available as aforesaid, the financial characteristics and claims' record of the Subcontractor shall be ignored.

8.3 The Subcontractor shall immediately inform the Authority if such insurance ceases to be available at rates which are commercially reasonable in order that the Subcontractor and the Authority can consider alternative means of best protecting their respective positions in

respect of the [services to be provided]/[goods to be supplied] under the Contract in the absence of such insurance provided that the Authority shall be entitled to require the Subcontractor to maintain such lesser amount of professional indemnity insurance as is available to the Subcontractor at rates which are commercially reasonable.

- 8.4 As and when it is reasonably requested to do so by the Authority the Subcontractor shall produce for inspection documentary evidence satisfactory to the Authority (acting reasonably) that its professional indemnity insurance is being maintained.
- 8.5 [The Subcontractor confirms that this Direct Agreement has been disclosed to and has been approved by the Subcontractor's professional indemnity insurers or underwriters].
- 8.6 Should the Subcontractor be in breach of any of its obligations under this Clause 8 (*Insurance*), the Authority may itself insure against any risk with respect to which the breach shall have occurred and may recover such sum or sums from the Subcontractor as a debt.

9 Copyright Licence

The Subcontractor hereby grants to the Authority a non-exclusive, royalty free licence to copy, use and, subject to the restrictions relating to confidentiality in the Contract, communicate the Subcontractor's Documents for the purposes of operating, repairing, replacing, maintaining, adjusting or dismantling the [*refer to the relevant asset/goods/services as appropriate*] or any part thereof until the full and final repayment of all amounts due to the Authority pursuant to FMSP or otherwise. In relation to software the licence is restricted to a licence to use, only.

10 Limitation of Liability

- 10.1 Notwithstanding the foregoing provisions, nothing in this Direct Agreement shall require the Subcontractor to incur any more expenditure or suffer any loss it would not have incurred under the Contract.
- 10.2 Neither the Authority nor any Appointed Representative shall be liable to the Subcontractor for any costs, losses, liabilities or expenses relating to the realisation of the Contractor's rights under the Contract or from any act, default, omission or misconduct of the Authority or any Appointed Representative or their respective officers, employees or agents in relation to the Contract or in connection with FMSP except to the extent set forth in this Direct Agreement and except to the extent that such costs, losses, liabilities or expenses are caused by the gross negligence, fraud or wilful misconduct of the Authority, Appointed Representative or respective officers, employees or agents.
- 10.3 Notwithstanding anything to the contrary, neither the Authority nor any Appointed Representative shall be liable to the Subcontractor, whether in contract, tort, equity, negligence, warranty, strict liability, breach of statutory duty or otherwise for any special, indirect, incidental or consequential damages or for any loss of profit, loss of use, loss of production, loss of contract, financing costs or any financial or economic loss suffered by the Subcontractor.

11 Representations and Warranties

- 11.1 The Subcontractor warrants and undertakes the following to the Authority that as at the date of this Direct Agreement:

- (a) it has complied and will continue to comply with all terms and obligations arising out of the Contract on the Subcontractor's part to be performed and observed and shall [provide the services]/[supply the goods] in accordance with the Contract;
- (b) without prejudice to (a), that
 - (i) it has exercised and will continue to exercise all due skill, care and diligence to be expected from a properly qualified and competent [service provider]/[supplier of goods] engaged on a similar basis;
 - (ii) that all materials and goods [used in the provision of the services] correspond to the description, quality and conditions set out in the requirements under the Contract; and
 - (iii) in performing its obligations under the Contract, it has complied with all relevant legislation and Good Industry Practice;
- (c) it is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation (and if relevant under those laws, is in good standing) and has the power to own its property and assets and to carry on its business as contemplated herein;
- (d) it has the power to:
 - (i) execute this Direct Agreement and the Contract and any other documentation relating to this Direct Agreement to which it is a party;
 - (ii) to deliver this Contract and the Contract and any other documentation relating to this Contract or the Contract that it is required by this Direct Agreement or the Contract to deliver; and
 - (iii) to perform its obligations under this Direct Agreement and the Contract (as the case may be).
- (e) it has taken all necessary action to authorise the execution, delivery and performance referred to in Paragraph (b) and such execution, delivery and performance does not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgement of any court or other agency of government applicable to it or any of its assets or any contractual restrictions binding on or affecting it or any of its assets; and
- (f) its obligations under this Direct Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law).

12 Contract Remains in Effect

Subject to the provisions of this Direct Agreement, the provisions and stipulations of the Contract shall remain valid and in effect.

13 Duration

13.1 Without prejudice to any accrued rights and obligations arising pursuant to this Direct Agreement existing at the date of termination, this Direct Agreement shall remain in effect until the earlier of:

- (a) the date on which the Contract has terminated (in accordance with this Direct Agreement) or expired; and
- (b) the date on which a transfer occurs pursuant to a deed of novation entered into in accordance with Clause 7 (*Novation*).

13.2 The Authority shall promptly notify the Subcontractor of any Contractor Default of which the Authority is aware and any Enforcement Date.

14 Confidentiality

[To be aligned with approach from sub-contracting and supply chain workstream]

15 Severance

If any provision of this Direct Agreement or part thereof is rendered void, illegal or unenforceable in any respect (whether against all or only some of the parties), the validity, legality and enforceability of the remaining provisions (and such aforesaid provision against the other parties) shall not in any way be affected or impaired thereby.

16 Assignment and Transfer

16.1 This Direct Agreement is binding on and shall enure for the benefit of the Parties and their respective successors and permitted assignees.

16.2 No Party to this Direct Agreement may transfer, sell, assign, novate, create any encumbrance or otherwise dispose of this Direct Agreement or any part thereof, or any benefit, interest or advantage of this Direct Agreement or any part thereof without the prior written consent of the other Parties.

17 Amendments

17.1 Any amendments to this Direct Agreement shall be in writing and with the consent of each of the parties.

17.2 The Subcontractor shall not make any amendment, variation, supplement or novation of or to the Contract without the prior written consent of the Authority.

18 Further Assurance

Each of the Parties shall, at its own cost, do all further acts and things and execute and deliver all instruments as shall be reasonably necessary for the carrying out of their respective obligations under this Direct Agreement.

19 Remedies and Waivers

19.1 Waiver must be in writing

If a Party breaches a term of this Direct Agreement, the rights of each other Party arising from that breach cannot be waived except:

- (a) with the express written consent of that other Party; and
- (b) to the extent set out in that consent,

and waiver of one breach does not waive or imply waiver of any further or other breach.

19.2 Limited exercise is not a waiver

This Clause 19 applies if a Party becomes entitled to exercise any right or remedy under this Direct Agreement or by law or regulation. No failure to exercise, no delay in exercise and no single or partial exercise of that right or remedy shall:

- (a) adversely affect that right or remedy;
- (b) waive it; or
- (c) prevent any further exercise of it or of any other right or remedy,

except to the extent the Parties have expressly agreed otherwise in writing.

19.3 Rights and remedies cumulative

The rights and remedies arising from this Direct Agreement are cumulative. They are not exclusive of any other rights or remedies provided by law or otherwise except to the extent this Direct Agreement expressly states otherwise.

19.4 Without prejudice

Nothing in this Direct Agreement or the arrangements contemplated thereby shall prejudice the rights of any of the Authority under FMSP, or shall be construed as obligating the Authority to exercise any of its rights under FMSP or under this Direct Agreement.

20 No conflict

If there is any conflict or inconsistency between the provisions of this Direct Agreement and the Contract, the provisions of this Direct Agreement shall prevail.

21 [Acknowledgement of Guarantor]¹³

The Subcontractor's Guarantor joins in this Direct Agreement to acknowledge and consent to the arrangements set out in it and agree not knowingly to do or omit to do anything that may prevent any party from enforcing its rights under this Direct Agreement.

22 Third party rights

Save for any successor Authority and to the extent provided for in this Direct Agreement in respect of the Appointed Representative and the Suitable Substitute, no right is granted to any person who is not a party to this Direct Agreement to enforce any term of this Direct

¹³ **Note:** Required only where Contract is supported by a guarantee or other covenant support.

Agreement in its own right and the Parties to this Direct Agreement declare that they have no intention to grant any such right.

23 Counterparts

This Direct Agreement may be entered into in any number of counterparts and by the parties on separate counterparts, and each of the executed counterparts, when duly exchanged or delivered, shall be deemed to be an original, but taken together they shall constitute one and the same instrument.

24 Notices

24.1 Notices

24.1.1 Any notice or other communication to a party to this Direct Agreement must be in writing. It must be addressed for the attention of such person, and sent to such address or email address, as that party may from time to time notify to the other parties.

24.1.2 The initial administrative details of the parties are detailed below, but any party may amend those details by notice to the Authority.

24.2 Delivery

24.2.1 Any notice or other communication to a party to this Direct Agreement will only be effective:

- (a) if by way of email, the Business Day following sending; or
- (b) if by way of letter, when it has been left at the relevant address, or five (5) Business Days after being deposited in the post (postage prepaid) in an envelope addressed to such party at its address as notified in accordance with this Direct Agreement.

24.2.2 Any communication or document to be made or delivered to the Authority will be effective only when actually received by the Authority and then only if it is expressly marked for the attention of the department or officer identified in Clause 24.2.4 below (or any substitute department or officer as the Authority shall specify for this purpose).

24.2.3 Any reference in this Direct Agreement to the date of a notice shall be interpreted as the date when such notice became effective.

24.2.4 The address and email address of each party to this Direct Agreement shall be:

Authority

For the attention of: []]

Address:

HMNB Portsmouth
P72 Room 245
Victory Building
The Parade
Portsmouth
PO1 3LT

Email Address:[]]

Executed as a Deed (but not delivered)
until dated) by [Sub-Contractor] acting by)
)
)

.....
(Director)(Print name)

.....
(Signature)

.....
(Director/Secretary)(Print name)

..... (Signature)

**The CORPORATE SEAL of the)
SECRETARY OF STATE FOR)
DEFENCE hereto affixed is)
hereby authenticated by: -)**

Signature

Full Name

Post title

Authorised by the Secretary of State

Schedule 28 – Not used

Schedule 29 – Not used

Schedule 30 – Change Procedure

- 1.1 Without prejudice to this Schedule 30, the Contractor or the Authority (as applicable in the circumstances) shall give an early warning by notifying the other Party in writing (including through the reporting processes under this Contract) as soon as either reasonably becomes aware of any matter which is reasonably likely to necessitate:
- (a) a change to the Specification (a **Specification Change**); or
 - (b) an alteration that causes a change to:
 - (ix) the fit, form, function or characteristics of the Services;
 - (x) the delivery dates;
 - (xi) the Contract Price;
 - (xii) the period required for the production or completion; or
 - (xiii) other work caused by the alteration,
- (a **Change**).
- 1.2 Not used.
- 1.3 No Specification Change or Change:
- (a) may be proposed except in accordance with this Schedule 30; and
 - (b) shall be made or take effect except in accordance with this Schedule 30.
- 1.4 The Contractor shall use a configuration control system to control Specification Changes. The configuration control system shall be compatible with ISO 9001 (latest published version) or as otherwise specified in accordance with this Contract.
- 1.5 The Parties shall work together to minimise the volume of Changes and/or Specification Changes.
- 1.6 Not used.
- 1.7 Not used.

Change Proposal

- 1.8 Subject to Paragraphs 1.1 to 1.5 and Paragraph 1.9 either Party may propose a Specification Change or Change (a **Change Proposal**).
- 1.9 An Authority Change Proposal or Contractor Change Proposal must contain the following information:
- (a) sufficient detail in relation to the Specification Change or Change, including key programme dates, to enable the Parties to evaluate the Change Proposal in full;

- (b) the Authority's or the Contractor's reasons for proposing the Specification Change or Change;
- (c) any key assumptions or dependencies in relation to the proposed Specification Change or Change;
- (d) dates by which a decision by the Authority or the Contractor is critical;
- (e) the category of change i.e. Specification Change, Mandatory Change or Change in Law;
- (f) the proposed timetable for the implementation of the Specification Change or Change;
- (g) (in relation to a Contractor Change Proposal only) a quotation for the additional costs or the savings resulting from implementation of the Specification Change or Change, based on pricing commensurate with the Contract Pricing Statement at Schedule 17 (*Contract Pricing Statement*);
- (h) (in relation to an Authority Change Proposal only) a request for the quotation for the additional costs or the savings resulting from implementation of the Specification Change or Change, based on pricing commensurate with the Contract Pricing Statement at Schedule 17 (*Contract Pricing Statement*);
- (i) any proposed adjustments to payments or incentives under this Contract (including, where relevant, any arising redundancy costs);
- (j) any amendment required to this Contract as a result of the Specification Change or Change;
- (k) the impact of the Specification Change or Change on the Services;
- (l) any comment provided in relation to the proposed Specification Change; and
- (m) any additional matters identified by either Party as being relevant in relation to the proposed Specification Change or Change;

and the Party not making the Change Proposal (**Party 1**) may request that the Party making the Change Proposal provide any missing information before continuing with the determination of the Change Proposal.

Determination of Change Proposal

1.10 As soon as reasonably practicable after Party 1 receives the Change Proposal, the Contract Managers shall meet to discuss and consider whether the proposal is: (i) a Change; (ii) a Specification Change; (iii) or some other form of change. If the proposal is determined to be a Specification Change, Change or a modified version of the proposal is agreed to be a Specification Change or a Change then the Authority will consider the Change Proposal taking into account all relevant issues, including:

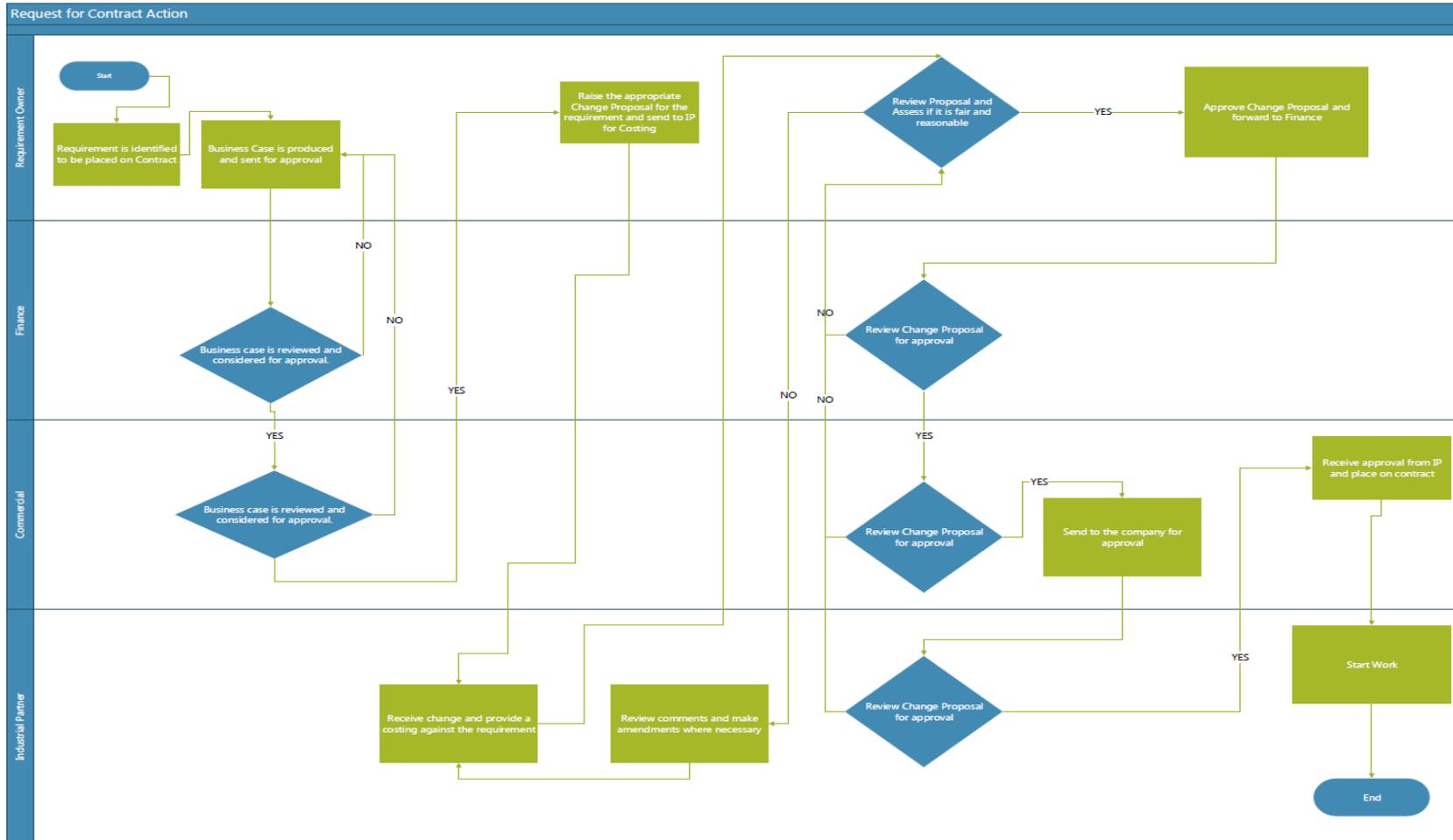
- (a) whether the Specification Change or Change reflects a change to the current obligations of the Parties as set out in the Contract;

- (b) whether the Specification Change or Change affects the quality of the Services or the likelihood of successful delivery of the Services or achievement of the Commercial Purpose;
 - (c) the impact, if any, on any Pricing Parameter and the financial implications of the Specification Change or Change on both Parties;
 - (d) whether the Specification Change or Change materially affects the risks or costs to which any Party is exposed; and
 - (e) the safety and security implications of the Specification Change or Change.
- 1.11 The Authority shall have the right to reject a Change proposed by the Contractor, in its absolute discretion. A Party shall have the right to reject a Change proposed by the other Party wholly or in part where it considers that the implementation of the proposed Change would:
- (a) be unsafe to any civilian or service personnel or plant or equipment present at the Service Delivery Locations or any part of Service Delivery Locations;
 - (b) contravene any Law; or
 - (c) otherwise prevent, impede or inhibit the Contractor or the Authority from performing their respective obligations under this Contract.
- 1.12 Where a change is a Mandatory Change the Contractor may not refuse to implement the proposed Change.
- 1.13 Following the determination of the Change Procedure, the relevant Contract Manager shall prepare a written statement of the terms of the Specification Change or Change as agreed by the Parties (a Change Notice) which shall be attached to DEFFORM 10B (Edition 03/14) and counter signed by the Parties. Thereafter the Parties shall follow the processes set out in Clause 74 (*Amendments to Contract*). Where the Specification Change or Change involves an increase in the amounts payable by the Authority to the Contractor, the Change Notice shall include where possible the agreed or determined amount of such increase.
- 1.14 As soon as reasonably practicable after a Specification Change or Change is agreed, the Parties shall implement the Specification Change or Change in accordance with the timetable set out in the Change Notice or such other timetable as may be agreed between the Parties.
- 1.15 Not used.
- 1.16 Not used.
- 1.17 Not used.
- 1.18 Not used.
- 1.19 Not used.
- 1.20 Not used.

Project Saving Business Case

- 1.21 The Contractor may make business case submissions to the Authority in order to identify Project related savings and how these might be shared.
- 1.22 The business case submission shall address the following:
 - 1.22.1 the project related saving initiative proposed;
 - 1.22.2 the expected benefits to be delivered by the proposal;
 - 1.22.3 the methodology for assessing the financial benefits (where possible);
 - 1.22.4 the resources required to implement the proposal together with the forecast cost of implementation of the proposal;
 - 1.22.5 the proposed schedule for implementation and delivery of the benefits;
 - 1.22.6 the impact of the proposal on the Contractor's works (cost and programme);
 - 1.22.7 any risks associated with the proposals and/or wider related risks; and
 - 1.22.8 how the proposal affects other contracts associated with the Maritime Enterprise (including the impact on works).
- 1.23 The Authority may, at its absolute discretion, accept the business case proposal submitted by the Contractor.
- 1.24 If the Authority instructs the Contractor to implement and fund the business case proposal then the Contractor shall be reimbursed its costs from the expected benefits. Once the Contractor's investment has been paid in full, the expected benefits shall then be divided as follows: the Authority shall receive forty per cent (40%) of the benefit and the Contractor shall receive sixty per cent (60%) of the benefit (the "gainshare").

Annex 1 – Change Flowchart



Schedule 31 – Not used

Schedule 32 – Not used

Schedule 33 – Processing Information

Part 1 Personal Data Particulars

DEFFORM 532

Edn 10/19

<p>Data Controller</p>	<p>The Data Controller is the Secretary of State for Defence (the Authority). <i>The Personal Data will be provided by: Data Subjects, Ministry of Defence, Contractors, Suppliers and all other parties that are required to provide personal data to facilitate fulfilment of the contract during the life cycle of the contract.</i></p>
<p>Data Processor</p>	<p>The Data Processor is the Contractor. The Personal Data will be processed at: <i>[insert address(es) and contact details] – This will be completed at contract award.</i></p>
<p>Data Subjects</p>	<p>The Personal Data to be processed under the Contract concern the following Data Subjects or categories of Data Subjects: <i>MOD Staff (including MOD civilian personnel, MOD military personnel, MOD contractors, volunteers, agents, and temporary workers) and suppliers.</i></p>
<p>Categories of Data</p>	<p>The Personal Data to be processed under the Contract concern the following categories of data: <i>Name, Date of Birth, Email Address, Telephone Number, Age, Salary, Employee Benefits, Employee Hours Worked, disciplinary action, grievances and legal action.</i></p>
<p>Special Categories of data (if appropriate)</p>	<p>The Personal Data to be processed under the Contract concern the following Special Categories of data: <i>Trade Union Memberships; Nationality; Health information (including Disabilities).</i></p>
<p>Subject matter of the processing</p>	<p>The processing activities to be performed under the contract are as follows: Accommodation – <i>Personal data will be required for Entitled Users to use the booking and management service. This will also include an electronic booking confirmation email service.</i> Motor Transport Services – <i>Personal data will be required for Entitled Users to book the leased vehicles provided by the Authority on Portsmouth Naval Base, HMS Collingwood and HMS Sultan.</i> Transition Plan – <i>Personal Data will be processed in the context of potential transfers under the Transfer of Undertaking (Protection of Employment) (TUPE).</i> Miscellaneous Base Services – <i>Personal data will be required for Entitled Users to book and utilise the services outlined.</i> Pass Office – <i>Personal data will be required to perform authorisation checks to facilitate the entry of visitors and vehicles to the Naval Base.</i></p>
<p>Nature and the purposes of the Processing</p>	<p>The Personal Data to be processed under the Contract will be processed as follows:</p> <ul style="list-style-type: none"> • <i>The nature of processing may include any operation such as: collection, recording, organisation, structuring, storage, retrieval,</i>

	<p><i>consultation, use, restriction and erasure or destruction of data (whether by automated means or not).</i></p> <ul style="list-style-type: none"> <i>The purpose is to secure or fulfil a contract (Contractual obligation).</i>
<p>Technical and organisational measures</p>	<p>The following technical and organisational measures to safeguard the Personal Data are required for the performance of this Contract:</p> <ul style="list-style-type: none"> <i>All data will be stored and handled in accordance with the Caldicott Principles and in accordance with the General Data Protection Regulation (GDPR) 2015.</i> <i>All appropriate technical and organisational measures must be taken against unauthorised or unlawful processing of personal data and against accidental loss, alteration, unauthorised disclosure or destruction of or damage to that personal data.</i> <i>The Contractor must not transfer the personal data to any third party outside the EU without the prior consent of the MOD.</i> <i>All personal data will be processed under the Data Protection Principles in Article 5(1) of the GDPR, which requires that Personal Data is: processed lawfully, fairly and in a transparent manner in relation to the Data Subject; collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; adequate, relevant and limited to what is necessary in relation to the purposes for which it is processed; accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that Personal Data that is inaccurate, is erased or rectified without delay; kept in a form which permits identification of Data Subjects for no longer than is necessary for the purposes for which the Personal Data is processed; processed in a manner that ensures appropriate security, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage.</i> <i>The Contractor must ensure that employees are adequately trained, and that training is current.</i> <i>The Contractor shall notify the Authority within 72 hours delay if it considers that any of the Authority’s instructions infringe the Data Protection Legislation and/or where the contractor becomes aware of a Data Loss Event.</i> <i>The Contractor must have steps in place to ensure that availability of and access to Personal Data can be restored in a timely manner after an incident.</i>
<p>Instructions for disposal of Personal Data</p>	<p>The disposal instructions for the Personal Data to be processed under the Contract are as follows (where Disposal Instructions are available at the commencement of Contract):</p> <p><i>Personal data should not be kept for longer than is necessary for the purpose for which it was collected and should be permanently and securely erased including all back-ups.</i></p>
<p>Date from which Personal Data is to be processed</p>	<p>Where the date from which the Personal Data will be processed is different from the Contract commencement date this should be specified here:</p> <p><i>Data will be processed from the Contract commencement date onwards.</i></p>

The capitalised terms used in this form shall have the same meanings as in the General Data Protection Regulations.

Schedule 34 – Exit Agreements

Transitional services agreement

Dated

[]
(the Outgoing Contractor)

[]
(the Incoming Contractor)

Transitional Services Agreement

Dated

Between

- (a) ** (the **Outgoing Contractor**) [a company incorporated in England and Wales (registered number **) whose registered office is at **] [a corporation organised and existing under the laws of; and
- (b) ** (the **Incoming Contractor**) [a company incorporated in England and Wales (registered number **) whose registered office is at **] [a corporation organised and existing under the laws of ** whose principal place of business is at **].

Recitals

- A. The Outgoing Contractor currently provides ** to the Secretary of State for Defence.
- B. The Secretary of State for Defence has conducted a competition in relation to the continued provision of the services referred to in Recital A and the Incoming Contractor has been successful in that competition.
- C. As a result of its success in the competition referred to in Recital B, the Incoming Contractor will be responsible for providing the services referred to in Recital A from [insert date].
- D. Prior to the sale, the Outgoing Contractor supplied the Outgoing Contractor Services to the [Business] and the Incoming Contractor wishes the Outgoing Contractor to continue providing the Outgoing Contractor Services for a limited time.

It is agreed

1 Definitions and Interpretation

1.1 In this Agreement the following definitions apply.

Agreement means this Transitional Services Agreement as the same may be amended or supplemented from time to time in accordance with the terms hereof.

Applicable Law means any:

- (a) law including any statute, statutory instrument, bye-law, order, regulation, directive, treaty, decree, decision (as referred to in Article 288 of the Treaty on the Functioning of the European Union) (including any judgment, order or decision of any court, regulator or tribunal;
- (b) legally binding rule, policy, guidance or recommendation issued by any governmental, statutory or regulatory body; and/or
- (c) legally binding industry code of conduct or guideline,

in force from time to time which relates to this Agreement and/or the Services and/or the activities which are comprised in all or some of the Services or the use or application of the output from the Services.

Completion means ** [Parties to agree date].

Contract manager shall have the meaning given in Clause 7.1.

Force Majeure means, in relation to either Party, an event, condition or circumstance beyond the reasonable control of that Party and without the fault or negligence of the Party claiming Force Majeure which causes a delay or disruption in the performance by such Party of any of its obligations under this Agreement including, without limitation:

- (a) fire, explosion or other disruption, mechanical breakdown, electrical shortage or blackout, decline or shortages of supply, [and circumstances arising out of information technology not being millennium compliant]; and
- (b) lockouts, strikes and other industrial disputes.

For the avoidance of doubt, the settlement of a labour strike, lockout or any other kind of labour dispute is not within the reasonable control of the Party affected and this Clause shall not oblige that Party to settle a strike, lockout or other labour dispute on terms contrary to its wishes.

[Incoming Contractor Group means [Parties to agree definition].]

Outgoing Contractor Services means those Services provided by the Outgoing Contractor or its Subsidiaries as set out in Schedule 1.

Parties means the Outgoing Contractor and the Incoming Contractor, and Party means either of them.

Services means:

- (a) the Outgoing Contractor Services; and
- (b) [the Third Party Services],

and Service means any one of the above as the context may require.

Service Provider means:

- (a) that Party providing Services to the other Party; [or]
- (b) [a Third Party Service Provider].

Subsidiaries means those entities which are subsidiaries [or subsidiary undertakings] of the relevant Party.

Tax Authority means any government, state or municipality or any local, state, federal or other authority, body or official anywhere in the world exercising a fiscal, revenue, customs or excise function (including without limitation, HM Revenue and Customs).

Termination Date means [*Parties to agree term*] months from the date hereof unless Schedule 1, or Schedule 2 provide otherwise or this Agreement is terminated pursuant to Clause 9.

[Third Party Service Provider means a third party in a contractual relationship with one Party for the provision of any Service.]

[Third Party Services means those Services provided by a third party as set out in Schedule 2, or agreed between the Parties from time to time.]

VAT means:

- (a) any tax imposed in compliance with the council directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112) (including value added tax imposed by VATA and legislation and regulations supplemental thereto); and
- (b) any other tax of a similar nature (including, without limitation, any value added tax, turnover tax, sales tax, use tax, goods and services tax and consumption tax), whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in (a), or elsewhere.

VAT Group means a group for the purposes of the VAT Grouping Legislation.

VAT Grouping Legislation means (a) sections 43 to 43D (inclusive) of VATA and (b) the Value Added Tax (Groups: eligibility) Order 2004 (SI 2004/1931).

VATA means the Value Added Tax Act 1994.

1.2 In this Agreement, unless otherwise specified:

- (a) the words and expressions defined in sections 1159, 1161 and 1162 of the Companies Act 2006 have the same meanings, except that a company is to be treated as a member of another company for the purposes of subsections 1159(1)(b) and (c) even if its shares in that other company are registered in the name of:
 - (i) its nominee or any other person acting on its behalf, or
 - (ii) another person by way of security over those shares;
- (b) reference to any statute, bye law, regulation, rule, delegated legislation or order is to any statute, bye law, regulation, rule, delegated legislation or order as amended, modified or replaced from time to time and to any statute, bye-law, regulation, rule, delegated legislation or order replacing or made under any of them;
- (c) references to any Clause, Paragraph or Schedule are to those contained in this Agreement and all Schedules to this Agreement are an integral part of this Agreement;
- (d) headings are for ease of reference only and shall not be taken into account in construing this Agreement;
- (e) reference to any English legal concept, term, action, remedy, method of judicial proceeding, legal document, legal status, court or official shall, in respect of any

jurisdiction other than England and Wales, be deemed to refer to what most nearly approximates to it in that jurisdiction;

- (f) reference to any English statute, bye-law, regulation, rule, delegated legislation or order shall, in relation to any assets owned, liabilities incurred, company incorporated or business carried on in any jurisdiction other than England and Wales, be deemed to include what most nearly approximates to it in that jurisdiction;
- (g) the expression **this Clause** shall unless followed by reference to a specific provision be deemed to refer to the whole Clause (not merely the sub-clause, Paragraph or other provision) in which the expression occurs;
- (h) **person** includes any individual, firm, company or other incorporated or unincorporated body;
- (i) **in writing** includes any communication made by letter or facsimile transmission;
- (j) **business day** means a day (not being a Saturday or Sunday) on which banks are open for normal banking business in London;
- (k) the expressions **hereof, herein or hereunder** shall unless followed by reference to a specific provision be deemed to refer to the whole clause (not merely the sub-clause, Paragraph or other provision) in which the expression occurs; and
- (l) any reference in this Agreement to any person, when construing any provision in relation to VAT, shall (where appropriate and unless the context otherwise requires) be construed, at any time when such person is treated as a member of a VAT Group, to include a reference to the representative member of such group at such time (so that a reference to x, for example, would read "x or the relevant representative member of the VAT Group of which x is a member (as the case may be)") (the term "representative member" to have the same meaning as for the purposes of the VAT Grouping Legislation).

2 **Outgoing Contractor Services**

- 2.1 The Outgoing Contractor agrees to provide or procure that its Subsidiaries [or a Third Party Service Provider] provide the Outgoing Contractor Services to the Incoming Contractor [Group].
- 2.2 [The Outgoing Contractor's obligation to deliver any Third Party Service is conditional upon its obtaining the consent of the relevant Third Party Service Provider. If that consent cannot reasonably be obtained, the Parties will use reasonable efforts to arrange for alternative methods of delivering any such Service.]

3 **Duration**

- 3.1 Subject to Clauses 4.4 and 9, this Agreement shall commence upon Completion and shall terminate upon the expiry of [twelve (12)] months from the date hereof, except insofar as Schedule 1, or Schedule 2 provide a different Termination Date for a particular Service.
- 3.2 The duration of this Agreement may be extended by written agreement between the Parties. [No later than [*Parties to agree period*] months from the date hereof, the Parties will discuss whether to enter into longer-term arrangements with respect to any Services.]

- 3.3 Neither the termination nor expiry of this Agreement shall affect:
- (a) the liability of any Party for breach of this Agreement;
 - (b) the obligations of any Party to make payments when due hereunder; or
 - (c) the provisions contained in Clauses 4, 5, 7, 9 and 24 and the related definitions, each of which shall survive the termination or expiration of this Agreement.

4 Pricing and Payment

- 4.1 Payment for the Services shall be payable by the Incoming Contractor [monthly] [quarterly] [yearly] on the basis set out in Schedule 3.
- 4.2 Credit Terms will be [thirty (30)] calendar days from the date of [receipt of] each invoice.
- 4.3 [The invoice for the Services performed in a particular country shall be rendered by the relevant Service Provider in that country on a separate invoice each month. Invoice amounts shall be stated in local currency and payments shall be made in such local currency within [thirty (30)] calendar days of the date of receipt of the relevant invoice.]
- 4.4 If the Parties agree to extend the Termination Date with respect to any Service, any such Service rendered shall be charged to and payable by the Incoming Contractor [at a price agreed by the Parties in writing, or if no price is agreed at costs typical for providing such Services.]

5 VAT

- 5.1 All sums or other consideration set out in this Agreement or otherwise payable or otherwise provided by the Incoming Contractor to the Outgoing Contractor pursuant to this Agreement shall be deemed to be exclusive of any VAT which is chargeable on the supply or supplies for which such sums or other consideration (or any part thereof) are the whole or part of the consideration for VAT purposes.
- 5.2 Where, pursuant to the terms of this Agreement, the Outgoing Contractor makes a supply to the Incoming Contractor for VAT purposes and VAT is or becomes chargeable on such supply, the Incoming Contractor shall pay to the Outgoing Contractor (in addition to and at the same time as any other consideration for such supply) a sum equal to the amount of such VAT and the Outgoing Contractor shall provide the Incoming Contractor with a valid VAT invoice in respect of such supply.
- 5.3 Where either party is required by the terms of this Agreement to reimburse or indemnify the other party for any cost, expense or other liability, such first party shall reimburse or indemnify such other party for the full amount of such cost, expense or other liability, including such part thereof as represents VAT, save to the extent that such other party is entitled to credit or repayment in respect of such VAT from the relevant Tax Authority.

6 Warranties

- 6.1 The Outgoing Contractor warrants that the Services performed by it [and by each of its Subsidiaries] shall be performed:
- (a) in accordance with good industry practice;

- (b) with reasonable skill and care;
- (c) by individuals qualified for the tasks to which they are assigned;
- (d) at a quality consistent with that provided prior to the date of this Agreement; and
- (e) in compliance with all Applicable Laws.

6.2 The Outgoing Contractor warrants that it will provide all co-operation, information and assistance as reasonably requested by the Incoming Contractor in relation to the Services.

6.3 The Outgoing Contractor warrants that it will obtain and maintain in force all licences, permissions, authorisations, consents and permits needed to provide the Services (or the benefit thereof) and to perform the Services in accordance with this Agreement.

6.4 Upon a written request by the Incoming Contractor, the Outgoing Contractor shall use reasonable efforts to pursue (on the Incoming Contractor's behalf) all rights under any contract to which it is a party with a Third Party Service Provider relating to any Service provided by the Third Party Service Provider to the Incoming Contractor. The Incoming Contractor shall fully indemnify the Outgoing Contractor for costs in connection with pursuing any such rights.

6.5 The Outgoing Contractor undertakes that if it experiences any shortage, interruption, delay, inadequacy or limitation in the availability of any of the Services (by reason of Force Majeure or otherwise) and is unable to fulfil all the requirements of the other Party, it shall ensure the other Party is treated no less favourably than any Subsidiary of the Party providing the Service in the allocation of such Services which remain to be performed.

7 Contract Management

7.1 Each party will at all times have a nominated representative (**Contract Manager**) to act as its primary point of contact for co-ordination of the provision or receipt of Services. Each party will notify the other party in writing within five (5) business days of any change to the identity of its Contract Manager. As at the date of this Agreement, the Incoming Contractor's Contract Manager is [insert details] and the Outgoing Contractor's Contract Manager is [insert details].

7.2 The parties will procure that the Contract Managers will meet at least once in each month and at such other intervals as reasonably requested by the Incoming Contractor to discuss the provision and receipt of the Services. The meetings will take place at the dates, times and places agreed by the Contract Managers.

7.3 Each party will ensure that its Contract Manager is available on reasonable notice during business hours to discuss the Services and this Agreement.

8 Confidentiality

8.1 The Parties and their respective employees may receive or have access to information or materials that are confidential or proprietary to the other Party. The Parties, their [Subsidiaries] and their respective employees shall access and use such information and materials only in connection with the performance of Services hereunder, and shall safeguard such confidential and proprietary information and materials against disclosure to all others, both for the duration of this Agreement and for a period of [two (2)] years thereafter.

8.2 This Clause shall not apply to any such information or material that:

- (a) was already known to such person prior to disclosure in connection herewith;
- (b) is or becomes public knowledge without disclosure by such person in connection herewith;
- (c) is lawfully acquired by such person, its agents, counsel or other advisers from a source not under any obligation to the Parties regarding disclosure of such information;
- (d) is disclosed by such Person under operation of law or with the prior consent of the Parties; or
- (e) is not identified in writing as confidential and proprietary at the time of disclosure.

8.3 The Parties will use reasonable efforts to cause any Third Party Service Provider to enter into a confidentiality agreement, containing substantially the same restrictions as are contained in Clause 8.1 of this Agreement.

9 Termination

9.1 This Agreement shall be construed as a separate and independent agreement for each and every Service provided under this Agreement. Any termination or expiration of this Agreement with respect to any Service shall not terminate this Agreement with respect to any other Service then being provided under this Agreement.

9.2 Subject to Clause 9.1 hereof, upon written notice the Incoming Contractor may terminate this Agreement relating to any Service if the Outgoing Contractor has committed a material breach of this Agreement with respect to such Service, unless within a period of thirty (30) calendar days after receipt of such notice the Outgoing Contractor remedies the breach. For the purposes of this Agreement, material breach shall include the occurrence of numerous immaterial breaches, whether they occur simultaneously or over a period of time, if the aggregate effect of such breaches is material.

9.3 The Outgoing Contractor may suspend or terminate this Agreement on and by immediate written notice to the Incoming Contractor where the Incoming Contractor, without proper justification, fails to pay any charge as and when due, and such failure continues for a period of at least thirty (30) calendar days after written notice from the Outgoing Contractor.

9.4 Upon the expiration or termination of this Agreement with respect to any Service, all rights under this Agreement to receive such Service will cease.

10 Force Majeure

10.1 Neither the Parties nor any of their Subsidiaries shall be held responsible for failure or delay in delivery of Services hereunder, nor shall the Parties or any of their Subsidiaries be held responsible for failure or delay in receiving Services hereunder, if such failure or delay is due to an event of Force Majeure. Subject to Clause 10.2, in the event of failure of or delay in the provision or acceptance of Services under this Agreement as a result of a Force Majeure, the invoice price of such Services ordered may be reduced accordingly by written notice by either Party to the other.

10.2 If the performance of this Agreement by either Party hereunder is prevented, restricted or interfered with by reason of a Force Majeure event, the Party whose performance is so affected, upon giving prompt notice to the other Party, shall be excused from such

performance to the extent of such Force Majeure event; provided however, that the Party so affected shall take all reasonable steps to avoid or remove such causes of non-performance and shall continue performance whenever such causes are removed.

11 Limitation of liability

- 11.1 [Liability under this Agreement, whether in contract, tort or otherwise, arising out of or in connection with the performance of the obligations in this Agreement shall be limited to [£** in aggregate].
- 11.2 For the avoidance of doubt, nothing in this Agreement shall exclude or limit either Party's liability for:
- (a) death or personal injury resulting from negligence;
 - (b) fraud or fraudulent misrepresentation;
 - (c) for breach of its obligations arising under Section 2 of the Supply of Goods and Services Act 1982; or
 - (d) any other matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability.

12 Successors and assigns

This Agreement shall bind and inure to the benefit of the Parties and their respective successors and permitted assigns. This Agreement shall not be assigned by either Party without the prior express written consent of the other Party.

13 Employees

- 13.1 The Outgoing Contractor agrees and undertakes that any employee it uses, appoints or seconds to fulfil its obligations to the Incoming Contractor under this Agreement is and shall for all purposes remain the employee of the Outgoing Contractor and that it is not intended that the contracts of employment of any such persons will transfer to the Incoming Contractor or any Third Party which may be substituted for the Incoming Contractor (the Substitute) on termination or expiry of this Agreement (or any part of it).
- 13.2 If, notwithstanding the above, any such employee shall be transferred by operation of law, then the Outgoing Contractor (the Transferor) shall, unless Incoming Contractor (the Transferee which expression shall include any permitted Substitute) has been in breach of any obligation owed to or in relation to that employee, indemnify and keep indemnified the Transferee (and any Substitute) against any and all loss, costs, damages or expenses, proceedings and claims arising in connection with the termination of employment of any such employee of the Transferor (including without limitation claims for redundancy, unfair and wrongful dismissal and any additional costs in contracting with the Substitute).
- 13.3 Before terminating the employment of any such employee who has transferred to the Incoming Contractor contrary to the Parties' intentions in Clause 13.1 above, the Incoming Contractor must give the Outgoing Contractor a reasonable opportunity to re-employ that employee.

13.4 This indemnity will survive termination or expiry of this Agreement only in relation to terminations of employment which take place within one (1) month of the termination or expiry of this Agreement.

13.5 In this Clause:

claim includes a claim by any person (including a trade union, a governmental or statutory or local authority or commission).

liability and **liabilities** include any award, compensation, damages, fine, loss, order, payment made by way of settlement, costs and expenses (including legal expenses on an indemnity basis) properly incurred in connection with a claim and also includes the costs and expenses of any investigation by the Equality and Human Rights Commission and of implementing any requirements which may arise from any such investigation.

13.6 If the Transferee becomes aware of any matter which might give rise to a claim for an indemnity under this Clause from the Transferor, the following provisions shall apply:

- (a) The Transferee shall immediately give written notice to the Transferor of the matter in respect of which the indemnity is being claimed (stating in reasonable detail the nature of the matter and, so far as practicable, the amount claimed) and shall consult with the Transferor with respect to the matter.
- (b) The Transferee shall:
 - (i) take such action and institute such proceedings, and give such information and assistance, as the Transferor or its insurers may reasonably request to dispute, resist, appeal, compromise, defend, remedy or mitigate the matter and enforce against any person (other than the Transferor) the rights of the Transferee or its insurers in relation to the matter;
 - (ii) in connection with any proceedings related to the matter (other than against the Transferor) use professional advisers nominated by the Transferor or its insurers and, if the Transferor or its insurers so request, allow the Transferor or its insurers the exclusive conduct of the proceedings in each case on the basis that the Transferor shall fully indemnify the Transferee for all costs incurred as a result of any request or nomination by the Transferor or its insurers; and
 - (iii) not admit liability in respect of or settle the matter without the prior written consent of the Transferor, such consent not to be unreasonably withheld or delayed.
- (c) If the Transferor has conduct of any litigation and negotiations in connection with a claim, the Transferor shall promptly take all proper action to deal with the claim so as not, by any act or omission in connection with the claim, to cause the Transferee to be in breach of its obligations to its current or past employees or to cause the Transferee's business interests to be materially prejudiced.

14 Entire agreement

14.1 This Agreement and the documents referred to herein:

- (a) constitute the entire agreement and understanding between the Parties with respect to the subject matter of this Agreement; and
- (b) (in relation to such subject matter) supersede all prior discussions, understandings and agreements between the Parties and their agents (or any of them) and all prior representations and expressions of opinion by any Party (or its agent) to the other Party (or its agent).

14.2 Each of the Parties acknowledges that it is not relying on any statements, warranties or representations given or made by either of them in relation to the subject matter hereof, save those expressly set out in this Agreement and the other documents referred to above, and that it shall have no rights or remedies with respect to such subject matter otherwise than under this Agreement (and the documents executed at the same time as it or referred to in it) save to the extent that they arise out of the fraud or fraudulent misrepresentation of any party.

15 Survival

The termination or expiration of this Agreement, for whatever reason, shall not affect any of the provisions of this Agreement which are expressly or by implication to come into or continue in force after such termination or expiration.

16 Variation

No variation of this Agreement shall be effective unless made in writing and signed by or on behalf of each of the Parties.

17 Severance

If at any time any provision of this Agreement is or becomes invalid or illegal in any respect, such provision shall be deemed to be severed from this Agreement but the validity, legality and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby.

18 Waivers

A failure by any party to exercise and any delay, forbearance or indulgence by any party in exercising any right, power or remedy under this Agreement shall not operate as a waiver of that right, power or remedy or preclude its exercise at any subsequent time or on any subsequent occasion. The single or partial exercise of any right, power or remedy shall not preclude any other or further exercise of that right, power or remedy. No custom or practice of the Parties at variance with the terms of this Agreement shall constitute a waiver of the rights of any party under this Agreement. The rights, powers and not exclusive of any rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law.

19 Costs

The Parties shall pay their own costs and expenses in relation to the preparation, execution and carrying into effect of this Agreement.

20 Third party rights

The Parties do not intend that any term of this Agreement shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party to this Agreement.

21 No partnership or agency

Nothing in this Agreement and no action taken by the parties in connection with it will create a partnership or joint venture between the parties or give either party authority to act as the agent of or in the name of or on behalf of the other party or to bind the other party or to hold itself out as being entitled to do so.

22 Independent contractors

Each party agrees that it is an independent contractor and is entering into this Agreement as principal and not as agent for or for the benefit of any other person.

23 Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, and which together shall constitute one and the same Agreement. Unless otherwise provided in this Agreement, this Agreement shall become effective and be dated (and each counterpart shall be dated) on the date on which the last counterpart of this Agreement has been signed and delivered by the last of the parties to execute this Agreement.

24 Notices

24.1 Any notice required to be given under this Agreement shall be in writing signed by (or by some person duly authorised by) the Party giving it and may be served by delivering it personally or by confirmed facsimile transmission with a copy by overnight delivery, receipt required, and shall be deemed to have been given when so delivered one (1) business day after the date on which the same was sent by facsimile and overnight delivery to the addresses in Clause 24.2 below (unless otherwise specified by a Party in a written notice to the other Parties).

24.2 Any notice required to be given under this Agreement shall be sent to:

[The Outgoing Contractor] at: **

Facsimile No: **

For the attention of: **

With copies to: **

Facsimile No: **

For the attention of: **

[The Incoming Contractor] at: **

Facsimile No: **

For the attention of: **

With copies to: **

Facsimile No: **

For the attention of: **

25 Dispute Resolution

25.1 Any dispute arising under this Agreement shall be referred to ** as a representative of the Incoming Contractor and to ** as a representative of the Outgoing Contractor for resolution (or such other successor representative identified by the appropriate Party).

25.2 If the persons referred to in Clause 25.1 are unable to achieve an acceptable resolution within thirty (30) calendar days of the referral, either Party may demand that the matter be referred to the [insert role] of the Outgoing Contractor and the [insert role] of the Incoming Contractor for resolution.

25.3 If the matter cannot be resolved within thirty (30) calendar days after the referral to the respective representatives referred to in Clause 25.2, the matter in question shall be submitted to binding arbitration pursuant to the rules of the International Chamber of Commerce using three arbitrators, one appointed by each of the Parties and the third appointed jointly by such arbitrators. The seat of the arbitration shall be London.

26 Governing law

English law governs:

- (a) this Agreement and its interpretation; and
- (b) any non-contractual obligations arising from or connected with this Agreement.

As witness the hands of the duly authorised representatives of the Parties hereto the day and year full above written.

Signed by ** for **the Outgoing Contractor**)

Signed by ** for **the Incoming Contractor**)

Schedule 1 – Outgoing Contractor Services

Ref	Function And Service Area	No. Of Months Service Required	Estimated Costs	Further Information

Schedule 2 – Third Party Services

Ref	Function And Service Area	No. Of Months Service Required	Estimated Costs	Further Information

Schedule 3 – Payment

Asset Transfer Agreement

Asset Transfer Agreement

for the purchase and transfer of certain of the assets of the Outgoing Contractor used in connection with the provision of FMSP services

Dated

□

(the Outgoing Contractor)

□

(the Incoming Contractor)

[DN: This draft Asset Transfer Agreement is to be used upon expiry or termination of the FMSP Contract, or where the Authority exercises its option to purchase (or procure the purchase of) the Exclusive Assets, or where the Outgoing Contractor agrees to make assets available for purchase. This draft Agreement envisages a limited number of assets and/or contracts to be purchased and transferred from the Contractor to the incoming contractor. The provisions will need to be reviewed prior to the transfer.

The FMSP Contract contains provisions for the transfer of records, registers, IP and sub-contracts from the Outgoing Contractor to the Authority so such items are not dealt with in this draft Asset Transfer Agreement.]

Asset Transfer Agreement

Dated

Between

- (1) ** (the **Outgoing Contractor**) [a company incorporated in England and Wales (registered number **) whose registered office is at **] [a corporation organised and existing under the laws of ** whose principal place of business is at ** ; and
- (2) ** (the **Incoming Contractor**) [a company incorporated in England and Wales (registered number **) whose registered office is at **] [a corporation organised and existing under the laws of ** whose principal place of business is at ** .

Recitals

- (A) The Outgoing Contractor provides [soft facilities management] and other related services (**Services**) at the Site, to the Authority, pursuant to the FMSP Contract.
- (B) The FMSP Contract contains certain provisions related to expiry and exit to enable the successful transition of services to an incoming contractor, including the provision of information, sale of goods and materials, and transfer of contracts.
- (C) The Authority [has conducted a competition in relation to the continued provision of the services refer to in Recital A and the Incoming Contractor has been successful in that competition] OR [issued a notice to the Outgoing Contractor pursuant to the FMSP Contract exercising its right to purchase the Assets].
- (D) [As result of its success in the competition referred to in Recital C, the Incoming Contractor will be responsible for providing the services referred to in Recital A from [insert date]].
- (E) The Outgoing Contractor has accordingly agreed to sell and transfer the Assets (and related items) to the Incoming Contractor on and subject to the provisions of this Agreement.

It is agreed

1 Definitions and interpretation

1.1 Definitions

In this Agreement the following definitions shall apply.

Assets means all assets and rights used by the Outgoing Contractor to provide the Services in accordance with the FMSP Contract (excluding those provided by or belonging to the Authority) agreed to be sold and purchased under this Agreement as described in Clause 2.1.

Authority means The Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland.

Business Day means any day excluding Saturdays, Sundays and public and statutory holidays in England and Scotland commencing at midnight and ending at the end of 23:00 hours and fifty-nine (59) minutes.

Claims means all claims and rights of the Outgoing Contractor to claim under any warranty, guarantee, indemnity, representation or assurance express or implied given by any third party, or under any policy of insurance taken out by the Outgoing Contractor, or by law, in relation to any of the Assets.

Completion means completion of the obligations of the parties required by Clause 5 and Schedule 1.

Completion Date means the date of Completion.

Conditions means the conditions set out in Clause 4 and **Condition** means any of them.

Consumables means all incidental assets used exclusively or primarily in connection with the Services and which are not Stock (including but not limited to fuel, office supplies, packaging, labelling, material, spares and spare parts) [including without limitation that described] [and which is listed] in [Schedule 5].]

Contracts means:

- (a) the Lease Contracts; [and]
- (b) [the Sub-Contracts].

Encumbrance includes any mortgage, charge, pledge, hypothecation, lien, assignment by way of security, title retention, option, right to acquire, right of pre-emption, right of set off, counterclaim, trust arrangement or any other security, preferential right, equity or restriction, and any agreement to give or create any of the foregoing.

FMSP Contract means the contract entitled FMSP/010 entered into [**] between the Authority and the Outgoing Contractor.

Independent Valuer means the independent valuer nominated pursuant to and in accordance with Clause 12.1

[Leased Assets means those assets which form the subject matter of the Lease Contracts.]

[Lease Contract(s) means all hire, lease, hire purchase, conditional sale and other like agreement(s) current at Completion under which the Outgoing Contractor is entitled to use any Assets, or other assets [including without limitation, those] [and which are] identified and listed in Schedule 34Schedule 3.]

[Longstop Date means ** or such other date as the parties may agree.]

Net Book Value means the net book value of the relevant Outgoing Contractor's assets calculated in accordance with the usual depreciation policy of the Outgoing Contractor as at the effective date of the FMSP Contract.

New FMSP Contract means the contract between the Authority and the Incoming Contractor entered into on or around the date of this Agreement.

Plant and Equipment means the plant, machinery, furniture, equipment, tools, [vehicles], fixtures and fittings and other chattels which at Completion are owned or used by the Outgoing Contractor exclusively or primarily in connection with the Services [including, without limitation, those listed] [and which are listed] in [Schedule 4].

Price means the price paid for the Assets under Clause Schedule 3.

Records means all documents (including maintenance records, warranties, guarantees, user guides and manuals) held by the Outgoing Contractor [that will not be transferred to the Authority (or Incoming Contractor) under the FMSP Contract] in respect of the Assets [and the Leased Assets].

Services has the meaning given to it in Recital A.

Site means Her Majesty's Naval Base Portsmouth.

Stock means the stock of raw materials, finished goods and other stock in trade which at Completion are owned or used and which the Outgoing Contractor has agreed to purchase in connection with the Services [including without limitation that described] [and which is listed] in [Schedule 5].]

Sub-Contracts means any sub-contracts identified by the Authority or as agreed between the Outgoing Contractor and the Authority and listed in Schedule 3.

Tax Authority means any government, state or municipality or any local, state, federal or other authority, body or official anywhere in the world exercising a fiscal, revenue, customs or excise function (including without limitation, HM Revenue and Customs).

Termination Date means the date that the FMSP Contract terminates either through expiry or the early termination of the FMSP Contract.

Transfer Time means [** a.m./p.m.] on the Completion Date.

Transaction means the arrangements contemplated by this Agreement and ancillary documents.

Value Added Tax or **VAT** means value added tax charged under the Value Added Tax Act 1994 or under any primary or secondary legislation promulgated by the European Union or any official body or agency thereof.

Warranties means the representations and warranties set out in Schedule 34Schedule 2.

1.2 Interpretation

In this Agreement, unless otherwise specified:

- (a) the list of contents and headings are for convenience only and should be ignored in construing this Agreement
- (b) references to **Clauses and Schedules** are references to the clauses of, and schedules to, this Agreement;
- (c) references to the singular include the plural and references to the plural include the singular;
- (d) references to a **person** or **people** includes references to an individual, firm, partnership, joint venture, company, corporation, body corporate, unincorporated body of people or any state or any agency of a state;
- (e) reference to a **party** or **parties** means the parties to this Agreement;
- (f) the words **including** and **in particular** are to be construed as being by way of illustration or emphasis only and does not limit the generality of any preceding words;
- (g) references to statutes or other legislation includes all re-enactments, modifications and amendments;
- (h) **in writing** includes any communication made by letter or facsimile transmission; and
- (i) a document is in the **agreed form** if it is in the form of a draft agreed between and initialled by or on behalf of the parties on or before the date of this Agreement.

2 Sale and purchase

2.1 Sale and purchase

The Outgoing Contractor shall sell, or procure the sale of, with full title guarantee and free from any Encumbrance, and the Incoming Contractor shall purchase the assets listed below as at and with effect from the Transfer Time:

- (a) the Plant and Equipment;
- (b) the Stock;
- (c) the Consumables.

2.2 Risk

Risk in the Assets shall pass to the Incoming Contractor at the Transfer Time.

3 Price

3.1 Amount and apportionment

3.1.1 In accordance with FMSP Contract, the Price shall be calculated as the lesser of:

- (a) the market value of the Assets at the Termination Date; and
- (b) the Net Book Value of the Assets at the Termination Date.

3.1.2 [If the Price is not agreed between the Parties seven (7) days prior to Completion, either party may refer the valuation of Assets and the Price to an Independent Valuer in accordance with Clause 12 and Schedule 6.]¹⁴

3.1.3 [The Price is £ [**] and shall be apportioned as follows:]

(a)	the Plant and Equipment	-	£ **	;
(b)	the Stock	-	£ **	;
(c)	the Consumables		£ **	;

3.2 VAT

- (a) All sums or other consideration set out in this Agreement or otherwise payable or otherwise provided by the Incoming Contractor to the Outgoing Contractor pursuant to this Agreement shall be deemed to be exclusive of any VAT which is chargeable on the supply or supplies for which such sums or other consideration (or any part thereof) are the whole or part of the consideration for VAT purposes.
- (b) Where, pursuant to the terms of this Agreement, the Outgoing Contractor makes a supply to the Incoming Contractor for VAT purposes and VAT is or becomes chargeable on such supply, the Incoming Contractor shall pay to the Outgoing Contractor (in addition to and at the same time as any other consideration for such supply) a sum equal to the amount of such VAT and the Outgoing Contractor shall provide the Incoming Contractor with a valid VAT invoice in respect of such supply.
- (c) Where either party is required by the terms of this Agreement to reimburse or indemnify the other party for any cost, expense or other liability, such first party shall reimburse or indemnify such other party for the full amount of such cost, expense or other liability, including such part thereof as represents VAT, save to the extent that such other party is entitled to credit or repayment in respect of such VAT from the relevant Tax Authority.

4 Conditions

4.1 Completion conditional

Completion is subject to and conditional upon the New FMSP Contract becoming unconditional in accordance with its terms.

4.2 Satisfaction or waiver of Conditions

- (a) The Outgoing Contractor and the Incoming Contractor shall each use all reasonable endeavours to procure the satisfaction of the Conditions set out in Clause 4.1 and will notify the other immediately upon their satisfaction.

¹⁴ **Note:** The Price is intended to follow the FMSP principles of the lower of market value and Net Book Value. The Authority would expect the price for the Plant and Equipment to be agreed before signing. If this, or other elements of the Price, are not agreed by signing, the provisions for independent valuation may be used.

- (b) A party shall notify the other immediately on becoming aware, of anything which will or may prevent any Condition from being satisfied by the Longstop Date.

5 Completion

5.1 Time and place¹⁵

Completion shall take place at the [Site] [before [^{**} a.m./ p.m.] on the day notified to the parties by the Authority as the day immediately before the day on which the services under the New FMSP Contract are to commence [in full].

5.2 Obligations

At Completion the Outgoing Contractor shall do or procure those things listed in Paragraph 1 of Schedule 1, and the Incoming Contractor shall, subject to and following satisfaction by the Outgoing Contractor of the Outgoing Contractor's obligations, do or procure those things listed in Paragraph 2 of Schedule 1.

5.3 Failure to complete

If the Outgoing Contractor does not comply with its obligations under Clause 5.2 by [^{**} a.m./p.m.] on the date on which Completion is due to take place the Incoming Contractor may:

- (a) defer Completion until such time as the Incoming Contractor shall specify (and the provisions of this Clause 5 shall apply to Completion as so deferred); or
- (b) proceed to Completion as far as practicable (without limiting its rights under this Agreement).

6 Transfer of contracts¹⁶

6.1 Lease Contracts to be assigned or novated

- 6.1.1 The Outgoing Contractor shall with effect from the Transfer Time assign the benefit of or novate in favour of the Incoming Contractor any Lease Contract as agreed with the Incoming Contractor or as required by the Authority, identified and listed in Schedule 3.
- 6.1.2 The Outgoing Contractor shall use all reasonable endeavours to procure that any such sub-contractor co-operates with the Incoming Contractor with a view to continuing to provide the relevant sub-contracted Services notwithstanding termination or expiry.
- 6.1.3 The parties shall execute such documents and provide such other assistance as reasonably requires to give effect to this Clause 6.1. The Outgoing Contractor shall hold such Lease Contract on trust for the Incoming Contractor until such time as the relevant Lease Contract has been assigned or transferred.

¹⁵ DN: Completion Arrangements to be agreed.

¹⁶ DN: Any Contracts to transfer should be identified – it is expected that there will be no, or nominal, consideration for the transfer.

6.1.4 The Outgoing Contractor shall indemnify the Incoming Contractor against all losses, liabilities and costs arising out of any claims made by a counterparty to a transferring Lease Contract both:

- (a) in relation to matters arising prior to the date of novation or date of assignment; and
- (b) in relation to any matters arising after the date of novation or date of assignment and which arise as a result of any act, neglect or default of the Outgoing Contractor.

6.2 [Sub-Contracts]¹⁷

6.2.1 The Outgoing Contractor shall and with effect from Transfer Time, assign the benefit of or novate in favour of the Incoming Contractor any Sub-Contract:

- (a) under which a material part of the Services to be transferred are being performed by a sub-contractor; and/or
- (b) which is necessary (in the reasonable opinion of the Authority) to enable the Authority or any Incoming Contractor to perform the Services or services substantially similar to the Services.

6.2.2 The Outgoing Contractor shall use all reasonable endeavours to procure that any such sub-contractor co-operates with the Incoming Contractor with a view to continuing to provide the relevant sub-contracted Services notwithstanding termination or expiry.

6.2.3 The parties shall execute such documents and provide such other assistance as reasonably requires to give effect to this Clause 6.2. The Outgoing Contractor shall hold such Sub-Contracts on trust for the Incoming Contractor until such time as the relevant Sub-Contract has been transferred.

6.2.4 The Outgoing Contractor shall indemnify the Incoming Contractor against all losses, liabilities and costs arising out of any claims made by a counterparty to a transferring Sub-Contract both:

- (a) in relation to matters arising prior to the date of assignment or novation; and
- (b) in relation to any matters arising after the date of assignment or novation and which arise as a result of any act, neglect or default of the Outgoing Contractor.

7 Representations and Warranties

7.1 Warranties

The Outgoing Contractor represents and warrants to the Incoming Contractor that each of the statements in Schedule 2 is true, accurate and not misleading.

7.2 Repetition of the Warranties

The Warranties are given at the date of this Agreement and shall be deemed to be repeated immediately before Completion by reference to the circumstances subsisting at that time.

¹⁷ DN: This follows the FMSP Contract provisions and is only to be included if relevant Contracts are identified.

7.3 Survival of Warranties

Subject as specifically otherwise provided in this Agreement, the Warranties shall remain in full force and effect notwithstanding Completion.

7.4 Incoming Contractor's reliance

The Outgoing Contractor acknowledges and accepts that the Incoming Contractor is entering into this Agreement in reliance upon the Warranties.

7.5 Incoming Contractor's knowledge

The Incoming Contractor shall be entitled to claim that any of the Warranties is or was untrue, inaccurate or misleading even if the Incoming Contractor or any professional adviser of the Incoming Contractor knew or could have discovered on or before Completion that the Warranty in question was untrue, inaccurate or misleading.

7.6 Warranties to be independent

Each of the Warranties shall be separate and independent and shall not be limited by reference to any other Warranty or any other provision of this Agreement.

7.7 Notification by Outgoing Contractor

The Outgoing Contractor undertakes both before and after Completion to notify the Incoming Contractor in writing fully and promptly of anything of which the Outgoing Contractor is or becomes aware which renders or may render any of the Warranties untrue, inaccurate or misleading.

8 Limitation on Warranty liability

8.1 General limitation

The Outgoing Contractor shall have no liability in respect of a claim under the Warranties:

- (a) unless notice in writing of the claim is given by or on behalf of the Incoming Contractor to the Outgoing Contractor stating in reasonable detail the nature of the claim and, if practicable, the amount claimed on or before the second (2nd) anniversary of Completion.
- (b) if proceedings in respect of a claim, notified in accordance with Paragraph (a) above, have not been issued and served on the Outgoing Contractor within:
 - (i) six (6) months after the relevant date referred to in Paragraph (a); or
 - (ii) in the case of a claim which has arisen by reason of some liability which is contingent only or not otherwise capable of being quantified, six (6) months from the date on which the Incoming Contractor becomes aware that the liability has become capable of being quantified (if later); and
- (c) unless the liability in respect of the claim when aggregated with the liability in respect of all claims against the Outgoing Contractor under the Warranties exceeds [^{**}

]18, in which case the Outgoing Contractor shall be liable for the whole amount and not merely the excess.

8.2 Maximum claim limit

The aggregate liability of the Outgoing Contractor under the Warranties shall not exceed [**¹⁹] plus costs and fees.

8.3 Exceptions to limitations

Clauses 8.1 and 8.2 shall not apply to any claim:

- (a) in respect of the Warranties set out in Paragraph 3.1 of Schedule 34Schedule 2 (*Ownership of Assets*); or
- (b) resulting from fraud or from the Outgoing Contractor (or any person(s) on behalf of the Outgoing Contractor) making any statement, promise or forecast known by that person or persons to be misleading, false or deceptive, or dishonestly concealing any material fact or recklessly making (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive.

9 Management of the Services before Completion

9.1 Outgoing Contractor's obligations

From the date of this Agreement until Completion, the Outgoing Contractor shall not do and, so far as the Outgoing Contractor is able, shall not allow or procure any act or omission which would render any of the Warranties untrue, inaccurate or misleading if repeated at any time before Completion by reference to the circumstances then subsisting.

9.2 Notification by Seller

The Outgoing Contractor undertakes to notify the Incoming Contractor in writing fully and promptly upon becoming aware of anything which constitutes or may constitute a breach of the Outgoing Contractor's obligations under Clause 9.1.

10 Action after Completion

10.1 Further assurance

The Outgoing Contractor shall after Completion from time to time at the expense of the Incoming Contractor execute and do (or procure the execution and doing of) all such deeds, documents, acts and things as the Incoming Contractor shall reasonably require on or after Completion for carrying into effect the terms of this Agreement.

¹⁸ DN: to be agreed

¹⁹ DN: to be agreed

11 Books and Records

11.1 Delivery of Records

The Outgoing Contractor shall deliver to the Incoming Contractor all the Records on Completion in accordance with Schedule 1.

12 Independent Valuer

12.1 Reference to Independent Valuer

12.1.1 If the Outgoing Contractor and the Incoming Contractor do not agree on the Price or any matter referred to in Schedule 6 within the periods stated, the matter in dispute shall be referred at the request of either the Outgoing Contractor or the Incoming Contractor to the Independent Valuer.

12.1.2 The Independent Valuer shall be:

- (a) a person or an independent firm of chartered surveyors appointed jointly by the parties within seven (7) days of the request by either the Outgoing Contractor or the Incoming Contractor; or
- (b) failing appointment in accordance with sub-clause (a), the person or independent firm of chartered surveyors nominated by the President for the time being the Royal Institution of Chartered Surveyors in England and Wales on the application of either the Outgoing Contractor or the Incoming Contractor.

12.2 Provision of information etc.

Each of the parties shall on request promptly supply to the Independent Valuer all such assistance, documents and information as he may require for the purposes of the reference; and both parties shall use all reasonable endeavours to procure the prompt determination of such reference.

12.3 Capacity of Independent Valuer

The Independent Valuer shall be deemed to act as an expert and not as an arbitrator and his determination shall, in the absence of manifest error, be conclusive and binding upon the parties.

12.4 Costs and expenses

The fees and expenses of the Independent Valuer shall be borne by the Outgoing Contractor and the Incoming Contractor in equal shares unless the Independent Valuer otherwise determines.

13 General

13.1 Confidentiality

13.1.1 The parties and their respective employees may receive or have access to information or materials that are confidential or proprietary to the other party. The parties and their respective employees shall access and use such information and materials only in connection with the performance of Services hereunder, and shall safeguard such confidential and

proprietary information and materials against disclosure to all others, both for the duration of this Agreement and for a period of [two (2)] years thereafter.

- (a) This Clause shall not apply to any such information or material that:
- (A) was already known to such person prior to disclosure in connection herewith;
 - (B) is or becomes public knowledge without disclosure by such person in connection herewith;
 - (C) is lawfully acquired by such person, its agents, counsel or other advisers from a source not under any obligation to the parties regarding disclosure of such information;
 - (D) is disclosed by such person under operation of law or with the prior consent of the parties; or
 - (E) is not identified in writing as confidential and proprietary at the time of disclosure.

13.2 Continuing effect

13.2.1 This Agreement remains in force after Completion for any matters, agreements or conditions which have not been done, observed or performed before Completion.

13.2.2 All representations, warranties, indemnities, undertakings and obligations of the parties (except for any obligations fully performed on Completion) continue in force after Completion.

13.3 Costs

Except as provided otherwise in this Agreement, each party shall be responsible for its own costs and expenses in relation to the negotiation, preparation, execution and implementation of this Agreement and other ancillary documents.

13.4 No deduction

All sums payable to the Incoming Contractor pursuant to this Agreement shall be paid without deduction, withholding, set off or counterclaim.

13.5 Assignment

Neither party may assign, hold in trust or otherwise transfer its rights and benefits under this Agreement.

13.6 Entire agreement

This Agreement and any parties documents referred to in this Agreement sets out the entire agreement between the parties and supersedes all previous agreements relating to the sale and purchase of the Assets.

13.7 Changing this Agreement

No party may amend or change this Agreement without the written consent of the other party.

13.8 Third party rights

The parties do not intend that any term of this Agreement shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Agreement.

13.9 Time of essence

Time is of the essence of this Agreement.

13.10 Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, and which together shall constitute one and the same Agreement.

13.11 Notices

(a) Any notice required to be given under this Agreement shall be in writing signed by (or by some person duly authorised by) the party giving it and may be served by delivering it personally or by confirmed facsimile transmission with a copy by overnight delivery, receipt required, and shall be deemed to have been given when so delivered one (1) Business Day after the date on which the same was sent by facsimile and overnight delivery to the addresses in Clause 13.11(b) below (unless otherwise specified by a party in a written notice to the other parties).

(b) Any notice required to be given under this Agreement shall be sent to:

[The Outgoing Contractor] at: **

Facsimile No: **

For the attention of: **

With copies to: **

Facsimile No: **

For the attention of: **

[The Incoming Contractor] at: **

Facsimile No: **

For the attention of: **

With copies to: **

Facsimile No: **

For the attention of: **

(a) Any notice or communication shall be deemed to have been received:

- (i) in the case of a notice given by hand, on the day of actual delivery; and
- (ii) if posted, on the second (2nd) Business Day following the day it was posted by first class mail postage prepaid,
- (iii) if sent by fax, with a confirmed receipt of transmission from the receiving machine, on the day it was transmitted;

on condition that a notice given but received on a day which is not a Business Day or after normal business hours is deemed to have been received on the next Business Day.

14 Governing Law

English law governs:

- (a) this Agreement and its interpretation; and
- (b) any non-contractual obligations arising from or connected with this Agreement.

Signed by the parties or their duly authorised representatives

Schedule 1– Completion Arrangements

1 Outgoing Contractor's obligations at Completion

1.1 Transfer of Assets capable of delivery:

The Outgoing Contractor shall deliver (at their then current location) all the Assets which are capable of transfer by delivery with the intent that legal and beneficial ownership of those Assets shall pass on delivery.

1.2 Transfer of other Assets:

The Outgoing Contractor shall deliver to the Incoming Contractor or such person as the Incoming Contractor may nominate:

- (a) the originals of the Contracts;
- (b) duly executed approvals, consents or agreements to the assignment or novation of the following Contracts:
- (c) [**];
- (d) the Records required to be delivered under Clause 11.1 together with any VAT records required to be delivered on Completion;
- (e) all documents of title and registration documents (and guaranty documents, warranties, indemnities, and insurances) relating to the Plant and Equipment, the Leased Assets, the Stock and the Consumables;

- (f) duly executed releases or certificates of non-crystallisation as required by the Incoming Contractor in respect of all Encumbrances over the Assets; and
- (g) [such duly executed conveyances, transfers and assignments as the Incoming Contractor may reasonably require to vest in the Incoming Contractor on Completion the full title and benefit to and of the other assets and rights hereby agreed to be sold.]

1.3 Outgoing Contractor corporate action:

The Outgoing Contractor shall deliver to the Incoming Contractor, or such person as the Incoming Contractor may nominate, a copy (certified as correct by the secretary of the Outgoing Contractor) of a minute of the board of directors of the Outgoing Contractor approving the Transaction contemplated by this Agreement and authorising the signature, execution and completion (as appropriate), of this Agreement and any documents ancillary to it.

2 Incoming Contractor's obligations at Completion

2.1 Price:

The Incoming Contractor shall pay the Price to the Outgoing Contractor by telegraphic transfer.

Schedule 2 - Representations and warranties

1 Outgoing Contractor

1.1 Authority and capacity

The Outgoing Contractor has full power and authority, without requiring or obtaining the consent of its shareholders or any other person, authority or body, to enter into and perform its obligations under this Agreement and any other document to be executed by it pursuant to or in connection with this Agreement.

1.2 Books and records

1.2.1 The Records are up to date and have been maintained on a proper and consistent basis, and contain all material information.

1.2.2 The Records are recorded, stored, maintained or operated or otherwise held by the Outgoing Contractor and are not wholly or partly dependent on any means which are not under the exclusive ownership and direct control of the Outgoing Contractor.

1.3 Documents

All title deeds and documents, which are required to evidence the Outgoing Contractor's ownership of or rights over all the Assets, are in its exclusive possession or control and are properly stamped and free from any Encumbrance.

1.4 Disclosure

The Outgoing Contractor:

- (a) has disclosed to the Incoming Contractor all material facts, matters and information which may reasonably be required by a buyer to enable it to own and properly operate and use the Assets, and to perform the Services as they are intended to be performed; and
- (b) confirms to the Incoming Contractor that, other than those Assets identified in this Agreement, the Outgoing Contractor does not own any assets used exclusively or primarily in the performance of the Services, which the Incoming Contractor would need in order to properly perform any of the Services or replacement services.

2 Trading and contractual matters

2.1 Copies of Contracts

Complete copies of the Contracts listed in Schedule 3 are [attached to Annex A]²⁰.

2.2 Validity of Contracts and compliance

2.2.1 Each of the Contracts is valid, binding and enforceable and has been complied with by all the parties to it. There are no events or circumstances likely to give rise to the termination,

²⁰ DN: To add Annex if Contracts are to transfer.

rescission, avoidance or repudiation of any of the Contracts and no notice of termination or of intention to terminate has been given or received in respect of any of them.

2.3 Assignment of Contracts

Each of the Contracts is capable of being assigned by the Outgoing Contractor to the Incoming Contractor without the consent of the other parties or parties to it.

3 Assets

3.1 Ownership and possession of Plant and Equipment

- (a) Each item of Plant and Equipment (that is not a Leased Asset) is:
- (i) legally and beneficially owned solely by the Outgoing Contractor;
 - (ii) free from any Encumbrance;
 - (iii) not subject to or to any factoring, hire-purchase, conditional sale or credit sale, leasing or hiring agreement; and
 - (iv) where capable of possession, in the possession of the Outgoing Contractor.

3.2 [Leased Assets

Each Leased Asset is:

- (a) free from any Encumbrance;
- (b) not subject to or to any factoring, hire-purchase, conditional sale or credit sale, leasing or hiring agreement (other than the relevant Lease Contract); and
- (c) in the possession of the Outgoing Contractor.]

3.3 Condition

All Plant and Equipment, and Leased Assets:

- (a) are in good repair and working order;
- (b) have been regularly and properly maintained in accordance with appropriate technical specifications, health and safety regulations and the terms and conditions of any applicable agreement, and so as to preserve any manufacturer's warranty;
- (c) comply with all relevant health and safety regulations and codes of practice; and
- (d) are not dangerous, obsolete or in need of renewal or replacement.

3.4 Stock and Consumables

- 3.4.1 The Stock and Consumables are legally and beneficially owned solely by the Outgoing Contractor, in good condition, meet all relevant statutory, regulatory and industry accepted standards or contractual specifications, and are either:

- (a) capable of being sold in the ordinary course of business without discount, rebate or allowance; or
- (b) capable of being used in the ordinary course business for the purpose for which it was purchased or made.

3.4.2 None of the Stock or Consumables are obsolete, slow moving or out of date, fashion or demand or likely to realise less than its book value. No item of Stock or Consumables is within [one (1) month] of its stated expiry date.

3.4.3 No item of Stock or Consumables is held at a level which is excessive or inappropriate having regard to the Services.

4 No Claims

There are no existing Claims.

5 Information

5.1 All information contained in or annexed to this Agreement and all other written information made available by or on behalf of the Outgoing Contractor to the Incoming Contractor or its agents, employees or professional advisers in the course of any investigation or negotiation leading to this Agreement was when given and remains true and accurate and not misleading.

5.2 There is no fact, matter or circumstance known to the Outgoing Contractor and not disclosed in writing to the Incoming Contractor or any of its advisers which renders any of that information untrue, inaccurate or misleading or which if disclosed might influence the decision of a reasonable buyer to purchase the Assets on the terms contained in this Agreement.

Schedule 3 – Contracts

Date of Agreement	Parties	Termination date	Subject matter	Type of Contract (i.e. Lease Contract or Sub-Contract)	To be Novated [Y/N]	To be Assigned [Y/N]

Schedule 4 – Plant and Equipment

No. in plant register	Description	Serial or other identification no.
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Schedule 5 – Stock and Consumables

Description	Serial of other identification no.	Quantity
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Schedule 6 – Valuation of Assets

1 Stock and Consumables²¹

- 1.1 The Outgoing Contractor and the Incoming Contractor shall carry out and complete an inspection and valuation of the Stock and Consumables on Completion.
- 1.2 For the purposes of that valuation the Stock and Consumables shall be valued at the lower of (i) market value and (ii) the residual value (being the value remaining in the books of the Outgoing Contractor after depreciation or other costs which may have been recovered from the Authority) at Completion [after making due allowance for damaged obsolete and slow moving items].
- 1.3 The Outgoing Contractor and the Incoming Contractor shall, as soon as reasonably possible following the valuation, agree the value of the Stock and Consumables.
- 1.4 If the value of the Stock and Consumables is not agreed by the Outgoing Contractor and the Incoming Contractor within seven (7) days of Completion or if any other dispute in relation to the valuation shall arise, the value or dispute shall be determined by the Independent Valuer (upon the application of either party) in accordance with Clause 12.

2 Plant and Equipment²²

- 2.1 If any of the items of Plant and Equipment is damaged or breaks down before Completion then at the Incoming Contractor's option either:
- (a) that item shall be excluded from the sale and retained by the Outgoing Contractor at Completion, in which case the Price shall be reduced by the amount specifically attributed to that item in Clause 3.1 or if no amount is so attributed, by a fair proportion of the total price attributed to the relevant category of items under this agreement; or
 - (b) that item shall be purchased at Completion, in which case the Incoming Contractor may require the Outgoing Contractor to repair that item at Outgoing Contractor's expense and, in default of the Outgoing Contractor doing so before Completion, the Incoming Contractor may itself repair the item after Completion at the Outgoing Contractor's expense in which case:
 - (c) the Incoming Contractor may deduct from the Price the cost of repair of the item, to the extent ascertained before Completion;
 - (d) if the actual cost is not ascertained at Completion, the Incoming Contractor may deduct from the Consideration its reasonable estimate of the cost of repair and within [seven (7)] days of the actual cost of repair being ascertained the Outgoing Contractor shall account to the Incoming Contractor for the amount of any additional cost of repair in excess of the amount of the Price deducted or the Incoming Contractor shall account to the Outgoing Contractor for any amount by which the amount of the Price deducted exceeds the cost of repair, as the case may be.

²¹ **Note:** To be used where the amount is not agreed before Completion and the parties wish to rely on a valuation at Completion

²² **Note:** This assumes that an amount for the Plant and Equipment has been agreed by the parties at signing

- 2.2 If the parties are unable to agree the fair proportion referred to in Clause 2.1(a) by Completion:
- (a) the amount of the Price attributed to all items of the same category in Clause 3 shall be retained by the Incoming Contractor;
 - (b) the matter forthwith shall be determined by an Independent Valuer and the Incoming Contractor shall pay the balance of the Price within seven (7) days of the matter being so determined.
- 2.3 If the parties are unable to agree the estimate or final cost of repair or replacement of any item pursuant to Clause 2.1(b) within seven (7) days following Completion the matter shall forthwith be determined by an Independent Valuer.

SIGNATORIES

Outgoing Contractor

[Signed by **)
for and on behalf of **)
[*name of company*])

Incoming Contractor

[Signed by **)
for and on behalf of **)
[*name of company*])

Schedule 35 – Not used