

Provision of Outsourced Training Services to Navy Command

FLEET/00428

TERMS AND CONDITIONS OF CONTRACT

THIS CONTRACT IS MADE ON XX OCTOBER 2017

BETWEEN:

- 1 **THE SECRETARY OF STATE FOR DEFENCE OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND** (the "**Authority**"); and
- 2 **Contractor** (registered in England and Wales under Company Number XXXXXXXXX) whose registered office is at XXXXXXXXXXXX (the "**Contractor**"),

Individually, a Party and together the Parties

BACKGROUND:

WHEREAS:

PART 1 The Flag Officer Sea Training ("FOST") is the management organisation responsible for the delivery of trained personnel to the Navy Command. The Secretary of State for Defence has ultimate responsibility for the Navy Command. The Authority is seeking to modernise elements of its specialist naval training (Training Optimisation).

- 1 Throughout the Project, the Parties have entered into this Contract with the intention of providing the Training Services required in the Statement of Requirements as amended from time to time by the change mechanism set out in Schedule 4(Change and Change Management).

PART 2 In so doing, the Parties intend to adopt a flexible and collaborative working environment which will be to the benefit of the Parties subject to compliance with FOST's Objectives.

PART 3 Subject to the terms of this Contract, the Authority will provide to the Contractor:

- 1 the right to use certain Intellectual Property for the delivery of Training Services, the use of which is subject to the provisions of Part 12 (Intellectual Property);
- 2 reasonable assistance and support, and access to premises and data to enable the Contractor to perform its obligations under this Contract, and to formulate and develop proposals for improvements and efficiencies within the scope of this Contract; and
- 3 facilities, assets, goods, manpower and services to the extent specified elsewhere in this Contract, and subject to these terms and conditions.

PART 4 Each Party shall, in fulfilling their obligations under this Contract, take all reasonable steps to preserve the reputation and good name of the other Party.

PART 5 The Parties shall at all times during this Contract act towards each other in a co-operative, non-adversarial manner and having due regard to the high level principles at Part 6.

PART 6 The Parties agree that they will observe the following high-level principles in relation to this Contract:

- 1 that performance of activities within the scope of this Contract shall be consistent, appropriate and, insofar as such objectives affect activities to be undertaken, within the scope of this Contract in accordance with the relevant declared FOST Objectives;
- 2 that there is a need for a structured relationship between their representatives and the Parties have agreed to implement the provisions of Schedule 3 (Governance and Contract Management) in order to observe this principle;

- 3 that the Contractor will identify and deliver reductions in the cost of Training Services and will re-invest in Training Optimisation to the benefit of both Parties;
- 4 that the Contractor recognises the Authority's requirement to implement change and will work with the Authority to implement approved changes to the Training Services delivered within the scope of this Contract;
- 5 that Naval ethos is to be preserved;
- 6 that each of the Parties needs to follow best commercial practices and procedures in the conduct of their respective businesses;
- 7 that the Contractor may identify opportunities for the generation of income through the use of the Authority's irreducible spare capacity under the Wider Markets Initiative which, if found acceptable to the Authority, will be subject to completely separate contractual arrangements; and
- 8 the principle of Presumed Inclusion, whereby:
 - 8.1 all activities, tasks, materials and services necessary to deliver the Training Services are deemed to be included within the Contract and are the responsibility of the Contractor. Accordingly, no Contract amendment shall be accepted by the Authority other than in respect of an activity, task, material or service expressly excluded from the Contract or, stated as being an obligation of the Authority or a third party;
 - 8.2 the activities, tasks, materials or services expressly excluded from the Contract or stated as being an obligation of the Authority or a third party shall be those contained within the Contract and neither Party may cite any other earlier document in aid of seeking a change to the Contract;
 - 8.2.1 in the event that there is a dispute as to whether an activity, task, material or service is necessary to deliver the Training Services then either Party may refer the matter to be determined under clause 90 (Dispute Resolution);
 - 8.3 irrespective of whether either Party elects to refer a matter in respect of Presumed Inclusion to the Dispute Resolution procedure, the Contractor shall perform any task, activity, service or provision of the material necessary for the performance of the Training Services without delay. The Contractor shall not be required to undertake any task or activity which is not necessary for the performance of the Training Services; and
 - 8.4 in respect of the Contract Price, the principle of Presumed Inclusion shall be interpreted that all allowable costs associated with the performance of the Training Services and the Contractor's obligations under this Contract are deemed to be included in the Contract Price unless expressly stated otherwise within the Contract. Accordingly, no amendment to the Contract Price shall be made other than in relation to an express exclusion from the Contract or an obligation of the Authority or third Party and neither Party may cite any other earlier document in aid of seeking a change to the Contract Price.

PART 7 Proposals were submitted on behalf of the Contractor in response to the Authority's invitation to negotiate and the Parties have discussed such proposals. The Parties have agreed to enter into this Contract which sets out the terms and conditions upon which the Contractor will carry out the Project.

IT IS AGREED:

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PART 1 PRELIMINARY

1 Definitions and Interpretation

Definitions

- 1.1 In this Contract (including the recitals and schedules), the words defined in Schedule 1 (Definitions and Interpretation) shall have the meanings specified in, and shall be construed and interpreted in accordance with, that schedule.

2 Precedence

- 2.1 This Agreement shall not become effective until the following condition[s] ha[s/ve] been satisfied:
- 2.1.1 The Contractor and any Employing Sub-contractor enter into an Admission Agreement in the form set out in Annex A to Schedule 16 ;
and
- 2.1.2 [The Contractor and any Employing Sub-contractor enter into a Parent Company Guarantee in the form set out in Annex B to Schedule 16 .]
- 2.2 In the event of any conflict or inconsistency between the provisions of the body of this Contract and the schedules, or between any of the schedules, the conflict shall be resolved according to the following descending order of priority:
- 2.1.1 the body of this Contract and Schedule 1 ;
- 2.1.2 Schedule 3 (Governance and Contract Management), Schedule 4 (Change and Change Management), Schedule 6 (Pricing Mechanism), Schedule 7 (Pricing of Change) and Schedule 12 (Performance Mechanism);
- 2.1.3 Schedule 2 (Statement of Requirements);
- 2.1.4 the remaining schedules
- 2.3 In the event of any conflict or inconsistency between the schedules and the annexes to the schedules, the schedules shall prevail.
- 2.4 If a Party becomes aware of any inconsistency within or between the documents referred to in this clause 2 such Party's representative (being either the Authority's Representative or the Contractor's Representative) shall notify the other's representative (being either the Authority's Representative or the Contractor's Representative) immediately, and the Parties will seek to resolve such inconsistency in accordance with Schedule 3 (Governance and Contract Management). If either Party considers the inconsistency to be material then the matter shall be determined in accordance with clause 90 (Dispute Resolution).

3 Duration

- 3.1 This Contract and the rights and obligations of the Parties to this Contract shall take effect on the Effective Date.
- 3.2 Subject to the provisions of clause 3.3 below, the Training Services shall

commence on the Service Commencement Date and, except as set out in clause 72 (Continuing Obligations), shall terminate on the earlier of:

- 3.2.1 the Expiry Date; or
 - 3.2.2 the Termination Date.
- 3.3 The Authority shall, on giving the Contractor no less than 12 months written notice, have the right to extend (at its sole discretion) the period until the Expiry Date by:
- 3.3.1 initially, a period of two years, provided that the Authority is satisfied with the outcome of a First Review ; and
 - 3.3.2 subsequently, a period of two years, provided that the Authority is satisfied with the outcome of a Second Review,
- in accordance with Schedule 10 (Options to Extend).
- 3.4 Any extensions shall be priced in accordance with clause 38.2.
- 3.5 In the event that the Expiry Date is extended in accordance with clause 3.3.1 and or 3.3.2, the Authority shall have the right (at its sole discretion) to make amendments to the volume and/or scope of the Training Services in accordance with Schedule 4(Change and Change Management).
- 3.6 In the period between the Effective Date and the Service Commencement Date, the Contractor shall carry out the activities required to assume responsibility for the delivery of the Training Services in accordance with the Implementation Plan.

4 Warranties and Undertakings

Contractor Warranties

- 4.1 The Contractor warrants and represents to the Authority as at the Effective Date that:
 - 4.1.1 it is properly constituted and incorporated under the laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted;
 - 4.1.2 it has the corporate power to enter into and to exercise its rights and perform its obligations under this Contract;
 - 4.1.3 all action necessary on the part of this Contractor to authorise the execution of, and the performance of, its obligations under this Contract has been taken;
 - 4.1.4 no arrangements are in place that have, or may have, the result in any sale, transfer or disposal of any legal, beneficial, equitable or other interest in any, or all, of the shares in the Contractor;
 - 4.1.5 the obligations expressed to be assumed by the Contractor under this Contract are, or in the case of any such document executed after the Effective Date shall be, legal, valid, binding and enforceable to the extent permitted by Law;

- 4.1.6 the execution, delivery and performance by it of this Contract does not contravene any provision of:
- 4.1.6.1 Legislation which has been enacted but is not yet in any existing Legislation binding on this Contractor including force;
 - 4.1.6.2 the memorandum and articles of association of the Contractor;
 - 4.1.6.3 any order or decree of any court or arbitrator which is binding on the Contractor; or
 - 4.1.6.4 any obligation which is binding upon the Contractor or upon any of its assets or revenues;
- 4.1.7 no claim is presently being assessed and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of the knowledge of the Contractor (having made all due enquiry), pending or threatened against it or any of its assets which shall, or might, have a material adverse effect on the ability of the Contractor to perform its obligations under this Contract;
- 4.1.8 it is not the subject of any other obligation, compliance with which shall, or is likely to, have a material adverse effect on the ability of the Contractor to perform its obligations under this Contract;
- 4.1.9 no Contractor Default has occurred which is continuing, nor has any event or circumstance occurred or arisen which, with the giving of notice, lapse of time, determination or satisfaction of any other clause may become a Contractor Default;
- 4.1.10 it is not in breach of any of its obligations under this Contract;
- 4.1.11 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 its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;
- 4.1.12 the copies of any Contract Documents which the Contractor has delivered or, when executed, shall deliver to the Authority's Representative, are or, as the case may be, shall be, true and complete copies of such documents and there are not in existence any other agreements or documents replacing or relating to any of this Contract which would materially affect the interpretation or application of any such document;
- 4.1.13 in entering into this Contract it has not committed any Prohibited Act; and
- 4.1.14 there is not, and nor has there been, any infringement or alleged infringement of any third party's Intellectual Property Rights in connection with the Project by the Contractor,

and the Authority relies upon such warranties and representations.

Contractor Undertakings

- 4.2 The Contractor covenants and undertakes with the Authority that for so long as this Contract remains in full force:
- 4.2.1 it will obtain, comply with the terms of, and do all that is necessary and within its powers to maintain in full force and effect all necessary corporate and other actions required to authorise the execution of, and the performance of its obligations under, this Contract;
 - 4.2.2 it shall give the Authority's Representative notice of any litigation, arbitration, administrative, adjudication or mediation proceedings before or of any court, arbitrator, administrator, adjudicator or mediator or other Authority dispute forum against itself or a Sub-Contractor which would adversely affect, to an extent which is material in the context of the Project, the Contractor's ability to perform its obligations under this Contract, unless such notice is precluded by the rules of the dispute forum. Such notice shall be given within 20 Business Days of the Contractor becoming aware such proceedings may be threatened or pending, and immediately after the commencement;
 - 4.2.3 it will not voluntarily enter into liquidation or a dissolution;
 - 4.2.4 it shall not cease to be resident in the United Kingdom or sell, transfer, lend or dispose of (other than by way of security) in whole, or in part, its undertaking, business or trade outside the United Kingdom;
 - 4.2.5 it shall not undertake the performance of its obligations under this Contract otherwise than through itself or a Sub-Contractor;
 - 4.2.6 it shall not, without the written consent of the Authority's Representative (such consent not to be unreasonably withheld or delayed), incorporate any company or purchase or acquire or subscribe for any shares in any company if to do so shall, or might, adversely affect the Contractor's financial standing and its ability to perform its obligations under this Contract and does not contravene clause 6.2;
 - 4.2.7 it shall not, without the written consent of the Authority's Representative (such consent not to be unreasonably withheld or delayed), make any loans or grant any credit or give any guarantee or indemnity to or for the benefit of any person, or otherwise voluntarily or for consideration assume any liability (whether actual or contingent) in respect of any obligation of any other person except in the ordinary course of business and/or as contemplated by this Contract if to do so shall, or might, adversely affect the Contractor's financial standing and its ability to perform its obligations under this Contract and does not contravene clause 6.2;
 - 4.2.8 it shall not change or cease its business or start any other business which is materially different from that to be carried on by it under this Contract; and

4.2.9 it shall comply with Establishment Orders.

Status of Contractor Warranties and Undertakings

4.3 All warranties, representations, undertakings, indemnities 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.

Contractor's Due Diligence

4.4 The Contractor shall be deemed to have:

4.4.1 satisfied itself as to the assets to which it shall acquire rights and the nature and extent of the risks assumed by it under this Contract;

4.4.2 satisfied itself as to the feasibility and strategy of its Implementation Plan; and

4.4.3 without prejudice to clause 62 (Disclosure of Information), satisfied itself with regard to any and all data, information, materials or items provided to the Contractor or any Sub-Contractor as to the ownership of any Intellectual Property Rights and as to its rights to use Intellectual Property Rights to perform its obligations under this Contract.

Accuracy of Information

4.5 The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Authority by the Contractor in connection with the provision of the Training Services and shall pay the Authority any extra costs occasioned by any discrepancies, errors or omissions.

5 Authority Disclosed Data

Authority Disclosed Data

5.1 Subject to clause 5.3, the Authority does not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any data disclosed by the Authority during the course of the procurement of this Contract (with the exception of any Authority Disclosed TUPE Data, to which the provisions of clause 50 (TUPE and Pension Matters) shall apply) 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), statute or otherwise as a result of:

5.1.1 any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in any data disclosed by the Authority during the course of the procurement of this Contract; or

5.1.2 any failure to make available to the Contractor any materials, documents, drawings, plans or other information relating to this Contract.

No Relief

- 5.2 Subject to clause 5.3, 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 it shall make its own reasonable enquiries as to the accuracy and adequacy of that information.

Fraudulent Statements

- 5.3 Nothing in this clause 5 shall exclude any liability which the Authority or any of its agents or employees would otherwise have to the Contractor in respect of any statements made fraudulently or fraudulent omissions to make statements prior to the Effective Date.

6 Co-operation

- 6.1 Each Party agrees to co-operate, at its own cost, with the other Party in the fulfilment of the purposes and intent of this Contract. Neither Party shall be under any obligation to perform any of the other Party's obligations under this Contract.
- 6.2 Each Party shall, in fulfilling their obligations under this Contract, take all reasonable steps to preserve the reputation and good name of the other Party.
- 6.3 The Parties shall give effect to the procedure set out in Schedule 3 (Governance and Contract Management).

PART 2 CONDUCT OF OPERATIONS**7 Scope of Contract**

- 7.1 The Contractor shall provide the Training Services set out in the Statement of Requirements in accordance with the terms of this Contract from the Service Commencement Date.
- 7.2 In the event that the Authority identifies additional requirements or changes to existing Training Services, the Contractor may be requested to submit a proposal for consideration by the Authority in accordance with the provisions of Schedule 4 (Change & Change Management).
- 7.3 Activities directly in support of sea-going ships, operations or exercises abroad are excluded from the scope of this Contract except where specifically identified within the Training Documentation System.

8 Specification

- 8.1 All Training Services to be supplied under this Contract shall conform in all respects with the Statement of Requirement set out in Schedule 2 (Statement of Requirements).
- 8.2 The Authority may, by notice, after consultation with the Contractor as necessary, alter from time to time the Statement of Requirement as from a date and to the extent specified by the Authority provided that any alterations will be made in accordance with Schedule 4 (Change and Change Management).
- 8.3 In the event that either Party considers that there may be any conflict within the Statement of Requirement it shall notify the other Party.
- 8.4 Any acceptance, authorisation, consent, comment, suggestion, requirement, proposal, consideration, audit, inspection, or approval of designs, drawings, specifications, plans, schedules, or the issue of any other technical and administrative documents by the Authority which is not done or given in accordance with this Contract shall not alter the Statement of Requirement.
- 8.5 An additional review will be taken commencing no later than 1 April 2019 as to whether the Authority wishes to take up the option to include the Fire Fighting Training Services (FFTS) into this contract. This Review should conclude no later than 31 July 2019 at which time either the Authority will notify of the requirement to move from the provisional price quoted at Schedule 6 and a firm price based upon the TUPE data provided and in accordance with Defcon 643. Alternatively the Authority will inform the Contractor of his decision not to proceed with the option.

9 Provision of Services

- 9.1 The Contractor shall provide the Training Services in accordance with the terms of this Contract from the Service Commencement Date.
- 9.2 The Contractor undertakes to the Authority that:

- 9.2.1 it shall perform or procure that the Training Services and its obligations are performed:
- 9.2.1.1 in an efficient, effective and safe manner;
 - 9.2.1.2 in accordance with Schools Guidance;
 - 9.2.1.3 so as to satisfy Schedule 2 (Statement of Requirements);
 - 9.2.1.4 in accordance with Schedule 14 (Training Services Management Plans);
 - 9.2.1.5 in compliance with Law;
 - 9.2.1.6 in accordance with Good Industry Practice; and
 - 9.2.1.7 using suitable goods and materials that are not Prohibited Materials;
- 9.2.2 it shall be responsible for all goods and materials brought onto the Establishments by or on behalf of the Contractor or any Sub-Contractor; and
- 9.2.3 it shall perform its obligations under this Contract in a manner that will enable the Authority to comply with the Law.
- 9.3 The Parties agree to the principle of Presumed Inclusion, whereby:
- 9.3.1 all activities, tasks, materials and services necessary to deliver the Training Services are deemed to be included within the Contract and are the responsibility of the Contractor. Accordingly, no Contract amendment shall be accepted by the Authority other than in respect of an activity, task, material or service expressly excluded from the Contract or, stated as being an obligation of the Authority or a third party;
 - 9.3.2 the activities, tasks, materials or services expressly excluded from the Contract or stated as being an obligation of the Authority or a third party shall be those contained within the Contract and neither Party may cite any other earlier document in aid of seeking a change to the Contract;
 - 9.3.3 in the event that there is a dispute as to whether an activity, task, material or service is necessary to deliver the Training Services then either Party may refer the matter to be determined under clause 90 (Dispute Resolution);
 - 9.3.4 irrespective of whether either Party elects to refer a matter in respect of Presumed Inclusion to the Dispute Resolution procedure, the Contractor shall perform any task, activity, service or provision of the material necessary for the performance of the Training Services without delay. The Contractor shall not be required to undertake any task or activity which is not necessary for the performance of the Training Services; and

- 9.3.5 in respect of the Contract Price, the principle of Presumed Inclusion shall be interpreted that all allowable costs associated with the performance of the Training Services and the Contractor's obligations under this Contract are deemed to be included in the Contract Price unless expressly stated otherwise within the Contract. Accordingly, no amendment to the Contract Price shall be made other than in relation to an express exclusion from the Contract or an obligation of the Authority or third Party and neither Party may cite any other earlier document in aid of seeking a change to the Contract Price.

Authority Policies

- 9.4 In providing the Training Services, the Contractor shall;
- 9.4.1 comply with the Authority's policy on smoking in the workplace contained in JSP 375;
 - 9.4.2 comply with the Authority's health and safety handbook contained in JSP 375;
 - 9.4.3 comply with the Authority's policy on sustainable procurement contained in JSP 418;
- as may be amended from time to time; and
- 9.4.4 have in place procedures to ensure, and use reasonable endeavours to ensure, that employees of the Contractor or any Sub-Contractor do not consume, or become under the influence of, alcohol or narcotics while performing their obligations under this Contract or any Sub-Contract.

No Disruption

- 9.5 The Contractor shall provide the Training Services so as to co-ordinate with the Authority's operations on the Establishments and shall take reasonable care to ensure that it does not interfere with the operations or activities of the Authority or any Authority Contractor.
- 9.6 The Authority undertakes to the Contractor that it shall not, except as expressly permitted under this Contract, wilfully or materially impede the Contractor in the performance of its obligations under this Contract (having regard always to the interactive nature of the activities of the Authority and of the Contractor and to any operations or activities carried out by the Authority in or at the Establishments for the purposes contemplated by this Contract or any other of the Authority's statutory duties or other functions).

Standards of Employees

- 9.7 The Contractor shall ensure that its employees and those employees employed by its Sub-Contractors delivering the Training Services shall:
- 9.7.1 subject to clause 9.8, possess all the necessary qualifications, licences, permits, skills and experience to discharge their responsibilities effectively, safely and in conformance with all relevant Law;

- 9.7.2 be trained in customer care and conduct themselves in a polite and orderly fashion conducive to working in a military environment; and
- 9.7.3 meet and comply with the requirements of the Authority's security policies, regulations and instructions and shall be trained to conform with the required security standards as detailed in Part 13 (Security and Confidentiality).
- 9.8 In respect of employees transferred to the Contractor pursuant to TUPE and who do not have the necessary qualifications, licences, permits, skills and experience referred to in clause 9.7.1 at the time of transfer to the Contractor, the Contractor shall take all necessary steps to ensure that the standards of such employees meet the standards required by clause 9.7.1 as soon as reasonably practicable after the date on which such employees transferred to the Contractor and in any event no later than three months following the Service Commencement Date (or such other period as may be agreed between the Parties).

Disciplinary Procedures

- 9.9 The Contractor shall procure that there is set up and maintained by it and by all of its Sub-Contractors appropriate personnel policies and procedures covering discipline, grievance and performance in respect of all staff (the "Relevant Procedures"). The Contractor shall procure that the Relevant Procedures are published in written form and that copies of them and revisions and amendments to them are available to the Authority at each Establishment for inspection at all reasonable times. The Contractor shall amend the Relevant Procedures, or procure their amendment, from time to time in accordance with any objection raised by the Authority, acting reasonably.
- 9.10 The Authority's Representative may require the Contractor to apply the Relevant Procedures (or procure that they are applied) to any staff member if:
- 9.10.1 that staff member commits an act of misconduct (whether or not in the course of his duties); or
- 9.10.2 that staff member is incompetent or negligent,
- if, in the reasonable opinion of the Authority's Representative, it would be conducive to the orderly and effective provision of any of the Training Services. The Contractor will take all reasonable steps to ensure the improvement in performance of the relevant staff member. For the avoidance of doubt, this clause does not limit the Contractor's obligation to comply with clause 9.9.

List of Staff

- 9.11 Subject to clause 58 (Security Requirements), the Contractor shall procure that the Authority's Representative is given details of all Proposed Staff (other than existing employees) and that the Authority shall have a right to make representations promptly to the Contractor in respect of any such Proposed Staff member's employment if:
- 9.11.1 the person has previously been engaged in the carrying out of this Contract and is considered by the Authority's Representative as a result to be unsatisfactory; or

- 9.11.2 there is any other good and substantial reason why the person should not be engaged in carrying out the Training Services,

and the Contractor must have due regard to those representations (although the final decision whether to appoint Proposed Staff will be a matter for the Contractor).

Access

- 9.12 Save as required by Law, the Contractor shall procure that the Authority (including the Authority's Representative) has access in accordance with clause 36 (Open Book Accounting and Auditing) to all relevant information which demonstrates that the Contractor has complied with the provisions of this clause 9. The Authority shall, in accordance with clause 36, be entitled to conduct audits of the personnel and management policies of the Contractor and the Sub-Contractors relevant to the staff engaged in the provision of the Training Services.

Training Services Management Plan

- 9.13 The Contractor has prepared the Training Services Management Plan at Schedule 14 and the Contractor shall be solely responsible for:
- 9.13.1 any discrepancies, errors or omissions in the Training Services Management Plans; and
- 9.13.2 any failure of the Training Services Management Plans to comply with the Authority's Statement of Requirements, notwithstanding that the Training Services Management Plans have been seen or acknowledged by the Authority or approved or not objected to or commented on by the Authority.

10 Business Continuity

- 10.1 The Contractor shall comply with its obligations contained in the Business Continuity Plan as per Schedule 15.

11 Training Design Service

- 11.1 The Contractor shall deliver the Training Design (Non-Routine) (Schedule 2 Annex C) and Training Optimisation (Schedule 2 Annex G) services in accordance with Clauses 74.2, 74.9 and 34.

12 Radio Transmissions

- 12.1 Where in the UK it is necessary for the Contractor to make radio transmissions for the purpose of test and development of electronic equipment under this Contract, the Contractor shall obtain an appropriate licence from the UK Regulatory Authority, OFCOM in accordance with the Wireless Telegraphy Act 2006.
- 12.2 The Contractor shall ensure that prior to making any transmission, a licence exists that covers the particular transmissions of this Contract in all respects.
- 12.3 The Contractor shall agree with the Authority the frequencies to be used for this Contract.

- 12.4 For the avoidance of doubt, the provisions of clauses 12.1 to 12.3 shall apply to the Contractor's own radio transmissions and equipment and not radio transmissions to be made using Authority radio equipment in the delivery of the Training Services in accordance with Schedule 2 (Statement of Requirements).

13 Transport Overseas

- 13.1 Where a Contractor Employee, Sub-Contractor, agent or consultant authorised to act on behalf of the Contractor is required by this Contract to join or visit a Government Establishment overseas, transport between the United Kingdom and the place of duty (but excluding transport within the United Kingdom) shall be provided free of charge by the Authority whenever possible, normally by Royal Air Force or by Authority chartered aircraft. The Contractor shall make such arrangements through the Authority's Representative. When such transport is not available within a reasonable time, or in circumstances where the Contractor wishes its employees, Sub-Contractors, agents or consultants to accompany materiel for installation which it is to arrange to be delivered, the Contractor shall make its own transport arrangements. The Authority shall reimburse the Contractor's Costs for such transport of its employees, Sub-Contractors, agents or consultants on presentation of evidence supporting the use of alternative transport and of the costs involved. Transport of the Contractor's Employees, Sub-Contractors, agents or consultants locally overseas which is necessary for the purposes of this Contract shall be provided wherever possible by the Authority and, where so provided, will be free of charge.

14 Injuries, Disease And Dangerous Occurrences

- 14.1 The Contractor shall report any injury, disease or dangerous occurrence at any Government Establishment arising out of the performance of this Contract, which is required to be reported under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 ("RIDDOR") to the Officer in Charge of the relevant Government Establishment. This would be in addition to any report, which the Contractor may be required to submit under RIDDOR to the relevant enforcing authority (e.g. Health and Safety Executive or Local Authority).

PART 3 IMPLEMENTATION PHASE**15 Implementation**

- 15.1 During the Implementation Phase, the Contractor shall implement the Implementation Plan to enable it to ensure the smooth and seamless transfer of the Training Services from the Previous Contract to this Contract. The Contractor shall take reasonable steps to ensure that the activities undertaken as part of the Implementation Programme (part of the Implementation Plan) do not impact on the delivery of the Previous Contract.

Skills Audit

- 15.2 Commencing at the Effective Date, the Contractor shall undertake a skills audit of the training staff engaged in the delivery of the Previous Contract and those employees who shall transfer to the Contractor pursuant to TUPE. The results of the skills audit shall be compared to those competencies detailed in Schedule 2 (Statement of Requirements) required in the delivery of this Contract.
- 15.3 The Contractor shall use the information obtained through the skills audit to populate its Competency Management System and implement a personnel change programme to cover any training and competency gaps.

Communications

- 15.4 The Contractor shall implement, as part of the Implementation Programme, a series of communications to ensure that all stakeholders are informed in advance of changes that could affect them. Such communications shall consist of presentations, meetings, briefings or one to one interviews, as appropriate to the topic and circumstances.

Contract Handbook

- 15.5 The Parties shall work jointly to populate the Authority Contract Handbook designed to describe the key features of this Contract and identify nominated points of contact to assist with any queries. The Contract Handbook shall be made available at SCD to all relevant staff engaged in the delivery of the Training Services, and to ensure easy access, shall be posted on the Establishment intranets.

Technology

- 15.6 The Contractor shall install and test all technology which it introduces in addition to the Authority supplied GFA as detailed in Annex D to Schedule 2 (Statement of Requirements).
- 15.7 The Contractor shall be responsible for all costs associated with equipment installed by the Contractor.

PART 4 GOVERNANCE AND MANAGEMENT PROCESSES**16 Governance and Contract Management**

- 16.1 The Parties shall comply with their obligations set out in Schedule 3 (Governance and Contract Management).

17 Training Services Management Plans

- 17.1 The Contractor shall (in accordance with the terms of this Contract and otherwise to the reasonable satisfaction of the Authority) implement the Training Services Management Plans set out in Schedule 14 (Training Services Management Plans).

18 Key Personnel

- 18.1 The Authority shall, provided that it acts reasonably, be entitled to identify and name certain individuals in connection with the Training Services as Key Personnel from time to time. The individuals so named by the Authority or the Contractor as at the date of this Contract are listed in Schedule 11 (Key Personnel). Such list may be amended from time to time by the Authority whether to take account of the replacement of any individual as a member of Key Personnel or to add or to remove any individual from such list.
- 18.2 The Contractor shall use the Key Personnel in the provision of the Training Services in the roles specified in Schedule 11.
- 18.3 Subject to clause 18.5, the Contractor shall not without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed):
- 18.3.1 dismiss for any reason (either summarily or on notice) any Key Personnel;
 - 18.3.2 suspend for more than five (5) Business Days any Key Personnel;
 - 18.3.3 institute disciplinary proceedings against any Key Personnel where the potential outcome is dismissal with or without notice;
 - 18.3.4 change the job description of any Key Personnel;
 - 18.3.5 alter any material term or condition of the contract or terms of employment or engagement of any Key Personnel (with or without their consent);
 - 18.3.6 redeploy or reallocate from their role any Key Personnel to other services; or
 - 18.3.7 do anything (by act or omission) which is, or is reasonably likely to be, a breach of the contract or terms of employment or engagement of any Key Personnel, and shall promptly:
 - 18.3.7.1 inform the Authority of any grievance raised by any member of Key Personnel;

- 18.3.7.2 notify the Authority of any absence of more than ten (10) Business Days of any member of Key Personnel due to ill health; and
- 18.3.7.3 notify the Authority within ten (10) Business Days of any notice served by any Key Personnel to terminate their employment.
- 18.4 Where the Contractor intends to withdraw (for whatsoever reason) any member of Key Personnel from employment or engagement in connection with the Training Services, the Contractor must obtain the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed) as to the suitability and adequacy of a proposed replacement who must have a level of skills and experience comparable to that of the member of Key Personnel being withdrawn, or, if more appropriate, have the necessary skills and experience required for the relevant job position.
- 18.5 Nothing in this clause 18 (Key Personnel) shall prevent either the Contractor from dismissing or suspending from their duties any Key Personnel where such action is:
- 18.5.1 necessary to comply with any applicable Law;
- 18.5.2 required to safeguard the health and wellbeing of any person;
- 18.5.3 justified on the grounds that any member of the Key Personnel has committed an act of gross misconduct; or
- 18.5.4 justified on the grounds that any member of the Key Personnel has failed either or both a drugs or alcohol test.
- 18.6 Where the Contractor dismisses or suspends any Key Personnel pursuant to clause 18.4, the Contractor shall, as soon as possible and in any event within two (2) Months of the dismissal or suspension, replace such Key Personnel in accordance with the provisions of this Contract.

PART 5 NOT USED

19 NOT USED

PART 6 LAND ISSUES**20 Contractor's Personnel At Government Establishments**

- 20.1 The Officer in Charge shall provide such available administrative and technical facilities for the Contractor Employees, Sub-Contractors, agents or consultants authorised to act on behalf of the Contractor employed at Government Establishments for the purpose of this Contract as may be necessary for the effective and economical discharge of work under this Contract. These facilities will be provided free of charge unless otherwise stated in this Contract. The status to be accorded to the Contractor Employees, Sub-Contractors, agents or consultants authorised to act on behalf of the Contractor for messing purposes will be at the discretion of the Officer in Charge.
- 20.2 Any land or premises (including temporary buildings) made available to the Contractor by the Authority in connection with this Contract shall be made available to the Contractor free of charge, unless otherwise stated in this Contract, and shall be used by the Contractor solely for the purposes of performing this Contract. The Contractor shall have the use of such land or premises as licensee and shall vacate the same upon completion of this Contract. During the Contract Period the Authority shall be responsible for the modification, repair, maintenance and cleaning of, and utilities for, any premises made available to the Contractor under such licence.
- 20.3 The Contractor shall have no claim against the Authority for any additional cost or delay occasioned by the closure for holidays of Government Establishments, where this is made known to it prior to entering into this Contract.

21 Liability In Respect Of Damage To Authority Property

- 21.1 Without prejudice to the provisions of clause 29 (Issued Property), the Contractor shall, except as otherwise provided for in this Contract, make good or, at the option of the Authority, pay compensation for all damage occurring to any Authority Property, which includes land or buildings, occasioned by the Contractor, or by any of its employees, Sub-Contractors, agents or consultants, arising from its or their presence on a Government Establishment in connection with this Contract, provided that this clause 21 shall not apply to the extent that the Contractor is able to show that any such damage was not caused or contributed to by any circumstances within its or their reasonable control.
- 21.2 The total liability of the Contractor under clause 21.1 shall be subject to any limitation specified in this Contract.

22 Contractor's Property

- 22.1 All property of the Contractor and its employees, Sub-Contractors, agents or consultants 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:
- 22.1.1 where any such loss or damage was caused or contributed to by any act, neglect or default of any Authority employee, agent or contractor then the Authority shall accept liability to the extent to which such loss or damage is so caused or contributed to as aforesaid; and

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

23 Contractor's Representatives

- 23.1 The Contractor shall submit in writing to the Authority for approval, initially and as necessary from time to time, a list of those of its employees, Sub-Contractors, agents or consultants authorised to act on behalf of the Contractor who may 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 employee, Sub-Contractor, agent or consultant authorised to act on behalf of the Contractor who:
- 23.1.1 was not born in the United Kingdom; or
- 23.1.2 if he was born in the United Kingdom, was born of parents either or both of whom were not born in the United Kingdom.
- 23.2 The Authority shall issue passes for those employees, Sub-Contractors, agents or consultants authorised to act on behalf of the Contractor who are approved by it in accordance with clause 23.1 for admission to a Government Establishment and a Contractor Employee, Sub-Contractor, agent or consultant authorised to act on behalf of the Contractor 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.
- 23.3 Notwithstanding the provisions of clauses 23.1 and 23.2, if, in the opinion of the Authority, any Contractor Employee, Sub-Contractor, agent or consultant authorised to act on behalf 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, 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.
- 23.4 The decision of the Authority upon any matter arising under clauses 23.1 to 23.3 inclusive shall be final and conclusive.

24 Health And Safety Hazard Control

- 24.1 Where the Contractor enters a Government Establishment for the purpose of performing work under this Contract:
- 24.1.1 the Contractor shall notify the Officer in Charge or the Establishment project liaison officer or overseeing officer nominated in this Contract of:
- 24.1.1.1 any health and safety hazards associated with the work to be performed by it or any of its employees, Sub-Contractors, agents or consultants;
- 24.1.1.2 any foreseeable risks to the health and safety of all persons associated with such hazards; and

- 24.1.1.3 any precautions to be taken by it as well as any precautions which, in its opinion, ought to be taken by the Authority, in order to control such risks;
- 24.1.2 the Authority shall notify the Contractor of:
 - 24.1.2.1 any health and safety hazards which may be encountered by the Contractor or any of its employees, Sub-Contractors, agents or consultants on the Government Establishment;
 - 24.1.2.2 any foreseeable risks to the health and safety of the Contractor or any of its employees, Sub-Contractors, agents or consultants, associated with such hazards; and
 - 24.1.2.3 any precautions to be taken by the Authority as well as any precautions which, in its opinion, ought to be taken by the Contractor, in order to control such risks;
- 24.1.3 the Contractor shall notify its employees, Sub-Contractors, agents or consultants of and, where appropriate, provide adequate instruction in relation to:
 - 24.1.3.1 the hazards, risks and precautions notified by it to the Authority under clause 24.1.1;
 - 24.1.3.2 the hazards, risks and precautions notified by the Authority to the Contractor under clause 24.1.2; and
 - 24.1.3.3 the precautions which, in its opinion, ought to be taken by its employees, Sub-Contractors, agents or consultants in order to control those risks;
- 24.1.4 the Contractor shall provide the Officer in Charge or the Establishment project liaison officer or overseeing officer nominated in this Contract with:
 - 24.1.4.1 copies of those sections of its own and, where appropriate, its employees', Sub-Contractors', agents' or consultants' safety policies which are relevant to the risks notified under clause 24.1.1;
 - 24.1.4.2 copies of any related risk assessments; and
 - 24.1.4.3 copies of any notifications and instructions issued by it to its employees, Sub-Contractors, agents or consultants under clause 24.1.3; and
- 24.1.5 the Authority shall provide the Contractor with:
 - 24.1.5.1 copies of those sections of its own safety policies which are relevant to the risks notified under clause 24.1.2;
 - 24.1.5.2 copies of any related risk assessments; and

- 24.1.5.3 copies of any notifications and instructions issued by it to its employees similar to those called for from the Contractor under clause 24.1.3.

25 Hazardous Substances

- 25.1 The Contractor shall ensure that any hazardous materials or equipment used or intended to be used in the provision of the Training Services are kept under control and in safe keeping in accordance with all relevant Legislation and Good Industry Practice, and shall ensure that all such materials are properly and clearly labelled on their containers, and shall promptly inform the Authority of all such materials being used or stored at any Establishment and shall comply with any other reasonable requirement of the Authority in respect of such materials and equipment.
- 25.2 The Contractor shall maintain a register of substances hazardous to health in relation to each Task and shall ensure that a copy of each register is held at the Contractor's registered office and that a copy is given to the Authority's Representative. The Authority's Representative shall notify the Contractor of any items which it or any Authority Contractor is using or storing at any Establishment and which it requires to be included in such register.
- 25.3 Prior to any delivery of any hazardous materials or equipment to an Establishment, the Contractor shall provide information to the Authority's Representative on such hazardous materials or equipment in the form of Schedule 20 (Hazardous Substances DEFFORM 68).
- 25.4 The Contractor shall comply with the Hazardous Waste Regulations 2005 and the List of Waste Regulations 2005 including amendments up to 2015 in respect of any Hazardous Waste produced directly by the Contractor in the delivery of this Contract. Where Hazardous Waste has been produced as a direct result of articles of GFA being supplied by the Authority then the Hazardous Waste will be disposed of in accordance with the relevant Establishment's Waste Management Plans.

26 Land and Buildings

- 26.1 The Authority shall grant to the Contractor, and the Contractor shall take the Licence of the Licensed Premises on the Service Commencement Date.

27 Contractor's Conduct on Authority Establishments

- 27.1 Subject to clause 27.2, the Contractor shall, and shall procure that any Sub-Contractor shall, in providing the Training Services at the Establishments:
- 27.1.1 not breach any provisions of the Authority's Title;
- 27.1.2 not act or omit to act in any way which shall give rise to a right for any person to obtain title to or any right or interest over an Establishment or any part of it (save in accordance with the terms of this Contract);
- 27.1.3 observe and comply with any third party rights (including public rights) which may exist from time to time in respect of land comprising and adjoining the Establishments, and the Contractor shall ensure that the

provision of the Training Services is carried out in such a way as not to interfere with access to and use and occupation of public or private roads or footpaths by any person who is entitled to any such access, use or occupation;

- 27.1.4 not use or occupy the Establishments for any purpose other than the provision of the Training Services;
 - 27.1.5 not deposit or manufacture on the Establishments any materials which are not required for the provision of the Training Services;
 - 27.1.6 not store materials or park vehicles in the immediate external vicinity of the boundaries of the Establishments other than for reasonable periods necessary for loading and unloading;
 - 27.1.7 not discharge any oil, grease or deleterious, dangerous, poisonous, explosive or radioactive matter from the Establishments into any rivers or any ditches or conduits on the Establishments and/or any adjoining property, and not permit or suffer the blockage of any of such rivers, ditches and conduits by reason of anything done or omitted on the Establishments by the Contractor or Sub-Contractors, and shall comply at the Contractor's expense with any requirements of the Environment Agency or any other Relevant Authority so far as such requirements relate to the provision of the Training Services;
 - 27.1.8 procure that those parts of the Establishment which are from time to time occupied by the Contractor and/or Sub-Contractor for the purpose of the provision of the Training Services are maintained in a clean, orderly, safe and secure state; and
 - 27.1.9 not without the written consent of the Authority's Representative (not to be unreasonably withheld or delayed) erect any temporary structure.
- 27.2 No act or omission of the Authority or an Authority Contractor shall result in the Contractor being in breach of clause 27.1 unless such act or omission arises out of or in connection with the Authority or an Authority Contractor:
- 27.2.1 acting on the instruction of the Contractor or a Sub-Contractor; and/or
 - 27.2.2 failing to supervise and/or take reasonable care to supervise (where appropriate) the performance of any person engaged in the provision of the Training Services.

PART 7 GOVERNMENT FURNISHED ASSETS**28 Government Furnished Assets**

- 28.1 The Authority shall make available to the Contractor free of charge the Government Furnished Assets on the dates, locations and for the periods specified in the tables in Schedule 2 Annex D. (Training Equipment Availability Service).
- 28.2 The Contractor shall not create or grant any form of benefit or interest in Government Furnished Assets whether by way of security or otherwise.
- 28.3 In accordance with Schedule 2 Annex D (Training Equipment Availability Service) this means all GFA is governed under the terms of clause 29 from the Service Commencement Date until the earlier of the Expiry Date or the Termination Date, or an earlier date agreed between the Authority and the Contractor should the Contractor, at its discretion, choose to return an item to provide Training Services in accordance with this Contract.
- 28.4 The Authority shall provide to the Contractor consumables and spares, from Service Commencement Date until the earlier of the Expiry Date or the Termination Date, in accordance with paragraph 9 of Schedule 2 (Statement of Requirements) and paragraph 21 of Schedule 2 (Statement of Requirements).

29 Issued Property

- 29.1 All Issued Property shall remain the property of the Authority. It shall be used in the execution of this Contract and for no other purpose, without the prior approval in writing of the Authority.
- 29.2 Neither the Contractor, nor any Sub-Contractor, nor any other person, shall have a lien on Issued Property, for any sum due to the Contractor, Sub-Contractor or other person, and the Contractor shall take all such steps as may be necessary to ensure that the title of the Authority, and the exclusion of any such lien, are brought to the notice of all Sub-Contractors and other persons dealing with any Issued Property.
- 29.3 Subject to clauses 29.4 and 29.7 below, within 14 days of receipt of Issued Property, the Contractor shall:
- 29.3.1 check the Issued Property to verify that it corresponds with the Issued Property specified in this Contract;
 - 29.3.2 conduct a reasonable visual inspection;
 - 29.3.3 conduct any additional inspection and testing as may be necessary and practicable to check that the Issued Property is not defective or deficient for the purpose for which it has been provided; and
 - 29.3.4 notify the Authority of any defects, deficiencies or discrepancies discovered.
- 29.4 Where Issued Property is packaged it shall not be unpacked earlier than is necessary. The period identified at clause 29.3 above shall count from the date on which packages are opened.

- 29.5 The Authority shall within a reasonable time after receipt of any notice under clause 29.3 replace, re-issue or authorise repair of Issued Property agreed to be defective or deficient and, if appropriate, the Authority shall revise the Contract Price, Statement of Requirements or both. If appropriate, it shall also issue written instructions for the return or disposal of the defective or deficient Issued Property.
- 29.6 In the event that the Authority fails to provide, replace, or authorise repair of defective or deficient Issued Property within a reasonable time of receipt of a notice in accordance with clause 29.3, fair and reasonable revisions of the Contract Price, Statement of Requirements or both shall be made as may be appropriate provided that the Contractor has taken all reasonable measures to mitigate the consequences of any such delay.
- 29.7 Clauses 29.3 to 29.6 do not apply in the following circumstances:
- 29.7.1 where Issued Property is issued for the purpose of repair, overhaul, conversion or other work to be performed on the Issued Property, inspection of such property shall be as specified in this Contract; and
- 29.7.2 where the Contractor can show that the Issued Property cannot be fully tested until it has been integrated with other items, inspection of such property shall be as specified in this Contract.
- 29.8 Subject to clause 29.11 below, and any limitation or exclusion of liability as may be specified in this Contract, the Contractor shall be responsible for the safe custody and due return of Issued Property, whether or not incorporated into the Training Services, and shall be responsible for all loss or damage thereto, until re-delivered in accordance with the Authority's instructions.
- 29.9 The Contractor shall be responsible for such calibration and maintenance of the Issued Property as is specified in this Contract.
- 29.10 If requested, the Authority, within a reasonable time, and where practicable before delivery of the Issued Property, shall notify the Contractor of the value of the Issued Property.
- 29.11 The Contractor shall not be liable in respect of:
- 29.11.1 defects or deficiencies notified to the Authority in accordance with clause 29.3 or latent Issued Property defects which the Contractor can show could not reasonably have been discovered by means of the activities described at clause 29.3;
- 29.11.2 fair wear and tear in Issued Property resulting from its normal and proper use in the execution of this Contract (except insofar as the deterioration is contributed to by any misuse, lack of care or want of maintenance by the Contractor);
- 29.11.3 Issued Property rendered unserviceable as a direct result of ordinary performance of this Contract; and
- 29.11.4 any loss or damage to Issued Property arising solely from a Force Majeure Event.
- 29.12 At the Expiry Date or Termination Date, whichever is the earlier, the Contractor

shall forward a list of Issued Property still held to the Authority's Representative. Return or disposal of such Issued Property will be as specified in this Contract, or as instructed by the Authority at Contract completion. If no disposal instructions are specified in this Contract the Authority shall provide such instructions within two months of the Contractor's written request to do so.

30 Accounting for the Property of the Authority

30.1 The Contractor shall:

- 30.1.1 maintain a Public Store Account, as defined in DEFSTAN 05-99, which shall include a complete list of all property of the Authority, as defined in clause 30.2, and record for that property, all transactions or other accounting information specified at Schedule 22 (Accounting for Property of the Authority – Data and Format Requirements for Public Store Account Records);
- 30.1.2 supply to the Authority quarterly reports on the current Public Store Account holdings. At least one report in any twelve-month accounting period or part shall be a reconciled report. This shall be submitted with the Annual Certificate Form AAC 32 as required in DEFSTAN 05-99. The other three reports submitted in the period may be un-reconciled advisory reports. The submission by the Contractor and receipt by the Authority of these reports shall not prejudice any rights or obligations of the Authority or the Contractor under this Contract;
- 30.1.3 ensure that the Public Store Account is available for inspection by the Authority at any reasonable time;
- 30.1.4 on being given two months' notice, permit and co-operate with the Authority to conduct audits of the Public Store Account in a manner to be determined by the Authority. Where the Authority has reasonable grounds to doubt the integrity of the Public Store Account 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;
- 30.1.5 retain the Public Store Account for a period of three years after disposal of the last item of the property of the Authority;
- 30.1.6 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 30 that apply to property of the Authority issued in aid of the Sub-Contract, in particular clauses 30.1, 30.2, 30.4 and 30.7; and
- 30.1.7 manage the Government Furnished Assets component of the Public Store Account in accordance with the provisions of DEFSTAN 05-99 and implement any new edition of or amendment to DEFSTAN 05-99 subject to clause 8 (Specification) within three months of the publication date of the new edition. These amendments shall not have retrospective effect.

30.2 For the purposes of this clause 'property of the Authority' means Government

Furnished Assets and fixed assets, including property issued under clause 29 (Issued Property) and property of the Authority issued to the Contractor under any other authorising document except for property vested in the Authority.

- 30.3 For the avoidance of doubt, it is a condition of this Contract that this clause 30 shall apply to all property issued to the Contractor from the Effective Date, whether in aid of this Contract, any other contract or other agreement with the Authority. Property of the Authority issued prior to the Effective Date may be subject to separate contractual arrangements.
- 30.4 The obligations of the Contractor arising under this clause 30 in respect of property of the Authority issued in aid of this Contract shall survive the Expiry Date or Termination Date and shall not be completed until all such obligations are fulfilled including the provisions of clause 30.1.5
- 30.5 The obligations of the Contractor arising under this clause 30 in respect of property of the Authority unconnected with this Contract shall survive the Expiry Date or Termination Date and shall not be completed until all those obligations are fulfilled including the provisions of clause 30.1.5 unless and until a subsequent contract containing this clause 30 is placed with the Contractor at which time obligations in respect of any remaining property of the Authority unconnected with this Contract shall be subsumed in the subsequent contract.
- 30.6 If, after the Expiry Date or Termination Date, no subsequent contract is placed containing this clause 30 within the period detailed at clause 30.1.5, then the obligations of the Contractor arising under this clause 30 in respect of property of the Authority unconnected with this Contract shall cease on expiry of the period detailed at clause 30.1.5.
- 30.7 The Authority reserves the right to amend Schedule 22 (Accounting for Property of the Authority – Data and Format Requirements for Public Store Account Records) without further consultation where the amendments arise from the Authority's proper and reasonable accounting requirements. For the purposes of this clause 30.7, Schedule 22 (Accounting for Property of the Authority – Data and Format Requirements for Public Store Account Records) shall be regarded as a Specification and subject to the terms of clause 8 (Specification). If the Authority exercises this right:
- 30.7.1 the Contractor shall implement the amendment to Schedule 22 (Accounting for Property of the Authority – Data and Format Requirements for Public Store Account Records) at the commencement of the Authority's next accounting year provided that a notice of six months or such other period as may expressly be agreed between the Authority and Contractor is given to the Contractor. These amendments shall not have retrospective effect; and
- 30.7.2 the Contractor shall inform the Authority as soon as practicable, but in any event within three months of notice having been given, if the Contractor cannot comply with the amendment to Schedule 22 (Accounting for Property of the Authority – Data and Format Requirements for Public Store Account Records).

PART 8 AUDIT, REVIEW AND TRAINING OPTIMISATION**31 Financial Reports**

- 31.1 The Contractor shall submit to the Authority Financial Reports in the form set out in Schedule 8 (Financial Reports) every three months. For the avoidance of doubt, the Contractor shall not be required to submit Financial Reports for any period after the earlier of the Expiry Date or the Termination Date.
- 31.2 The submission by the Contractor and receipt by the Authority of the Financial Reports shall not prejudice any of the rights of the Authority or the Contractor under this Contract

32 Review

- 32.1 Further to clause 3.3.1 above, the Authority shall conduct a First Review commencing no later than 1 April 2022 and completing no later than 31 March 2023.
- 32.2 If the Authority decides to extend this Contract following the conclusion of the First Review, it shall provide to the Contractor at least 12 months written notice in accordance with clause 3.3.1.
- 32.3 In the event that the Authority exercises its sole discretion to extend this Contract following the First Review, the Authority shall conduct the Second Review during some or all the period from 1 April 2024 to 31 March 2025.
- 32.4 If the Authority decides to further extend this Contract following the conclusion of the Second Review, it shall provide the Contractor at least 12 months written notice in accordance with clause 3.3.2.
- 32.5 The First Review and the Second Review (if relevant) shall include, without limitation, a Training Optimisation Review, a Value for Money Review and Benchmarking Exercise, if appropriate, and a review of the Contractor's performance against the criteria set out in Schedule 12 (Performance Mechanism) and Schedule 10 (Options to Extend).

33 Performance Management

- 33.1 The Contractor shall procure that the relevant provisions of Schedule 12 (Performance Mechanism) are flowed down to all Sub-Contractors and any other persons for whom it is responsible to enable the Contractor, its Sub-Contractors and any other persons for whom it is responsible to comply with the provisions of Schedule 12 (Performance Mechanism).
- 33.2 The Contractor shall provide the Authority's Representative with relevant particulars of any aspects of its performance which fail to meet the requirements of this Contract (unless otherwise notified in writing by the Authority) in accordance with Schedule 12 (Performance Mechanism).
- 33.3 The Authority may at all reasonable times observe, inspect and satisfy itself as to the adequacy of the Contractor's monitoring of performance pursuant to Schedule 12 (Performance Mechanism) (including carrying out sample checks and any other auditing required).

34 Training Optimisation

- 34.1 The Contractor shall, for the Contract Period, establish and implement measures which are designed to secure Training Optimisation at no risk to or reduction in the quality of the Training Services delivered by the Contractor and measured under this Contract.
- 34.2 The Contractor shall, provide the Authority with a plan (the “**Training Optimisation Plan**”) detailing how the Contractor will deliver Training Optimisation against the requirement stated in Annex G to Schedule 2 (Statement of Requirements).
- 34.3 The Training Optimisation Plan shall include, but not be limited to:
- 34.3.1 the systematic gathering, review and use of management information;
 - 34.3.2 the early identification of problems and opportunities, and measures to address them;
 - 34.3.3 effective business management;
 - 34.3.4 effective use of resources;
 - 34.3.5 appropriate incentivisation; and
 - 34.3.6 the development and training of Contractor Employees.
- 34.4 The Contractor shall work collaboratively with the Authority to identify potential Training Optimisation initiatives and submit these to the Authority in accordance with Part 7 to Schedule 4 (Change and Change Management). The Contractor shall produce a programme of all Training Optimisation initiatives and opportunities (the “**Training Optimisation Programme**”) and use this to manage and monitor progress and benefits against the Training Optimisation Plan.
- 34.5 The Contractor shall report against Training Optimisation as follows:
- 34.5.1 record its performance in delivering the Training Optimisation initiatives, in the Level 3 monthly Performance Report and review and summarise this performance at the PCWGs;
 - 34.5.2 report the output of the Training Optimisation Programme to the Authority at the Level 2 Operating Board; and
 - 34.5.3 report the output of the Training Optimisation Plan in line with the criteria in this clause 34 (Training Optimisation) in the Annual Report for discussion at the Level 1 Strategic Board.
 - 34.5.4 Report the Training Optimisation benefits in the Training Optimisation Benefits Statement for discussion at the Level 1 Strategic Board.
- 34.6 Notwithstanding the Authority Audit activities in Schedule 13, the Authority’s Representative may audit the Contractor’s Training Optimisation Plan (including the reports referred to in clause 34.5 above) at approximate intervals of six months and may carry out other periodic monitoring, spot checks and auditing of the Contractor’s Training Optimisation Programme as deemed reasonable

between the Parties (the “**Training Optimisation Review**”).

- 34.7 The Contractor shall provide an annual statement detailing the benefits derived to both Parties from Training Optimisation initiatives (“**Training Optimisation Benefits Statement**”) as part of the Annual Report. The statement shall include cost reductions and details of estimated indirect savings to the Authority such as reduced cost of equipment ownership, reduced use of accommodation and reduced man-training days on Establishments.
- 34.8 This Training Optimisation Benefits Statement shall be used by the Authority to evaluate the Contractor’s performance as part of the First Review and, if relevant, the Second Review in accordance with clause 32 (Review) and Schedule 10 (Options to Extend).

35 Value for Money Review

- 35.1 The Contractor agrees that the Authority needs to be satisfied that the Contract Price represents continuing good Value For Money for the provision of the Training Services throughout the Contract Period and understands that the Authority will conduct reviews of the Value For Money offered in the provision of Training Services
- 35.2 The right of the Authority to conduct the Value for Money Review and the obligations of the Contractor under this clause 35 do not, in any way, alter the obligation on the Contractor to provide Annual Financial Reports. The Authority will conduct the Value for Money Review in accordance with this clause 35 in consultation with, and with the participation of, the Contractor. To this end, and in accordance with the provisions of clause 36 (Open Book Accounting and Audit), the Contractor agrees:
- 35.2.1 to assist the Authority as the Authority requires to implement this clause 35, and provide access to its relevant documents, records and accounts;
- 35.2.2 to provide, and shall ensure its Sub-Contractors provide, such information as may be requested by the Authority; and
- 35.2.3 that where the Authority reasonably believes that the Contractor is not offering Value for Money, the provisions of clause 35 (Value for Money Review) will be used to test the Contractor’s service cost and output.

36 Open Book Accounting and Auditing

- 36.1 The Contractor shall operate Open Book Accounting in relation to this Contract as set out in this clause 36.
- 36.2 The Contractor shall:
- 36.2.1 provide to the Authority an Annual Financial Report at the end of each Contract Year;
- 36.2.2 deliver to the Authority, at the three monthly interval, a summary of costs and revenues relating to this Contract;

- 36.2.3 provide to the Authority the annual accounting and audit of its costs and revenues relating to this Contract; and
- 36.2.4 provide access to the Authority, on request, to the source data (including computerised records and data) of any information reported in this clause 36.2.
- 36.2.5 The Contractor shall prepare annually the following for delivery to the Authority on or before 30th June, a full and final statement of Actual Costs and revenue relating to this Contract (a "Full and Final Statement") for the preceding Contract Year.

The Full and Final Statements shall be fully in support of, and compatible with, the operation of the Contract Price as calculated in accordance with Schedule 6 (Pricing Mechanism).

- 36.3 The Full and Final Statements shall contain, without limitation, details of:
 - 36.3.1 staff costs (including manning levels, salaries, overtime, and pension and NI contributions);
 - 36.3.2 equipment costs (including hardware depreciation, hardware lease, hardware maintenance, software licences and maintenance, telecommunications and supplies/sundries);
 - 36.3.3 other costs (including travel, training, temporary staff and Sub-Contract services);
 - 36.3.4 overheads; and
 - 36.3.5 revenue from all sources included in this Contract.
- 36.4 The Authority's Open Book Accounting rights shall extend to the Contractor's Parent Company and Group Companies only where such companies are single sourced Sub-Contractors to the Contractor under this Contract and only with respect to such accounting information directly related to such activities.
- 36.5 The Contractor shall ensure that all Sub-Contracts placed on a single source basis contain provisions for the Authority to have equivalent audit rights to those set out in this clause 36 only with respect to accounting information directly related to such Sub-Contract activities.
- 36.6 The Contractor shall keep, or shall cause to be kept, full financial records and supporting information of all relevant Training Services provided pursuant to this Contract, including, but not limited to, materials and services provided, timesheet records, Sub-Contracts utilised and charges levied and the volume of business placed with Small to Medium Enterprises.
- 36.7 The Contractor shall grant to the Authority, the statutory auditors of the Authority and their respective authorised agents (provided an appropriate confidentiality agreement has been concluded) the right of reasonable access to the financial books and records of the Contractor, and shall provide all reasonable assistance at all times during the Contract Period for the purposes of carrying out a financial audit of the Contractor's financial books and records.

- 36.8 The Authority warrants to the Contractor that it, and its authorised agents and representatives shall respect and protect the confidentiality of all data and records accessed during any audit carried out pursuant to this clause 36. All such data and records shall be treated as Confidential Information for the purposes of clause 62 (Disclosure of Information).
- 36.9 The Authority shall from time to time notify the Contractor of programmes of audits.
- 36.10 The appointed auditors may produce reports to the Authority indicating areas of non-compliance with this Contract and make recommendations.
- 36.11 Following each audit, the Authority shall produce a report of the audit to the Contractor indicating any areas of financial non-compliance with this Contract which the Contractor is required to rectify in accordance with this clause 36.
- 36.12 The Authority shall ensure that the Contractor has the opportunity to review the factual issues relevant to the Contractor which are raised by the report in clause 36.14 and to comment upon the recommendations and agree with the Authority the recommendations that are to be implemented.
- 36.13 The Contractor shall, at its own expense, implement, within the timescales agreed by the Parties, any changes necessary to remedy areas of non-compliance with any of the terms in this Contract as identified by the Authority or its representatives, where such non-compliance results from a failure or inaction on the part of the Contractor.
- 36.14 The Contractor shall provide, within reasonable timescales, evidence, either documentary or demonstrative, as required by the Authority, and shall, if required, provide access to the representatives of the Authority, to permit the Authority or its representatives, or the National Audit Office, to monitor and confirm the implementation of such agreed changes.
- 36.15 The Authority and the Contractor shall implement audit recommendations in accordance with the timescale and procedures agreed by the Parties.
- 36.16 For the purpose of the examination of the Authority's financial records, any examination pursuant to section 6(1) of the Budget Responsibility & National Audit Act 2011 or any re-enactment of the efficiency or effectiveness with which the Authority has used its resources, the Comptroller and Auditor General may examine such documents which includes computerised records and data directly relating to this Contract as he may reasonably require which are owned, held or otherwise within the control of the Contractor and may require the Contractor to produce such oral or written explanations as he considers necessary.

37 Contractor's Records

- 37.1 The Contractor shall maintain such records as are specified in this Contract and make them available to the Authority as the Authority may reasonably require when requested upon reasonable notice.
- 37.2 Subject to the provisions of clause 62 (Disclosure of Information) and Part 12 (Intellectual Property) the Contractor shall permit all records referred to in this clause 37 to be examined and if necessary copied, by or on behalf of the Authority.

PART 9 BILLING AND PAYMENT**38 Contract Price**

- 38.1 The Authority will pay to the Contractor the Contract Price. Details of the Contract Price are set out in Schedule 6 (Pricing Mechanism). Pricing of changes and amendments to this Contract shall be calculated in accordance with the provisions of Schedule 4 (Change and Change Management) and Schedule 7 (Pricing of Change).
- 38.2 Should the Authority exercise its options to extend this Contract in accordance with the provisions of clause 3 (Duration) and Schedule 10 (Options to Extend), the pricing of the extensions shall be calculated in accordance with the provisions of Schedule 6 (Pricing Mechanism).
- 38.3 The Parties agree to the principle of Presumed Inclusion, whereby:
- 38.3.1 all activities, tasks, materials and services necessary to deliver the Training Services are deemed to be included within the Contract and are the responsibility of the Contractor. Accordingly, no Contract amendment shall be accepted by the Authority other than in respect of an activity, task, material or service expressly excluded from the Contract or, stated as being an obligation of the Authority or a third party;
 - 38.3.2 the activities, tasks, materials or services expressly excluded from the Contract or stated as being an obligation of the Authority or a third party shall be those contained within the Contract and neither Party may cite any other earlier document in aid of seeking a change to the Contract;
 - 38.3.3 in the event that there is a dispute as to whether an activity, task, material or service is necessary to deliver the Training Services then either Party may refer the matter to be determined under clause 90 (Dispute Resolution);
 - 38.3.4 irrespective of whether either Party elect to refer a matter in respect of Presumed Inclusion to the Dispute Resolution procedure, the Contractor shall perform any task, activity, service or provision of the material necessary for the performance of the Training Services without delay. The Contractor shall not be required to undertake any task or activity which is not necessary for the performance of the Training Services; and
 - 38.3.5 in respect of the Contract Price, the principle of Presumed Inclusion shall be interpreted that all allowable costs associated with the performance of the Training Services and the Contractor's obligations under this Contract are deemed to be included in the Contract Price unless expressly stated otherwise within the Contract. Accordingly, no amendment to the Contract Price shall be made other than in relation to an express exclusion from the Contract or an obligation of the Authority or third Party and neither Party may cite any other earlier document in aid of seeking a change to the Contract Price.
- 38.4 Subject to this clause 38 and Schedule 4 (Change and Change Management),

unless expressly stated to the contrary in this Contract, the Contract Price includes the costs of delivery of the Training Services as set out in Schedule 2 (Statement of Requirements) and the performance of the Contractor's obligations under this Contract.

39 Payment

- 39.1 In consideration of the delivery of the Training Services, the Authority shall pay the Contractor the Contract Price, subject to the provisions of this Contract, in accordance with Schedule 9 (Payment Mechanism).

40 Recovery of Sums Due

- 40.1 Whenever under this Contract any sum of money shall be recoverable from or payable by the Contractor, the same may be deducted from any sum then due, or which at any time thereafter may become due, to the Contractor under this Contract, or under any other contract with the Authority, or with any Government Department.

41 Disputed Amounts

- 41.1 The Authority may withhold or deduct payment of any amount it believes the Contractor is not entitled to pursuant to this Contract ("**Disputed Amount**") pending agreement or determination of the Contractor's entitlement in relation to the Disputed Amount, subject to notifying the Contractor of such belief (and the reasons for it) on or before the day on which the Disputed Amount would (but for this clause 41.1) otherwise fall due.
- 41.2 The Authority shall pay any undisputed amounts on or before the day on which they fall due.
- 41.3 Within five Business Days following receipt by the Contractor of any notice served by the Authority pursuant to clause 41.1 above (or such other notice regarding the existence of a Disputed Amount as may be served by the Authority pursuant to this Contract), the Contractor shall respond by notifying the Authority as to whether or not it agrees with the statements made in that notice and the grounds for such agreement or disagreement. If the Contractor indicates that it does agree, or if the Contractor fails to make such a response within that time limit, the Authority shall be entitled:
- 41.3.1 to retain on a permanent basis any amounts withheld pursuant to clause 41.1; and
- 41.3.2 to reclaim from the Contractor the amount of any over-payment which may have been made to the Contractor, together with interest on any such amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which the over-payment was made until that amount has been paid in full and whether before or after judgment.
- 41.4 If the Contractor responds pursuant to clause 41.3 that it does not agree with all or any of the statements made in any notice served by the Authority pursuant to

clause 41.1 above (or such other notice regarding the existence of a Disputed Amount as may be served by the Authority pursuant to this Contract), the matter or matters in question shall be determined under clause 90 (Dispute Resolution).

41.5 If the determination of any dispute conducted pursuant to clause 41.4 shows that:

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

41.5.2 the Contractor has claimed under clause 39 (Payment) any amount which it was not entitled to be paid,

the Authority shall pay such amount to the Contractor or the Contractor shall repay such amount to the Authority (as relevant) with interest in each case on that amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which payment should have been made (in the case of failure to pay by the Authority) or from the date on which over-payment was made (in the case of excessive claims by the Contractor) until all relevant monies have been paid in full and whether before or after judgment.

42 VAT

- 42.1 The Contract Price excludes any UK output VAT and any similar EU (or non-EU) taxes chargeable on the provision of the Training Services by the Contractor to the Authority.
- 42.2 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 HMRC, the Authority shall pay to the Contractor in addition to the Contract Price (or any other sum due to the Contractor) a sum equal to the output VAT chargeable on the tax value of the provision of the Training Services, and all other payments under this 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.
- 42.3 The Contractor is responsible for the determination of VAT liability. The Contractor is to consult its local VAT office (and not the Authority) in cases of doubt. The Contractor shall notify the Authority of the Authority's VAT liability under the Contract, and any changes to it, when the liability is other than at the standard rate of VAT.
- 42.4 Where the provision of the Training 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 provision of the Training Services.
- 42.5 Where the Training Services are deemed to be provided to the Authority outside the UK, the Contractor may be required by the laws of the country where the supply takes place to register there for EU (or non- EU) turnover or similar tax. In that event, the Authority shall pay to the Contractor in addition to the Contract Price (and any other sum due to the Contractor under this Contract) a sum equal to the tax the Contractor is liable to pay to the tax authorities of the country in question in relation to the provision of the Training Services.
- 42.6 In relation to the Training Services provided under this Contract, the Authority shall not be required to pay any sum in respect of the Contractor's input VAT (and/or similar EU and non-EU input taxes). However, these input taxes will be allowed where it is proven to the Authority that, despite the Contractor having taken all reasonable steps to recover them, it has not been possible to do so.

PART 10 INSURANCE, INDEMNITIES AND LIABILITY**43 Insurance**

- 43.1 Without prejudice to its obligation to indemnify or otherwise be liable to the Authority under this Contract, the Contractor shall for the periods specified in Schedule 17 (Required Insurances) take out and maintain, or procure the taking out and maintenance of insurances in accordance with the requirements specified in Schedule 17 (Required Insurances) and any other insurances required by Law (together the "**Required Insurances**"). The Contractor shall ensure that the Required Insurances are effective in each case not later than the date on which the relevant risk commences.
- 43.2 The Required Insurances shall be taken out and maintained with insurers who are of good financial standing and of good repute in the international insurance market.
- 43.3 Where specified in Schedule 17 (Required Insurances) the Contractor shall ensure that the relevant policy of insurance 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.
- 43.4 The Contractor shall not (and the Contractor shall procure that none of its Sub-contractors of any tier shall not) take any action or fail to take any action or, insofar as is reasonably within its power, permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Required Insurances.
- 43.5 If the Contractor is in breach of Clause 43.1, the Authority may elect, but shall not be obliged, to purchase any insurance which the Contractor is required to maintain pursuant to this Contract but has failed to maintain in full force and effect, and the Authority shall be entitled to recover the premium and other reasonable costs incurred in connection therewith as a debt due from the Contractor.
- 43.6 The Contractor shall, upon the Effective Date and within fifteen (15) days after the renewal of any of the Required Insurances, provide evidence, in a form satisfactory to the Authority, that the Required Insurances are in force and effect and meet the requirements of this clause 43 and Schedule 17 (Required Insurances). The supply to the Authority of any evidence of insurance cover in compliance with the requirements of this clause 43.6 shall not imply acceptance by the Authority that the extent of insurance cover is sufficient or that the terms and conditions thereof are satisfactory, in either case, for the purposes of this Contract nor be a waiver of the Contractor's liability under this Contract.
- 43.7 The Contractor shall notify the Authority at least ten (10) days prior to the cancellation, suspension, termination or non-renewal of any of the Required Insurances.
- 43.8 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 without limitation

providing information and documentation in a timely manner.

- 43.9 Except where the Authority is the claimant party, the Contractor shall notify the Authority immediately (such notification to be accompanied by reasonable particulars of the incident or circumstances giving rise to such incident) after any:
- 43.9.1 incident 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; and
 - 43.9.2 if the incident or circumstances may give rise to any claim in connection with this Contract which may be in excess of the limits of Required Insurances in Schedule 17 (Required Insurances).
- 43.10 The Contractor shall maintain a written register of all losses which result in a claim under the Required Insurances in connection with this Contract and shall allow the Authority to review such register at any time.
- 43.11 Where any Required Insurance requires payment of a premium, the Contractor shall be liable for such premium.
- 43.12 Where any Required Insurance referred to in Schedule 17 (Required Insurances) is subject to an excess or deductible, below which the indemnity from insurers is excluded, the Contractor shall be liable for such excess or deductible which would otherwise be insured but for the excess or deductible. The Contractor shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Required Insurances whether under the terms of this Contract or otherwise.

44 Indemnities

- 44.1 The Contractor shall, subject to clause 44.2, be responsible for, and shall release and indemnify the Authority, its employees, agents and Authority Contractors on demand from and against all liability for:
- 44.1.1 death or personal injury;
 - 44.1.2 loss of or damage to Authority Property;
 - 44.1.3 breach of statutory duty; and
 - 44.1.4 actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis),

which may arise out of, or in consequence of, a breach of this Contract, a tortious act or omission, a breach of statutory duty, fraud or wilful misconduct, or the performance or non-performance of its obligations under this Contract by the Contractor, a Sub-Contractor, their employees or agents.

Limits on Indemnity

- 44.2 The Contractor shall not be responsible or be obliged to indemnify the Authority for:
- 44.2.1 any of the matters referred to in clauses 44.1.1 to 44.1.4 above which

arises as a direct result of the Contractor acting on the instruction of the Authority properly given in accordance with this Contract; or

- 44.2.2 any injury, loss, damage, cost and expense caused by the negligence or wilful misconduct of the Authority, its employees, agents or Authority Contractors or by the breach by the Authority of its obligations under this Contract.
- 44.3 An indemnity by either Party under any provision of this Contract shall be without limitation to any indemnity by that Party under any other provision of this Contract.

Conduct of Indemnity Claims

- 44.4 If any claim is subject to an indemnity from either Party to the other:
- 44.4.1 the Party wishing to make a claim (the "**Indemnified Party**") shall notify the other Party (the "**Indemnifying Party**") of the relevant claim as soon as reasonably practicable, giving full particulars of the claim;
- 44.4.2 the Indemnified Party shall take all reasonable steps (and, if the Contractor is the Indemnified Party, it shall ensure that the Sub-Contractors shall take all reasonable steps) to minimise and mitigate any loss for which the Indemnifying Party is liable under this Contract; and
- 44.4.3 if the claim relates to an action by a third party against the Indemnified Party, the Indemnifying Party may, unless the Contractor is the Indemnifying Party and the Authority notifies the Contractor that the Authority is refusing to allow the Contractor to have conduct of the claim on grounds of national security, at its own expense (and with the assistance and co-operation of the Indemnified Party) have conduct of such claim, including its settlement, and the Indemnified Party shall not, unless the Indemnifying Party has failed to resolve the claim within a reasonable period, take any action to settle or prosecute the claim.

Conduct of Indemnity Claims – Indemnifying Party's Obligations

- 44.5 If the Indemnifying Party wishes to have conduct of the claim it shall:
- 44.5.1 give reasonable security to the Indemnified Party for any cost or liability arising out of the conduct of the claim by the Indemnifying Party;
- 44.5.2 keep the Indemnified Party reasonably informed of the conduct of the claim;
- 44.5.3 consult with the Indemnified Party to the extent reasonably practicable;
- 44.5.4 not compromise the claim in any way whatsoever by making statements or admissions (other than in accordance with the Indemnified Party's consent, not to be unreasonably withheld or delayed);
- 44.5.5 do nothing which could prejudice the defence of any such claim; and

44.5.6 not bring the name of the Indemnified Party into disrepute.

Repayment of Subsequently Recovered Amounts to Indemnifying Party

44.6 If the Indemnifying Party pays to the Indemnified Party an amount in respect of an indemnity and the Indemnified Party subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the claim under the indemnity, the Indemnified Party shall immediately repay to the Indemnifying Party whichever is the lesser of:

44.6.1 an amount equal to the sum recovered (or the value of the saving or benefit obtained) less any out of pocket costs and expenses properly incurred by the Indemnified Party in recovering the same; and

44.6.2 the amount paid to the Indemnified Party by the Indemnifying Party in respect of the claim under the relevant indemnity,

provided that:

44.6.2.1 there shall be no obligation on the Indemnified Party to pursue such recovery; and

44.6.2.2 the Indemnifying Party shall be repaid only to the extent that the amount of such recovery aggregated with any sum recovered from the Indemnified Party exceeds any loss sustained by the Indemnified Party.

Limitations on Claims

44.7 Neither Party will be liable to the other Party for:

44.7.1 any indirect, special or consequential loss or damage; or

44.7.2 any loss of profits, turnover, business opportunities or damage to goodwill (whether direct or indirect).

44.8 Notwithstanding any other provisions of this Contract, neither Party shall be entitled to recover compensation or make a claim under this Contract in respect of any loss that it has incurred to the extent that it has already been compensated in respect of that loss pursuant to this Contract or otherwise.

Contractor's Liability

44.9 Save in respect of:

44.9.1 claims which relate to a matter in respect of which the Contractor is required to maintain insurance pursuant to the terms of this Contract, in which case the limit of liability in respect of such matter shall be the maximum insured amount under the relevant policy of insurance; or

44.9.2 the indemnities under clause 50 (TUPE and Pension Matters), Schedule 16 (TUPE) and Part 12 (Intellectual Property) in respect of which liability shall be unlimited,

the Contractor's liability in each Contract Year shall be limited in respect of the

following risks as set out below:

44.9.3 death or personal injury - Unlimited;

44.9.4 all other actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis) - £ Thirty two Million Pounds GBP (ex vat),

for the relevant Contract Year in respect of any and all claims or series of connected claims arising under or in connection with this Contract arising in that Contract Year. For the purposes of this clause, a claim or series of connected claims shall be deemed to have arisen in the Contract Year in which the facts or circumstances giving rise to such claim or series of connected claims first occurred.

44.10 Nothing in this Contract shall be construed as excluding or limiting either Party's liability for death or personal injury resulting from that Party's negligence, for fraud or fraudulent misrepresentation or for wilful misconduct.

44.11 The Parties shall use all reasonable endeavours to mitigate any losses it seeks to claim under this clause 44

PART 11 EMPLOYMENT MATTERS**45 Non-Solicitation**

- 45.1 Subject to clause 45.2, the Contractor undertakes that during the term of this Contract, and for the period of six months after the Expiry Date, or, if this Contract is terminated before the Expiry Date, the Termination Date, it shall not directly solicit or attempt to directly solicit services from any employees of the Authority or entice or attempt to entice any employees of the Authority away from the Authority.
- 45.2 Where an employee of the Authority responds on its own account to an advertisement made by the Contractor to the wider public, such response shall not be construed as the Contractor directly soliciting or attempting to directly solicit services from any employee of the Authority or enticing or attempting to entice any employees away from the Authority.
- 45.3 In the event that the Contractor breaches clause 45.1, it shall pay on demand liquidated damages to the Authority, the amount of liquidated damages being calculated in accordance with clause 45.4.
- 45.4 The amount of liquidated damages payable by the Contractor to the Authority pursuant to clause 45.3 shall be a sum equal to the gross salary of the relevant employee of the Authority for the 12 month period (or, if the employee of the Authority was employed for a period of less than 12 months, the gross salary for such lesser period) prior to the breach of clause 45.1 by the Contractor. The Parties agree that the liquidated damages referred to in this clause 45.4 are a genuine pre-estimate of loss that the Authority may suffer as a result of such breach.

46 Discrimination, Equality & Diversity

- 46.1 The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act 2010 (or any statutory modification or re-enactment relating to discrimination in employment. The Equality Act 2010 applies to both private and public sector bodies, however Section 149 of the Act places specific obligations on public sector bodies. The Contractor (and any Sub-Contractors) will be subject to these additional obligations whilst carrying out functions under this Contract.
- 46.2 Where in connection with this Contract, the Contractor is required to carry out work on a Government Establishment the Authority's premises or alongside the Authority's employees on any other premises in a manner which any third party might reasonably assume to be a role which is being undertaken by an employee of the Authority, the Contractor shall comply with the reasonable directions of the Authority in order to enable the Authority to fulfil its duties under the Regulations set out in clause 46.1. Those directions shall include but not be limited to the directions set out in clauses 46.7 and 46.8.
- 46.3 The Contractor shall take all reasonable steps to procure the observance of the provisions of clauses 46.1 and 46.2 by any servants, employees or agents of the Contractor and any Sub-Contractors engaged in the performance of this Contract.
- 46.4 If the Contractor becomes aware of any prosecution or proceedings brought under the Regulations set out in clause 46.1 against the Contractor, any servants,

- employees or agents of the Contractor and any Sub-Contractors engaged in performance of this Contract, the Contractor shall immediately notify the Authority at the address specified in this Contract. The Contractor shall not be required to notify the Authority if to do so would be in breach of any duty of confidentiality between the Contractor and any of its employees.
- 46.5 Notification by the Contractor of any information under this clause 46 shall not prejudice any rights of the Authority or the Contractor under this Contract.
- 46.6 Where the Contractor lets a Sub-Contract in connection with the performance of this Contract, the Contractor shall incorporate the terms of clause 77 (Discrimination, Equality and Diversity– Provisions to be included in Sub-Contracts) in the Sub-Contract as follows:
- 46.6.1 where clause 77 reads 'the Sub-Contract', the Contractor shall substitute the phrase or description used in the Sub-Contract to denote the same;
- 46.6.2 where clause 77 reads 'the Contractor', the Contractor shall substitute the phrase or description used in the Sub-Contract to denote the same; and
- 46.6.3 where clause 77 reads 'the Sub-Contractor', the Contractor shall substitute the phrase or description used in the Sub-Contract to denote the same.
- 46.7 In connection with clause 46.2 the Contractor shall so far as is reasonable promote good relations between persons of different racial groups (whether defined by colour, race, nationality, or ethnic or national origin) by:
- 46.7.1 encouraging the use of verbal and non-verbal language which will not cause racial offence;
- 46.7.2 encouraging the use of words or terms in written communications which will not cause racial offence;
- 46.7.3 discouraging any form of racial stereotyping;
- 46.7.4 encouraging behaviour which will not create restrictions between racial groups; and
- 46.7.5 encouraging behaviour which respects racial differences.
- 46.8 The Contractor is encouraged to bring to the attention of the Authority any measures which might promote good relations between different racial groups.

47 Employee Relations

- 47.1 During the Implementation Phase, the Contractor shall engage and consult with the Authority and any Previous Contractor employee and any other party affected by Schedule 16 (TUPE) and their relevant representatives in accordance with the Implementation Plan.

48 Use of Authority Personnel

- 48.1 During the Contract Period, subject to clause 48.3 below the Authority may make available GFR to the Contractor.
- 48.2 The Contractor shall be responsible for the management of the GFR in order to provide the Training Services in accordance with the terms of this Contract.
- 48.3 The Authority shall have the right at any time upon giving the Contractor such reasonable notice as may be appropriate in all the circumstances to require the GFR for duties unconnected with this Contract.
- 48.4 The Authority shall, where possible, provide replacement GFR to replace those which it has removed pursuant to clause 48.3 above. Where the Authority is unable to provide any replacements, the Contractor shall be responsible for recruiting additional staff to ensure that it can meet the requirements of this Contract in accordance with Schedule 4 (Change and Change Management).
- 48.5 Where the Contractor is required to recruit staff pursuant to clause 48.4 above, the Parties shall agree the Training Services Management Plans for replacing the GFR and any associated costs.
- 48.6 The Authority shall not be liable to the Contractor for the acts or omissions of the GFR to the extent that the GFR acts on the instructions of the Contractor.

49 Redundancy

- 49.1 The Parties shall comply with their respective redundancy related obligations set out in Part 2 to Schedule 16 (TUPE) and the Contractor shall comply with the Redundancy Plan detailed at Schedule 5

50 TUPE and Pension Matters

- 50.1 The Parties shall comply with their respective employment and pensions related obligations set out in Schedule 16 (TUPE) to the extent that they are relevant and can be applied to the transfer of Authority Employees and Ex-Authority Employees during the Contract Period.

Initial Transfer

- 50.2 The provisions set out in Schedule 16 (TUPE) shall apply as appropriate and to the extent that they are relevant and can be applied to those Authority Employees identified in the TUPE data issued with the Invitation to Submit Final Tender (ITSFT) and listed in Schedule 16 (TUPE) Appendix 2, Part A. For the purposes of clause 2.1.6 of Schedule 16 (TUPE) Annex A the sum included in the Contract Price in respect of the initial transfer of Authority Employees is **£TBC (ex VAT)**.

- 50.3 The provisions of Schedule 16 (TUPE) shall apply to the extent that they are relevant and can be applied to those Ex-Authority Employees listed at Schedule 16 (TUPE) Annex A, Appendix 3.

Future Transfers

- 50.4 In the event that, pursuant to the Contract, there is a transfer of employment of an individual either to or from the Contractor or its subcontractors in accordance with the Transfer of Undertakings (Protection of Employment) Regulations 2015 as amended from time to time ("the Transfer Regulations"), the Parties agree that the terms of Schedule 16 (TUPE) shall apply subject only to any amendments directly and necessarily arising from the specific circumstances applying to the individuals so transferring.
- 50.5 For the purposes of pensions, the parties agree that the provisions of Schedule 16 TUPE will apply to this Agreement.
- 50.6 All Sub-contracts which may result in the employment of any Former Authority Employee being transferred to a Sub-contractor pursuant to the Transfer Regulations shall include those pension provisions required under clause 1.2 of Schedule [insert details of pensions schedule] (Pensions) of this Contract in respect of such Sub-contracts.

PART 12 INTELLECTUAL PROPERTY**51 Intellectual Property Rights – Vested in the Authority**

- 51.1 All rights in Intellectual Property, including rights in inventions, designs, computer software, databases, copyright works and information, which is generated in the performance of work under this Contract (the “Results”) shall vest in and be the property of the Authority. The Contractor shall take all necessary measures to secure that vesting. The Authority may use, have used, copy and disclose the Results by itself or through third parties for any purpose whatsoever, subject to the Contractor’s patents and design rights (registered or unregistered) and to the rights of third parties not employed in the performance of work under this Contract. The Authority shall determine whether any of the Results should be protected by patent or like protection. The costs of patent or like protection shall be borne by the Authority.
- 51.2 The Contractor shall mark any copyright work comprising Results with the legend: ‘© Crown-owned copyright [insert the year of generation of the work]’. The Contractor shall also identify any confidential information contained in the copyright work which was provided by a third party not employed in the provision of the Training Services under this Contract.
- 51.3 The Contractor shall not use or disclose Results or use or disclose any information obtained as a result of the performance of this Contract unless and until published or made available to the public otherwise than in breach of this clause 51, or unless so agreed by the Authority at any time.
- 51.4 Nothing in this clause 51 shall transfer from the Contractor to the Authority ownership of rights in any Intellectual Property not generated in the provision of the Training Services under this Contract.

52 Foreground Intellectual Property

- 52.1 Clause 51 (Intellectual Property Rights – Vested in the Authority) shall apply to all the Results relating to Foreground Intellectual Property under this Contract, unless prior to commencement of a specific Task the Parties agree in writing that the Contractor shall own any Foreground Intellectual Property arising from that Task. To the extent that any Foreground Intellectual Property shall be owned by the Contractor, the Authority shall be entitled to the rights in such Foreground Intellectual Property as set out in clause 52.3. In the event that any Task involves the prospect of the joint development of Intellectual Property, the Parties shall agree a disposition of the Intellectual Property to be created which takes account of the dependency on any Background Intellectual Property owned by Authority and/or the Contractor, but the absence of any such agreement shall not be construed as meaning anything other than Authority ownership of the Foreground Intellectual Property.

Licensing of Foreground Intellectual Property

- 52.2 The Authority grants to the Contractor a non-exclusive, royalty free, licence to utilise the Authority owned Foreground Intellectual Property for the sole purpose of the Contractor performing its obligations under this Contract. Subject to compliance with clause 62 (Disclosure of Information) and clauses 53.13 to 53.15 below, the Contractor may sub-licence, on the same terms, the Authority owned

Foreground Intellectual Property to such Sub-Contractors as may require use of the Foreground Intellectual Property solely for the purposes of performing their Sub-Contract obligations.

- 52.3 In the event that the Contractor and Authority shall have agreed that the Foreground Intellectual Property shall be owned by the Contractor, the Contractor shall grant to the Authority a perpetual, royalty free, nonexclusive, worldwide licence to copy, modify and use such Contractor owned Foreground Intellectual Property and have all such activities performed by third parties on behalf of the Authority for any United Kingdom Government purpose whatsoever.

Commercial Exploitation of Foreground Intellectual Property

- 52.4 The Contractor shall not commercially exploit any Contractor owned Foreground Intellectual Property without first agreeing with the Authority the sum or sums which shall be paid to the Authority and subject also to the Contractor obtaining any further consent as may be required in respect of security and export licences. To the extent that it is required to facilitate commercial exploitation of the Contractor owned Foreground Intellectual Property, the Authority shall give consideration to granting a licence in respect of the Authority owned Foreground Intellectual Property and any relevant Background Intellectual Property owned by the Authority. Additionally, such licence to exploit Authority owned Foreground Intellectual Property and relevant Background Intellectual Property owned by the Authority shall be subject to any required security approvals and export licences. The obtaining of any required approvals outside the control of the Authority shall be the responsibility of the Contractor.

53 Background Intellectual Property

Authority Owned Background Intellectual Property

- 53.1 To the extent that it is able, and without incurring liability to any third party, the Authority grants to the Contractor a royalty free, non-exclusive licence to use Authority owned Background Intellectual Property for the purposes of the Contractor performing this Contract. Unless the Authority shall specify to the contrary, the Contractor shall be entitled to sub-licence its Sub-Contractors to use the Authority owned Background Intellectual Property solely for performance of Sub-Contracts.

Contractor Owned Background Intellectual Property

- 53.2 Where the Contractor utilises Contractor owned Background Intellectual Property for the purposes of performing this Contract, the Contractor shall grant the Authority a perpetual, royalty free, non-exclusive licence to use, and have third parties use, on behalf of the Authority, such Contractor owned Background Intellectual Property for the purposes of this Contract, including the delivery of Government to Government Training and such licence shall extend on the same terms and to the same purposes being performed after the Expiry Date or the Termination Date. Such licence shall not extend where the Authority has exercised its rights to terminate under clause 67 (Break) and Schedule 4 (Change and Change Management). Where the Authority terminates under clause 67 and Schedule 4 (Change and Change Management), the licence rights shall continue on fair and reasonable terms but the exercising of any such right shall not be conditional on the prior agreement of those fair and reasonable terms.

Authority Supplied Third Party Owned Background Intellectual Property

- 53.3 To the extent that the Authority has sufficient rights to enable use by the Contractor for the purposes of this Contract, the Authority shall grant a royalty free, non-exclusive licence to the Contractor to use Authority supplied third party owned Background Intellectual Property in accordance with any restrictions notified by the Authority. The Contractor shall not sub-licence such Authority supplied third party owned Background Intellectual Property without first obtaining the written consent of the Authority. Where any such sub-licence is granted, its use shall be solely for the purposes of performing Sub-Contract obligations and subject to such constraints as may be notified by the Authority but which sub-licence shall not be of broader scope than that granted to the Contractor.

Contractor Supplied Third Party Owned Background Intellectual Property

- 53.4 Where the Contractor utilises third party owned Background Intellectual Property for the purposes of this Contract, the Contractor shall ensure that:
- 53.4.1 the Authority has a free right to use such third party owned Background Intellectual Property for the same purposes as it is employed under this Contract, including the delivery of Government to Government Training;
 - 53.4.2 the Contractor shall endeavour to ensure that such third party owned Background Intellectual Property is available for use by third parties for the same purposes as it is employed under this Contract, and that the Contractor shall notify the Authority of any issue of non-compliance prior to utilising the relevant third party owned Background Intellectual Property for this Contract and await instruction from the Authority;
 - 53.4.3 all third party owned Background Intellectual Property licences shall be perpetual unless the Authority agrees otherwise;
 - 53.4.4 all third party owned Background Intellectual Property licence shall be royalty free unless the Authority agrees otherwise; and
 - 53.4.5 the Authority is supplied within 20 days with copies of any agreed third party owned Background Intellectual Property licences.

Notification and Marking

- 53.5 The Contractor shall mark any copyright work delivered under the Contract with a copyright notice consistent with the requirements of clause 51.2 or as appropriate, such notice as may be relevant to specify the Contractor as owner of the work provided that in the latter case the copyright notice acknowledges the Authority's rights of use of such work under this Part 12 (Intellectual Property). Any such notice shall be perpetuated in any copies of such work made by the Contractor, the Authority or any other Government Department or its agents or contractors.
- 53.6 The Contractor shall ensure that any documents delivered under the Contract, which consist exclusively of Foreground Intellectual Property, are entirely free of the Contractor's proprietary markings including, but not limited to, the Contractor's company name, logos, names of authors etc.
- 53.7 The Contractor shall ensure that any Background Intellectual Property which it

utilises for this Contract is, to the extent practicable, marked as such and delivered, where reasonable to do so, independently of Foreground Intellectual Property. Where the Contractor provides any Training Service under this Contract which mixes Foreground Intellectual Property and Background Intellectual Property, it shall, at the request of the Authority, provide a justification for the mixing and at the reasonable request of the Authority, at no additional cost, shall provide these as separate Training Services.

Data Retention

- 53.8 During the Contract Period and for not less than six years after, the Contractor shall maintain at least one copy (the "Control Copy") of all Information to which this Contract applies.
- 53.9 The Control Copy shall be maintained in media and formats agreed to by the Authority but in any event be presented in a logical format which readily facilitates third party understanding of the Control Copy and association as appropriate with its relevant equipment. The Control Copy shall be the property of the Authority and marked as such and include the reference number of this Contract. The Authority may take possession of the Control Copy notwithstanding any administration, receivership, winding-up or liquidation of the Contractor or any transfer of its assets to any third party, and copies of the Control Copy shall be supplied as required by the Authority from time to time by the Authority at the Authority's reasonable expense.
- 53.10 If the Contractor enters into another contract with the Authority regarding maintenance of the Control Copy, then the Contractor's obligations under clauses 53.8 to 53.10 shall be governed by that contract at the end of the period referred to in clause 53.8. The Contractor shall not destroy or amend the Control Copy except as authorised in writing by the Authority.

Sub-Contracting

- 53.11 The Contractor shall not place any Sub-Contract which involves any element of design and development of Intellectual Property without ensuring that the Intellectual Property rights of the Authority are consistent with this Contract. Where appropriate, the Contractor shall invite the Authority to enter into a direct agreement with any prospective Sub-Contractor to ensure the Authority's rights of use in any Foreground Intellectual Property.

Continuity of Use

- 53.12 Recognising that the Authority may require continuity of anything utilised or delivered under this Contract, the Contractor shall at all times act in a manner so as to ensure that the Authority can, in the most cost effective way to the Authority, continue to utilise or deliver any Training Service or item provided by the Contractor under this Contract. In this respect, the Contractor shall immediately consult with the Authority in respect of any third party Background Intellectual Property licences required during the performance of this Contract which contain restrictions on use, price or otherwise and which restrictions would constrain or prevent the Authority, or a third party on behalf of the Authority, from continuing to utilise that Background Intellectual Property for the same purposes as which it was utilised under this Contract.
- 53.13 The Contractor shall, if requested, and on fair and reasonable terms, grant to the

Authority, or third parties on behalf of the Authority, licences in Contractor owned Background Intellectual Property for which licences are for purposes beyond those for which the Background Intellectual Property was utilised or granted under this Contract. At the request of the Authority the Contractor shall endeavour to obtain, on fair and reasonable terms, licences for the Authority, or third parties on behalf of the Authority, in Contractor supplied third party owned Background Intellectual Property for purposes beyond those for which the Background Intellectual Property was utilised or granted under this Contract.

Controlled Information

- 53.14 Clauses 53.14 to 53.16 shall apply in addition to and notwithstanding clause 62 (Disclosure of Information) or any other confidentiality clause in this Contract.
- 53.15 The Contractor shall:
- 53.15.1 hold the Controlled Information and not use it other than for the purpose of discharging its obligations under this Contract;
 - 53.15.2 not copy the Controlled Information except as strictly necessary for the purpose of discharging its obligations under this Contract;
 - 53.15.3 not disclose the Controlled Information to any third party without the prior written consent of the Authority;
 - 53.15.4 protect the Controlled Information diligently against any unauthorised access and against loss;
 - 53.15.5 act diligently to ensure that:
 - 53.15.5.1 Controlled Information is disclosed to Contractor Employees only to the extent necessary for the purpose of discharging its obligations under this Contract; and
 - 53.15.5.2 Contractor Employees to whom Controlled Information is disclosed are made aware of and required to comply with the terms of this clause 53.15;
 - 53.15.6 compile a register of Controlled Information (the "Register of Controlled Information"), which shall include an explicit description of the Controlled Information, a record of the number of copies made and a record of all access to the Controlled Information including access to any copies of the Controlled Information;
 - 53.15.7 maintain the Register of Controlled Information for the Contract Period and for two years afterwards;
 - 53.15.8 make the Register of Controlled Information available to the Authority upon reasonable notice for inspection and audit for the Contract Period and for two years thereafter; and,
 - 53.15.9 after the Contract Period, return to the Authority all original and duplicate copies of the Controlled Information, or if requested by the Authority, destroy the Controlled Information and provide a certificate

of destruction to the Authority.

- 53.16 Clauses 53.14 and 53.15 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:
- 53.16.1 that the Information concerned was or has become published or publicly available for use without breach of any provision of the Contract or any other agreement between the Parties;
 - 53.16.2 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;
 - 53.16.3 that the Information concerned was lawfully provided by a third party without restriction on use or further disclosure; or
 - 53.16.4 from its records, that the Information was derived independently of the Controlled Information,

to the extent that copying, use or disclosure of this other information shall not disclose its relationship to any Controlled Information.

54 Third Party Intellectual Property – Commercial and Non-Commercial Articles and Services

Notifications

- 54.1 As it becomes aware, the Contractor shall promptly notify the Authority of:
- 54.1.1 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;
 - 54.1.2 any restriction as to disclosure or use, including any export requirement or restriction, 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;
 - 54.1.3 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 clause 54.1 does not apply in respect of articles or services normally available from the Contractor as a commercial off the shelf (“COTS”) item or service.

- 54.2 If the information required under clause 54.1 has been notified previously, the Contractor may meet its obligations by giving details of the previous notification.

Patents and Registered Designs in the UK – COTS Articles or Services

- 54.3 In respect of any question arising (by way of an allegation made to the Authority or 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 clause will not apply if:
- 54.3.1 the Authority has made or makes an admission of any sort relevant to such question;
 - 54.3.2 the Authority has entered or enters into any discussions on such question with any third party without the prior written agreement of the Contractor;
 - 54.3.3 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 1949;
 - 54.3.4 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.
- 54.4 The indemnity in clause 53.3 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.
- 54.5 In the event that the Authority has entered into negotiations in respect of a claim for compensation, or legal proceedings in respect of the Crown Use have commenced, the Authority shall authorise the Contractor for the purposes of performing the 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.

Patents and Registered Designs in the UK - All other Articles or Services

- 54.6 If a relevant invention or design has been notified to the Authority by the Contractor prior to the date of this Contract, 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 patent or registered design, for the purpose of performing this Contract.
- 54.7 If, under clause 54.1, a relevant invention or design is notified to the Authority by the Contractor after the date of this Contract, then:

- 54.7.1 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
- 54.7.2 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.

Patents, Utility Models and Registered Designs outside the UK

- 54.8 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.
- 54.9 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.

Royalties and Other Licence Fees

- 54.10 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:
- 54.10.1 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
- 54.10.2 any obligation to make payments for Intellectual Property has not been promptly notified to the Authority under clause 54.1.
- 54.11 Where an authorisation is given by the Authority under clauses 54.5 to 54.7, 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:
- 54.11.1 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

- 54.11.2 authorised to use any model, document or information relating to any such invention or design which may be required for that purpose.

Copyright, Design Rights etc.

- 54.12 The Contractor shall assume all liability and indemnify the Authority and its officers, agents and employees against liability, including costs as a result of:
- 54.12.1 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;
 - 54.12.2 misuse of any Confidential Information, trade secret or the like by the Contractor in performing this Contract; or
 - 54.12.3 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.
- 54.13 The Authority shall assume all liability and indemnify the Contractor, its officers, agents and employees against liability, including costs as a result of:
- 54.13.1 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; or
 - 54.13.2 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.

Authorisation and Indemnity - General

- 54.14 The above represents the total liability of each Party to the other under this Contract in respect of any infringement or alleged infringement of patent or other Intellectual Property Right owned by a third party.
- 54.15 Neither Party shall be liable, one to the other, for any consequential loss or damage arising as a result, directly or indirectly, of a claim for infringement or alleged infringement of any patent or other Intellectual Property Right owned by a third party.
- 54.16 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 clause 54 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.
- 54.17 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 and shall provide such information as the other Party may reasonably require.

- 54.18 Following a notification under clause 54.16, the Party notified shall advise the other Party in writing within 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.
- 54.19 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.
- 54.20 If at any time a claim or allegation of infringement arises in respect of copyright, database right, design right or breach of confidence as a result of the provision of any item by the Contractor to the Authority, the Contractor may at its own expense replace the item with an item of equivalent functionality and performance so as to avoid infringement or breach.
- 54.21 The Parties shall co-operate with one another to mitigate any claim or damage which may arise from use of third party Intellectual Property Rights.

Sub-Contracts

- 54.22 The Contractor shall secure from any Sub-Contractor, the prompt notification to the Authority of the information required by clause 54.1. On receipt of any such notification the Authority shall issue a written authorisation to the Sub-Contractor in accordance with clause 54.7. Any such authorisation will be subject always to clauses 54.10, 54.11 and 54.14 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 clause 54 is a matter between the Contractor and the Sub-Contractor.

General

- 54.23 Nothing in this Part 12 shall be taken as an authorisation or promise of an authorisation under section 240 of the Copyright, Designs and Patents Act 1988. This Part 12 shall constitute "an agreement to the contrary" for the purposes of section 48 of the Copyright, Designs and Patents Act 1988.

55 Retention of Rights

- 55.1 Nothing in this Contract shall extinguish or diminish any rights to use Intellectual Property which has been acquired by either the Authority or the Contractor outside of this Contract.

56 Transfer

- 56.1 The Intellectual Property licences granted under this Contract shall not be

assigned without the prior written permission of the licensor.

PART 13 SECURITY AND CONFIDENTIALITY**57 The Official Secrets Acts**

57.1 The Contractor shall:

57.1.1 take all reasonable steps to ensure that all Contractor Employees engaged on any work in connection with this Contract have notice that the Official Secrets Acts 1911-1989 apply to them and will continue so to apply after the Expiry Date or the Termination Date; and

57.1.2 if directed by the Authority, ensure that any Contractor Employee shall sign a statement acknowledging that, both during the term of this Contract and after its Expiry Date or the Termination Date, he is bound by the Official Secrets Acts 1911-1989 (and where applicable by any other Legislation).

58 Security Requirements

58.1 The Commanding Officer for each Establishment is responsible for all security on that Establishment. For the avoidance of doubt, this shall include personnel security, physical security and IT security. The Commanding Officer may delegate any part of their security responsibilities to the relevant Establishment Security Officer ("ESyO").

58.2 The Contractor shall provide the name of the Contractor Security Officer to the Authority. The Contractor's Security Officer and the ESyO shall liaise and cooperate in relation to relevant Establishment security matters.

58.3 The security requirements set out in this clause 58 shall apply to the Contractor, Contractor Employees and any Sub-Contractor, agent and representative authorised to act on behalf of the Contractor. For the avoidance of doubt, the Contractor is not relieved from any obligation contained in this Contract as a result of a breach of this clause 58.

Personnel Security

58.4 The Contractor shall ensure that all the Contractor Employees (including Sub-Contractors, agents and representatives) delivering Training Services under this Contract have sufficient clearances in place.

58.5 The Contractor must obtain a Baseline Personnel Security Standard or Baseline Standard check for each Contractor Employee (including Sub-Contractors, agents and representatives) and provide the information to the Authority. Information on the Baseline Personnel Security Standard is contained in the Cabinet Office document "HMG Baseline Personnel Security Standard" (available on the website www.cabinetoffice.gov.uk). Schedule 25 (Security Clearance) contains a sample proforma of verification to be provided by the Contractor to the Authority for each Contractor Employee. For the avoidance of doubt, security clearance received by way of any other contract with any Government Department or via the Contractor's List X Status does not remove or alter any of the obligations on the Contractor under this clause 58.

58.6 In the event that the Authority requires any Contractor Employee (including Sub-Contractor) to have clearances additional to the Baseline Standard, the

Contractor shall co-operate, and shall ensure its employees and Sub-Contractors co-operate, with the Authority to enable such additional clearances to be obtained.

Physical Security

- 58.7 The Contractor shall ensure that all Contractor Employees abide by the physical security requirements of each Commanding Officer, as shall be notified to it from time to time.

IT Security

- 58.8 The Contractor shall ensure that all Contractor Employees shall abide by the IT security requirements of each Commanding Officer, as shall be notified to it from time to time.

59 Declaration of Convictions – Working with Children and Vulnerable Adults

- 59.1 The Contractor shall (to the extent permitted by Law) procure that all Contractor Employees or persons performing any Training Services under this Contract who may reasonably be expected in the course of their employment or engagement to have access to children or vulnerable adults shall before he or she begins to attend the Establishments:

59.1.1 be questioned concerning their convictions; and

59.1.2 be required to complete a police check form or to consent to an application for a certificate under Part V of the Police Act 1997.

- 59.2 The Contractor shall procure that no person who discloses any convictions, or who is found to have any convictions following completion of a police check or an application for a certificate under clause 59.1 above, in either case of which the Contractor or its Sub-Contractor is aware or ought to be aware, is employed without the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).

- 59.3 The Contractor shall procure that the Authority is kept advised at all times of any person employed or engaged by the Contractor or any Sub-Contractor in the performance of any of the work under this Contract who, subsequent to commencement of such employment or engagement, receives a conviction of which the Contractor or its Sub-Contractor become aware or whose previous convictions become known to the Contractor or a Sub-Contractor and provided that the Authority (acting reasonably) considers the conviction has a material bearing on the suitability of any such person to be engaged in performing any of the work under this Contract, such person shall only continue to have access to the children and vulnerable adults, for the purpose of providing the relevant Training Services, with the Authority's prior written consent, not to be unreasonably withheld or delayed.

- 59.4 The Contractor shall comply with the provisions of JSP 893 (Policy on Safeguarding Vulnerable Groups).

60 Security Measures

- 60.1 Unless it has the written authorisation of the Authority to do otherwise, neither the

Contractor nor any of the Contractor Employees shall, either before or after the Expiry Date or the Termination Date, 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:

- 60.1.1 who is not a British citizen;
 - 60.1.2 who does not hold the appropriate authority for access to the protected matter;
 - 60.1.3 in respect of whom the Authority has notified the Contractor in writing that the Secret Matter shall not be disclosed to, or acquired by, that person;
 - 60.1.4 who is not a Contractor Employee; or
 - 60.1.5 who is a Contractor Employee and has no need to know the information for the proper performance of this Contract.
- 60.2 Unless it has the written permission of the Authority to do otherwise, the Contractor and the Contractor Employees shall, both before and after the completion or termination of this Contract, take all reasonable steps to ensure that:
- 60.2.1 no photograph of, or pertaining to, any Secret Matter shall be taken and no copy of or extract from any Secret Matter shall be made except to the extent necessary for the proper performance of this Contract; and
 - 60.2.2 any Secret Matter is at all times strictly safeguarded in accordance with the Security Policy Framework and upon request, is delivered up to the Authority who shall be entitled to retain it.

A decision of the Authority on the question of whether the Contractor has taken or is taking reasonable steps as required by this clause 60, shall be final and conclusive.

- 60.3 The Contractor shall:
- 60.3.1 provide to the Authority:
 - 60.3.1.1 upon request, such records giving particulars of those Contractor Employees who have had at any time, access to any Secret Matter that is required to be kept in accordance with clause 60.2.2;
 - 60.3.1.2 upon request, such information as the Authority may from time to time require so as to be satisfied that the Contractor and the Contractor Employees are complying with its obligations under this clause 60, including the measures taken or proposed by the Contractor so as to comply with its obligations and to prevent any breach of them;
 - 60.3.1.3 full particulars of any failure by the Contractor and the Contractor Employees to comply with any obligations

relating to Secret Matter arising under this clause 60 immediately upon such failure becoming apparent; and

- 60.3.2 ensure that, for the purpose of checking the Contractor's compliance with the obligation in clause 60.2.2, a Representative of the Authority shall be entitled at any time to enter and inspect any premises used by the Contractor which are in any way connected with 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 it may reasonably require.
- 60.4 The Contractor shall ensure that all Contractor Employees are aware of its obligations in this clause and have notice that the provisions of the Official Secrets Acts 1911 - 1989 apply to them and will continue to apply after expiry or termination of this Contract before he or she begins to attend the Establishments.
- 60.5 If at any time either before or after the completion or termination of this Contract, the Contractor or any of the Contractor Employees discovers or suspects that an unauthorised person is seeking or has sought to obtain information directly or indirectly concerning any Secret Matter, the Contractor shall immediately inform the Authority of the matter with full particulars.
- 60.6 If the Contractor proposes to make a Sub-Contract which will involve the disclosure of Secret Matter to the Sub-Contractor, the Contractor shall:
- 60.6.1 submit for approval of the Authority the name of the proposed Sub-Contractor, a statement of the work to be carried out and any other details known to the Contractor which the Authority shall reasonably require;
- 60.6.2 incorporate into the Sub-Contract the terms of Part 16 and such secrecy and security obligations as the Authority shall direct; and
- 60.6.3 inform the Authority immediately if it becomes aware of any breach by the Sub-Contractor of any secrecy or security obligation and, if requested to do so by the Authority, terminate the Sub-Contract.
- 60.7 For the avoidance of doubt, there is no requirement for List X Status under this Contract.

61 Observance Of Regulations

- 61.1 The Contractor shall ensure that its employees, Sub-Contractors, agents or consultants have the necessary probity (by undertaking the Baseline Personnel Security Standard) and, where applicable, hold additional, valid National Security Vetting clearance for the material to which they have long-term, frequent and uncontrolled access when employed within the boundaries of a Government Establishment.
- 61.2 Where the Contractor requires information on the Baseline Personnel Security Standard or security clearance for its employees, Sub-Contractors, agents or consultants or is not in possession of the relevant rules, regulations or requires guidance on them, it shall apply in the first instance to the Authority Representative.

- 61.3 On request, the Contractor shall be able to demonstrate to the Authority that the Contractor's processes to assure compliance with the Baseline Personnel Security Standard have been carried out satisfactorily. Where that assurance is not already in place, the Contractor shall permit the Authority to inspect the processes being applied by the Contractor to comply with the Baseline Personnel Security Standard.
- 61.4 The Contractor shall comply and shall ensure that its employees, Sub-Contractors, agents or consultants 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.
- 61.5 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.

62 Disclosure of Information

- 62.1 Subject to clauses 62.4, 62.5 and 62.6 each Party:
- 62.1.1 shall treat in confidence all Confidential Information it receives from the other;
 - 62.1.2 shall not disclose any of that Confidential Information to any third party without the prior written consent of the other Party, which consent shall not unreasonably be withheld, except that the Contractor may disclose Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of this Contract;
 - 62.1.3 shall not use any of that Confidential Information otherwise than for the purpose of this Contract; and
 - 62.1.4 shall not copy any of that Confidential Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under this Contract.
- 62.2 The Contractor shall take all reasonable precautions necessary to ensure that all Confidential Information disclosed to the Contractor by or on behalf of the Authority under or in connection with this Contract:
- 62.2.1 is disclosed to its employees and Sub-Contractors, only to the extent necessary for the performance of this Contract; and
 - 62.2.2 is treated in confidence by them and not disclosed except with prior written consent or used otherwise than for the purpose of performing work or having work performed for the Authority under this Contract or any Sub-Contract under it.
- 62.3 The Contractor shall ensure that its employees are aware of its arrangements for discharging the obligations at clauses 62.1 and 62.2 before they receive Confidential Information and take such steps as may be reasonably practical to enforce such arrangements.

- 62.4 Clauses 62.1 and 62.2 shall not apply to any Confidential Information to the extent that either Party:
- 62.4.1 exercises rights of use or disclosure granted otherwise than in consequence of, or under, this Contract;
 - 62.4.2 has the right to use or disclose the Confidential Information in accordance with other conditions of this Contract; or
 - 62.4.3 can show:
 - 62.4.3.1 that the Confidential Information was or has become published or publicly available for use otherwise than in breach of any provision of this Contract or any other agreement between the Parties;
 - 62.4.3.2 that the Confidential Information was already known to it (without restrictions on disclosure or use) prior to it receiving it under or in connection with this Contract;
 - 62.4.4 that the Confidential Information was received without restriction on further disclosure from a third party who lawfully acquired it and who is itself under no obligation restricting its disclosure; or
 - 62.4.5 from its records that the same information was derived independently of that received under or in connection with this Contract,
- provided the relationship to any other Confidential Information is not revealed.
- 62.5 Neither Party shall be in breach of this clause 62 where it can show that any disclosure of Confidential Information was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the party making the disclosure shall ensure that the recipient of the Confidential Information is made aware of, and asked to respect, its confidentiality. Such disclosure shall in no way diminish the obligations of the Parties under this clause 62.
- 62.6 The Authority shall not be in breach of this Contract where it can show that any disclosure of Confidential Information is made solely, and to the extent necessary, to comply with the Freedom of Information Act 2000 or the Environmental Information Regulations 2004. To the extent permitted by the time for compliance under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, the Authority shall consult the Contractor where the Authority is considering the disclosure of Confidential Information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 and, in any event, shall provide prior notification to the Contractor of any decision to disclose the Confidential Information. The Contractor acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose Confidential Information in order to comply with the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Freedom of Information Act 2000 or the Environmental Information Regulations 2004. For the avoidance of doubt, nothing in this clause 62 shall affect the Contractor's rights at law.

- 62.7 Nothing in this clause 62 shall affect the Parties' obligations of confidentiality where information is disclosed orally in confidence.
- 62.8 If disclosure is permitted under this clause 62, the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Contract.

PART 14 CHANGE**63 Change and Change Management**

- 63.1 The provisions of Schedule 4 (Change and Change Management) shall have effect.

64 Notification of Change of Control

- 64.1 The Contractor shall inform the Authority in writing, as soon as practicable, at the address below, of the details of any proposed or actual change of control (as described below) of the Contractor, the Parent Company, any Holding Company of the Contractor. The Contractor shall not be required to comply with this obligation to inform to the extent that to do so is (or would be) in breach of either:

64.1.1 any pre-existing non-disclosure agreement; or

64.1.2 any Legislation governing the conduct of the Contractor in the UK or other jurisdictions,

and where the Contractor may be subject to legal sanction arising from so informing the Authority.

- 64.2 For the purposes of this clause, "control" means the power of a person to secure that the affairs of the Contractor, the Parent Company, any Holding Company of the Contractor are conducted in accordance with the wishes of that person:

64.2.1 by means of the holding of shares, or the possession of voting powers in, or in relation to, the Contractor, the Parent Company, any Holding Company of the Contractor and/or any Sub-Contractor; or

64.2.2 by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating the Contractor, any the Parent Company, Holding Company of the Contractor and/or any Sub-Contractor,

and a "change of control" occurs if a person who controls the Contractor, the Parent Company, any Holding Company of the Contractor ceases to do so or if another person acquires control of the Contractor, the Parent Company, any Holding Company of the Contractor and/or any Sub-Contractor.

- 64.3 Each notice of change of control shall be taken to apply to all contracts with the Authority. Notices shall be submitted to:

Mergers & Acquisitions Section
Strategic Suppliers Management Team
Poplar 1 # 2119
MoD Abbey Wood
Bristol
BS34 8JH

- 64.4 Notification by the Contractor of any intended, planned or actual change of control shall not prejudice the existing rights of the Authority or the Contractor under the Contract nor create or imply any rights of either the Contractor or the Authority

additional to the Authority's rights set out in this condition. The Contractor shall notify the Authority no less than 50 Business Days before any proposed change in its registered address or place of business.

- 64.5 A Representative of the Authority shall consider the notice of change of control and advise the Contractor in writing of any concerns the Authority may have. Such concerns may include but are not limited to potential threats to national security, the ability of the Authority to comply with its statutory obligations or matters covered by the declarations made by the Contractor prior to Contract Award
- 64.6 The Authority may terminate the Contract by giving written notice to the Contractor within six months of the Authority being notified in accordance with clause 64.1. The Authority shall act reasonably in exercising its right of termination under this Condition.
- 64.7 The Contractor shall not affect any change in its registered address or place of business without the Authority's written consent (not to be unreasonably withheld).

PART 15 EXPIRY AND TERMINATION**65 Termination on Expiry of Service Period**

- 65.1 This Contract shall terminate automatically on the Expiry Date unless it has been terminated earlier in accordance with the provisions of this Contract. The Contractor shall not be entitled to any compensation for termination of this Contract on the Expiry Date.

66 Failure of Performance

Persistent Failure of Performance Leading to a Breach of Contract: Non – Audit related

- 66.1 Other than in respect of Performance Failures (Level 1), if there is a continuous or frequent failure of performance for a period of three months then a breach of this Contract by the Contractor shall be deemed to have occurred and the Authority may serve a notice on the Contractor:

66.1.1 specifying that it is a formal warning notice;

66.1.2 giving reasonable details of the breach; and

66.1.3 stating that such breach is a breach which, if it recurs frequently or continues, may result in a termination of the whole or part of this Contract in accordance with this clause 66.

- 66.2 If, following service of such a warning notice, the breach specified has continued or recurred frequently after the date falling 30 calendar days after the date of service of such notice, then the Authority may serve another notice on the Contractor specifying that it is a final warning notice:

66.2.1 stating that the breach specified has been the subject of a prior formal warning notice served on the Contractor; and

66.2.2 stating that if such failure continues for a further month or recurs within a three month period after the date of service of the final warning notice then such breach shall constitute a persistent breach (a "**Failure of Performance Persistent Breach**") of this Contract by the Contractor and the Authority shall be entitled to exercise the remedies set out in this clause 66.

Events Leading to Contractor Default

- 66.3 In the event that any one or more of the following takes place, a contractor default (a "**Contractor Default**") is deemed to occur:

66.3.1 a breach by the Contractor of any of its obligations under this Contract which materially and adversely affects the provision of the Training Services;

66.3.2 a Performance Failure (Level 1) Default Breach occurs;

66.3.3 a court makes an order that the Contractor be wound up or a resolution for a voluntary winding up of the Contractor is passed;

- 66.3.4 any receiver or receiver manager in respect of the Contractor is appointed or possession is taken by or on behalf of any creditor of any property that is the subject of a charge;
- 66.3.5 any voluntary arrangement is made for a composition of debts or a scheme of arrangement is approved under the Insolvency Act 1986 or the Companies Act 2006 for the Contractor;
- 66.3.6 an administration order is made, or an administrator is appointed, in respect of the Contractor;
- 66.3.7 a breach by the Contractor of its obligations under clause 86 (Assignment) or clause 80 (Sub-Contracting);
- 66.3.8 a failure to commence the provision of any Training Service described in Schedule 2 (Statement of Requirements);
- 66.3.9 a breach by the Contractor of its obligations to take out and maintain any of the Required Insurances;
- 66.3.10 a breach of security by the Contractor as described in Part 13 (Security and Confidentiality); and
- 66.3.11 a Personal Data Breach occurs.

Rights in the Event of Contractor Default: Termination in Whole or Part

- 66.4 If a Contractor Default has occurred, the Authority shall be entitled to terminate the whole or any relevant part of this Contract in accordance with the provisions of clause 66.5 and subject to the provisions of clauses 66.6 to 66.9.
- 66.5 If a Contractor Default has occurred and the Authority wishes to terminate the whole or any relevant part of this Contract pursuant to clause 66.4, it must serve a notice (the "Termination Notice") on the Contractor stating:
 - 66.5.1 that the Authority is terminating this Contract (or part) for Contractor Default;
 - 66.5.2 where relevant, the part of this Contract that the Authority is terminating;
 - 66.5.3 the type and nature of Contractor Default that has occurred, giving reasonable details; and
 - 66.5.4 that this Contract (or part) shall (subject to clauses 66.6 to 66.9 below) terminate on the day (the "Contractor Default Termination Date") falling 20 Business Days after the date the Contractor receives the Termination Notice.

Rights in the Event of Contractor Default: Rectification

- 66.6 Where a Termination Notice cites a Contractor Default of the type and nature falling under clause 66.3.1 (material breach) and/or clause 66.3.8 (failure to commence the provision of any Training Service) and/or clause 66.3.8 (failure to take out Required Insurance) and/or clause 66.3.11 (Personal Data breach), the

Contractor shall, in consultation with the Authority, have the opportunity to set out how it intends to remedy such Contractor Default in writing, (the “**Rectification Plan**”).

- 66.7 Where the Authority agrees with such proposed rectification, and the rectification is implemented in accordance with the Rectification Plan to the Authority’s satisfaction, the Termination Notice in question shall be deemed to be revoked.

Rights in the Event of Contractor Default: Failure of Rectification

- 66.8 Where the Authority agrees with such proposed rectification, and the rectification is not implemented in accordance with the Rectification Plan to the Authority’s satisfaction, the Contractor Default Termination Date shall be the day falling 20 Business Days after the date by which the rectification was agreed to be implemented.

Termination Date for Contractor Default

- 66.9 Following the issue of a Termination Notice pursuant to clause 66.5 above, and where the Authority is terminating the whole of this Contract, this Contract shall (subject to clauses 66.6 to 66.8 above) terminate on the Contractor Default Termination Date (or such later date as the Authority, at its discretion, may agree).

Partial Termination

- 66.10 Where the Authority is terminating part of this Contract, the Parties shall, subject to clause 72 (Continuing Obligations), owe each other no further obligations in respect of such part of this Contract as is specified in the Termination Notice from the Contractor Default Termination Date (or such later date as the Authority, at its discretion, may agree).
- 66.11 For the avoidance of doubt, where clause 66.11 above applies, the Parties shall continue to fulfil their respective obligations in respect of those parts of this Contract that are not identified in the Termination Notice as being terminated.

Financial Consequences of Termination for Contractor Default

- 66.12 Where this Contract (or any part) is terminated pursuant to this clause 66 the provisions of clauses 66.13 to 66.15 below shall apply.
- 66.13 The Contractor shall be entitled to be paid (subject to any other provision of this Contract affecting the level of such payment) for any aspect of the Training Services that it has, as at the Termination Date, delivered to the Authority in accordance with this Contract.
- 66.14 Where the Authority makes alternative arrangements for the provision of the Training Services, the Authority shall be entitled to recover from the Contractor the cost of making such alternative arrangements, together with any additional expenditure incurred by the Authority as a result of such other arrangements throughout the remainder of what would have been (as at the date of the Termination Notice) the term of this Contract had it not been terminated pursuant to this clause 66.
- 66.15 In the event that, as a result of any Contractor Default, data transmitted or processed in connection with this Contract is either lost or sufficiently degraded

as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall provide a full credit in respect of any charge levied for its transmission.

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

66.16.1 If the Contractor does not enter into the Admission Agreement by 31 December 2017

66.16.2 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 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;

66.16.3 If the Contractor breaches the provisions of Schedule 16 TUPE provided that where the breach is remediable the right to terminate shall only arise where the Contractor fails to remedy the breach within 28 days of service of a notice from the Authority setting out particulars of the breach and requiring the Contractor to remedy it; or

66.16.4 Where notice to terminate the Admission Agreement has been served under clause 13.1 of the Admission Agreement.

67 Break

67.1 The Authority shall, in addition to its power under any other of the provisions of this Contract, have the power to determine this Contract at any time by giving to the Contractor 40 Business Days' written notice.

67.2 The Contractor shall notify the Authority within 10 Business Days of receipt of the notice if it believes that the notice period referred to in clause 67.1 is insufficient to allow it to comply with the Law in conducting employee consultations, and shall provide evidence of this to the Authority's reasonable satisfaction. Upon receipt of the Contractor's request and satisfactory evidence, the Authority shall extend the notice period by a reasonable period of time to enable the Contractor to conduct employee consultation in accordance with Law.

67.3 Upon the expiration of such notice period, this Contract shall terminate, without prejudice to the rights of the Parties already accrued as at the Termination Date.

67.4 In the event of such notice being given, the Authority shall, at any time before the expiration of the notice, be entitled to exercise and shall, as soon as may be reasonably practicable within that period, exercise such of the following powers as it considers expedient:

67.4.1 to direct the Contractor, where provision of any element of the Training Services has not been commenced, to refrain from commencing provision;

67.4.2 to direct the Contractor to complete the provision of any element of the Training Services and/or to concentrate its efforts on the completion of any elements of the Training Services where provision

of the same (or any activities that are integral to such provision) has (or have) already commenced;

- 67.4.3 to direct the Contractor to, as soon as may be reasonably practicable after the receipt of such notice, take such steps as will ensure that the rate of provision of the Training Services (or the rate of performance of any activities that are integral to such provision) is reduced as rapidly as possible; and
- 67.4.4 to direct the Contractor to determine on the best possible terms such Sub-Contracts and orders for materials, parts, components and/or Training Services as have not been completed, observing in connection with this any direction given under clauses 67.4b and 67.4c as far as may be possible.
- 67.5 If in any particular case hardship to the Contractor should arise from the operation of this clause 67, it shall be open to the Contractor to refer the circumstances to the Authority who, on being satisfied that such hardship exists, shall make such allowance (having particular regard to the provisions of clauses 67.6 to 67.9), if any, as in its opinion is reasonable, and the decision of the Authority on any matter or thing arising out of this clause 67 shall be final and conclusive.

Financial Consequences of a Break

- 67.6 Where this Contract is terminated pursuant to this clause 67, the provisions of clauses 67.7 to 67.9 below shall apply.
- 67.7 Where this clause applies (and subject always to the Contractor's compliance with any reasonable direction given by the Authority pursuant to this clause 67):
- 67.7.1 subject to Part 12 (Intellectual Property), the Authority shall take over from the Contractor at a fair and reasonable price all unused and undamaged materiel, that are:
- 67.7.1.1 in the possession of the Contractor at the Termination Date; and
- 67.7.1.2 properly provided by or supplied to the Contractor for the performance of this Contract,
- except such materiel as the Contractor shall, with the concurrence of the Authority, elect to retain;
- 67.7.2 the Contractor shall prepare and deliver to the Authority within an agreed period, or in default of agreement within such reasonable period as the Authority may specify, a list of all such unused and undamaged materiel that is liable to be taken over by or previously belonged to the Authority, and shall deliver such materiel in accordance with the directions of the Authority (who shall pay to the Contractor fair and reasonable handling and delivery charges incurred by the Contractor in complying with such directions); and
- 67.7.3 in respect of Training Services (and any elements) that do not consist of physical items, the Authority shall pay the Contractor fair and

reasonable prices for each such Training Service (any element) that is provided or partially provided in accordance with this Contract.

67.8 Where this clause applies, the Authority shall (subject to clause 67.9 below and to the Contractor's compliance with any direction given by the Authority pursuant to this clause 67) indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of this Contract, subject to:

67.8.1 the Contractor taking all reasonable steps to mitigate such loss;

67.8.2 where the Contractor holds insurance, the Contractor reducing its unavoidable costs by any insurance sums available; and

67.8.3 the Contractor submitting a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination of this Contract pursuant to this clause 67.

67.9 The Authority shall not be liable under clause 67.8 above to pay any sum which:

67.9.1 would be claimable under any insurance held (or required to be held) by the Contractor, but for the fact that the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy, or has failed to take out or maintain any insurance that it is required to take out and/or maintain; or

67.9.2 when added to any sums already paid or due to the Contractor under this Contract, exceeds the total sum that would have been payable to the Contractor if this Contract had not been terminated prior to the Expiry Date; or

67.9.3 relates to or arises from the existence or termination of any Sub-Contract.

68 Termination for Corrupt Gifts and Fraud

68.1 Notwithstanding clause 66, if the Contractor, Contractor Employees, agents or any Sub-Contractor (or anyone acting on its behalf or any of its or their employees) does any of the Prohibited Acts with or without the knowledge or authority of the Contractor in relation to this Contract or any other contract with the Crown, the Authority shall be entitled:

68.1.1 to terminate this Contract and recover from the Contractor the amount of any loss resulting from the termination;

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

68.1.3 to recover from the Contractor any other loss sustained in consequence of any breach of this clause 68, where this Contract has not been terminated.

68.2 In exercising its rights or remedies under this clause 68, the Authority shall:

- 68.2.1 act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the Prohibited Act;
- 68.2.2 give all due consideration, where appropriate, to action other than termination of this Contract, including (without being limited to):
- 68.2.2.1 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
 - 68.2.2.2 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.
- 68.3 Recovery action taken against any person in the employment of the Authority shall be without prejudice to any recovery action taken against the Contractor pursuant to this clause 68.

69 Miscellaneous Provisions

- 69.1 Each Party shall (subject to the provisions of clause 40 (Recovery of Sums Due)) pay to the other any amounts payable pursuant to clauses 66 to 68 within 20 Business Days of the Termination Date (or, if later, within 20 Business Days of the amount being identified by both Parties as being payable, where it was not possible to determine on the Termination Date that such amount was payable).
- 69.2 Any payment by the Authority to the Contractor pursuant to clauses 66 to 68 shall be in full satisfaction of any claim which can be made against the Authority by the Contractor and shall be the sole remedy of the Contractor in relation to termination of this Contract.

70 Co-Operation on Expiry or Termination of Contract

- 70.1 During the final 24 months before the Expiry Date, or during any notice period applying to an earlier termination of this Contract or any part in accordance with its terms, the Contractor shall co-operate fully with the transfer of responsibility for the provision of the Training Services (or any part) from the Contractor to any person (a "Follow-On Contractor") or to the Authority as so directed by the Authority, and for the purposes of this clause the meaning of the term "co-operate" shall include:
- 70.1.1 liaising with the Authority and/or any Follow-On Contractor, and providing reasonable assistance and advice concerning the provision of the Training Services and transfer of such provision to the Authority or to such Follow-On Contractor;
 - 70.1.2 allowing any such Follow-On Contractor access (at reasonable times and on reasonable notice) to any Establishments and/or assets used in the provision of the Training Services, but not so as to interfere with or impede the provision of the Training Services; and
 - 70.1.3 without prejudice to the obligations of the Contractor pursuant to clause 62 (Disclosure of Information), providing to the Authority and/or

to any Follow-On Contractor all and any information concerning:

70.1.3.1 any Establishments; and

70.1.3.2 provision of the Training Services,

which is reasonably required for the efficient transfer of responsibility for performance of the Contractor's obligations, but excluding any information and data protected by Part 12 (Intellectual Property) and any information which is commercially sensitive to the Contractor (and for the purpose of this clause 70 "commercially sensitive" shall mean information which would, if disclosed to a competitor of the Contractor, give that competitor a competitive advantage over the Contractor and thereby prejudice the business of the Contractor, but shall not include any information referred to in Schedule 16 (TUPE)).

70.2 For a period of six months after the Expiry Date or the Termination Date in accordance with its terms, the Contractor shall provide all reasonable assistance, guidance and information to the any Follow-On Contractor or the Authority (as the case may be), and shall be paid monthly in arrears its reasonable costs actually incurred and directly arising from such provision, subject to:

70.2.1 such provision having been expressly requested or approved by the Authority in advance; and

70.2.2 the Contractor providing satisfactory evidence of the same to the Authority at the end of each month.

70.3 Without prejudice to the provisions of clause 70.2, the Contractor shall use all reasonable endeavours so as to facilitate the smooth transfer of responsibility for provision of the Training Services (or any part) to a Follow-On Contractor or to the Authority, as the case may be, and the Contractor shall take no action at any time during the Contract Period or thereafter which is calculated or intended, directly or indirectly, to prejudice or frustrate or make more difficult such transfer.

70.4 Following the Expiry Date or any earlier Termination Date, the Contractor shall, with the Authority's consent (not to be unreasonably withheld), be allowed reasonable access to land and/or premises owned or controlled by the Authority in order to carry out winding-down activities.

70.5 During the final 12 months before the Expiry Date, or during any notice period applying to an earlier termination of this Contract (or any part), the Contractor shall protect and preserve property in its possession in which the Authority has an interest and comply with its obligations set out in the Exit Plan set out in Schedule 5 (Transition)

70.6 Without prejudice to clauses 70.1.3 and 70.5, on termination of this Contract (or any part), the Contractor shall, upon request by the Authority, which request shall be made within three months of:

the Expiry Date; or

service of any Termination Notice,

as soon as practicable, allow the Authority access to all data and information (subject to clause 51 (Intellectual Property Rights – Vested in the Authority)

required by the Authority to take over the terminated activities of this Contract, (and for the purposes of this clause 70.6, "data and information" shall mean all data and information germane to the provision by the Contractor of the Training Services in the performance of this Contract, and other relevant data and information reasonably required by the Authority which the Contractor is able to provide in accordance with this Contract relating to Intellectual Property Rights or between the Contractor and any third party), but excluding any information and data protected by Part 12 (Intellectual Property) and any information which is commercially sensitive to the Contractor (and for the purpose of this clause 70 "commercially sensitive" shall mean information which would, if disclosed to a competitor of the Contractor, give that competitor a competitive advantage over the Contractor and thereby prejudice the business of the Contractor, but shall not include any information referred to in Schedule 16 (TUPE)).

- 70.7 The Authority may request that Sub-Contracts be novated to the Authority on the same terms as the Sub-Contracts, and the Contractor shall give all reasonable assistance to the Authority in seeking the novation of Sub-Contracts placed in support of the provision of the Training Services under this Contract are novated to the Authority as requested. All costs (including the Contractor's reasonable and proper costs) associated with any such novation of Sub-Contracts shall be borne by the Authority.

71 Force Majeure

- 71.1 If, by reason of a Force Majeure Event the Contractor shall have been delayed in delivery of the Training Services, the Contractor shall, immediately upon becoming aware that any such delay has been caused, give to the Authority notice in writing of its claim for an extension of time for the completion of the delivery of the Training Services and the Authority shall allow the Contractor an extension of time for such completion in respect of any delay caused by any of the circumstances before mentioned as shall be reasonable.
- 71.2 The Contractor shall not be entitled to any extension of time unless it shall at all times have used all reasonable endeavours to prevent any such delay and to minimise any such delay and to do all that may be reasonably required to the satisfaction of the Authority to proceed with the work.
- 71.3 In the event of a Force Majeure Event, the Authority shall continue to make payment to the Contractor for the Training Services.
- 71.4 The maximum extension of time granted under this clause 71 for the Training Services shall be limited to 90 days, after which the Authority shall be entitled to terminate this Contract in accordance with clause 67 (Break) and Schedule 4 (Change and Change Management) on written notice to the Contractor. Notwithstanding the foregoing, any such termination shall be without prejudice to any accrued rights up to and including the Termination Date.

72 Continuing Obligations

- 72.1 Save as otherwise expressly provided in this Contract or as already taken into account in the calculation of any payment on termination pursuant to this Contract,
- 72.1.1 termination of this Contract shall be without prejudice to any accrued rights or obligations under this Contract prior to the earlier of the Expiry Date or the Termination Date; and

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

clause 1 (Definitions and Interpretation);

clause 4 (Warranties and Undertakings);

clause 20 (Contractor's Personnel at Government Establishments);

clause 21 (Liability in Respect of Damage to Authority Property);

clause 30 (Accounting for the Property of the Authority);

clause 31 (Financial Reports);

clause 36 (Open Book Accounting and Auditing);

clause 39 (Payment);

clause 43 (Insurance);

clause 44 (Indemnities);

clause 45 (Non-Solicitation);

clause 50 (TUPE and Pension Matters);

Part 12 (Intellectual Property);

Part 13 (Security and Confidentiality);

clauses 66.12 to 66.15 (Financial Consequences of Termination for Contractor Default);

clauses 67.6 to 67.9 (Financial Consequences of Break);

clause 68 (Termination for Corrupt Gifts and Fraud);

clause 70 (Co-Operation on Expiry or Termination of Contract)

clause 87 (Deed of Indemnity Given by a Parent Company in Respect of a Subsidiary);

clause 90 (Dispute Resolution);

clause 91 (Law of the Contract and Jurisdiction); and

any other provision of this Contract which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

73 Exit Plan

73.1 The Contractor shall within six months after the Effective Date prepare and submit to the Authority a draft of an exit plan (an Exit Plan) in accordance with Schedule 5 (Transition) Annex A:

- 73.1.1 addressing each of the issues set out in this Annex to facilitate the transition of the Services from the Contractor to any Follow-on Contractor(s). The Contractor shall ensure that there is no disruption in the supply of the Training Services and no deterioration in the quality of delivery of the Training Services;
 - 73.1.2 detailing how the Training Services will transfer to any Follow-on Contractor(s) including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Authority's technology components from any technology components run by the Contractor or any of its Sub-Contractors (where applicable);
 - 73.1.3 specifying the scope of the Training Services that may be required by the Authority and detailing how such services would be provided (if required) during the Exit Period;
 - 73.1.4 providing a timetable and identify critical issues for carrying out the Training Services; and
 - 73.1.5 setting out the management structure to be put in place and employed during the Exit Period.
- 73.2 The Contractor shall have regard for any comments made by the Authority in relation to the draft Exit Plan prepared and submitted by the Contractor to the Authority pursuant to paragraph 2.1 (and each subsequent draft) and shall submit a revised plan reflecting such comments as soon as reasonably practicable and in any event within 10 Business Days of the Contractor's receipt of such comments on such draft. The process for approving the Exit Plan shall be as set out in Schedule 3 (Governance and Contract Management). No amendment may be made by the Contractor to the Exit Plan once so approved without the prior written consent of the Authority.

Obligations during the Contract Period

- 73.3 The parties shall each appoint its members of the Exit Steering Group (**ESG**) in accordance with Schedule 3 (Governance and Contract Management). The Contractor's ESG members shall be responsible for ensuring that the Contractor and its employees, agents and Sub-Contractors comply with this Annex. The Contractor shall ensure that its ESG members have the requisite authority to arrange and procure any resources of the Contractor as are reasonably necessary to enable the Contractor to comply with this Annex. The ESG members shall liaise with one another in relation to all issues relevant to termination or expiry and all matters connected with this Annex and each party's compliance with it.
- 73.4 During the Contract Period, the Contractor shall:
- 73.4.1 create and maintain a register of:
 - 73.4.2 all assets, detailing their ownership status as either Authority Property (separately identifying Issued Property), or Contractor Property; and
 - 73.4.3 all Sub-Contracts and other Contracts;
 - 73.4.4 required to perform the Services;

- 73.4.5 create and maintain a database setting out the Contractor's technical infrastructure through which the Services are delivered. Such database shall be capable of allowing staff of any Follow-on Contractor(s) to acquire sufficient technical understanding of how the Contractor provides the Training Services to ensure the smooth transition of the Training Services with the minimum of disruption; and
- 73.5 The Contractor shall ensure all Issued Property is clearly marked to identify that it is exclusively used for the provision of the Training Services under this Contract.
- 73.6 The Contractor shall procure that all licences for third party owned Intellectual Property (including software) entered into with effect from or after Contract Award and necessary for the Contractor to perform the Training Services and all Sub-Contracts shall be assignable or capable of novation at the request of the Authority to any Follow-on Contractor(s) without restriction (including any need to obtain any consent or approval) or payment by the Authority. If the Contractor cannot procure such rights then the Contractor shall consult with the Authority on whether the rights that can be obtained are nevertheless acceptable to the Authority (acting reasonably) or whether the Contractor (at the Contractor's risk) should seek an alternative provider of the goods or services to which the relevant licence or Sub-Contract relates.
- 73.7 On reasonable notice the Contractor shall provide to any Follow-on Contractor(s) (subject to the Follow-on Contractor entering into reasonable written confidentiality undertakings with the Contractor), such material and information as the Authority shall reasonably require in order to facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential Follow-on Contractor(s) undertaking due diligence (including in relation to the Training Services, Authority Property, Authority's Data and Registers).
- 73.8 The Contractor shall continue to provide the Training Services (or the relevant part of them) during the Exit Period in accordance with the provisions of this Contract.
- 73.9 In accordance with clause 70, the Contractor shall, in addition to providing the Training Services, provide to the Authority any reasonable assistance requested by the Authority to allow the Training Services to continue without interruption and to facilitate the orderly transfer of the Training Services.
- 73.10 The Authority and the Contractor acknowledge that the transition of the Training Services to any Follow-on Contractor(s) may be phased over a period of time so that certain identified Training Services are transferred to the Follow-on Contractor(s) before others.
- 73.11 The Authority shall, at the Contractor's reasonable request, require each or any Follow-on Contractor (where not the Authority) and any agent or personnel of any such Follow-on Contractor, to enter into an appropriate confidentiality undertaking with the Contractor.
- 73.12 The Contractor shall comply with all of its obligations contained in the Exit Plan once approved in accordance with Clause 73.2.
- 73.13 During the Exit Period the Contractor shall not terminate or vary in any material respect any Sub-Contract without the Authority's prior written consent, such consent not to be unreasonably withheld or delayed.

- 73.14 The Contractor shall comply with all of its obligations regarding its personnel in accordance with Clause 73.2.
- 73.15 Upon the end of the Contract Period:
- 73.15.1 the Contractor shall cease to use the Authority's Data and, at the direction of the Authority either:
 - 73.15.2 provide the Follow-on Contractor(s) with a complete and uncorrupted version of the Authority's Data in electronic form (or such other format as reasonably required by the Authority); or
 - 73.15.3 destroy (including removal from any hard disk) or return (at the Authority's option) all copies of the Authority's Data (save where and to the extent such data are required to be retained by the Contractor for statutory compliance purposes, the Contractor's retention of such data being conditional on the Authority's prior written consent thereto (such consent not to be unreasonably withheld or delayed)) and confirm in writing that such destruction has taken place;
 - 73.15.4 the Contractor shall erase from any computers, storage devices and storage media that are to be retained by the Contractor after the end of the Contract Period any material (including software) containing any Intellectual Property Rights owned by the Authority;
 - 73.15.5 the Contractor shall return to the Authority such of the following as are in the Contractor's possession or control:
 - 73.15.5.1 all Authority's Assets;
 - 73.15.5.2 all materials created by the Contractor under this Contract, the Intellectual Property Rights in which are owned by the Authority;
 - 73.15.5.3 any other equipment which belongs to the Authority; and
 - 73.15.5.4 any items that have been on-charged to the Authority, such as consumables;
 - 73.15.6 the Contractor shall vacate any Government Establishment (as defined in Clause 20 and Schedule 26) occupied or part occupied by or on behalf of the Contractor in connection with this Contract; and
 - 73.15.7 each Party shall return to the other Party all information of the other Party and shall certify that it does not retain the other Party's information.
- 73.16 The Transitional Assistance Services to be provided by the Contractor shall include (without limitation) such of the following services as the Authority may specify:
- 73.16.1 stopping all non-critical software changes;
 - 73.16.2 providing to the Authority an up-to-date Training Services

Management Plan containing the business procedures which the Contractor follows in the provision of the Services;

- 73.16.3 providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and provide assistance to any Follow-on Contractor(s) in re-writing and implementing processes and procedures such that they are appropriate for use by any Follow-on Contractor(s) after the end of the Term;
 - 73.16.4 providing details of work volumes and staffing requirements over the preceding 12 months;
 - 73.16.5 analysing and providing information about capacity and performance requirements, processor requirements and bandwidth requirements, and known planned requirements for capacity growth;
 - 73.16.6 generating a computer listing of all source code relevant to the Contractor's Supplied System in a form and on media as requested by the Authority;
 - 73.16.7 transferring all training material and providing appropriate training to those Follow-on Contractor staff responsible for internal training in connection with the provision of the Training Services;
 - 73.16.8 providing for transfer to any Follow-on Contractor(s) of all knowledge reasonably required for the provision of the Training Services which may, as appropriate, include information, records and documents; and
 - 73.16.9 answering all reasonable questions from any Follow-on Contractor(s) regarding the Training Services.
- 73.17 Recognising the importance of the Training Planning Service in ensuring continuity of training during the transition to a Follow-On Contractor, the Follow-On Contractor shall be invited to participate as soon as possible in the training planning cycle (SOTR/SOTT round) prior to the Expiry Date.

Transfer of Property and Contracts

- 73.18 Not less than three months prior to the Expiry Date or Termination Date of the Contract whichever is the earlier, the Authority shall notify the Contractor:
- 73.18.1 which, if any, of the Authority Property the Authority requires to be transferred to any Follow-on Contractor(s);
 - 73.18.2 (in order for any Follow-on Contractor(s) to provide replacement Training Services from termination or expiry) which, if any, of the Contractor Property the Follow-on Contractor requires continuing use of; and
 - 73.18.3 (in order for any Follow-on Contractor(s) to provide replacement Training Services from termination or expiry) which, if any, of the Sub-Contracts the Authority requires to be transferred to the Follow-on Contractor(s).

- 73.19 At the request of the Authority the Contractor shall provide such assistance as may be necessary to assist the Follow-on Contractor(s) to identify which Property and which Sub-Contracts are required for the continued provision of the Training Services and the provision of the replacement Services.
- 73.20 The Contractor shall sell the Contractor Property with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994 and otherwise free from security interests to the Authority with effect from the end of the Term and the sale shall take place at such place as the Authority shall specify. Where not already paid for under the Contract, the Authority shall acquire the Contractor Property at Net Book Value. Risk in such Contractor Property shall pass to the Follow-on Contractor(s) (as appropriate) at the end of the Term.
- 73.21 Where the Contractor is notified in accordance with paragraph 5.1.b. that any Follow-on Contractor(s) require(s) continued use of any of the Contractor Property, the Contractor shall:
- 73.21.1 procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Authority) for the Follow-on Contractor(s) to use such property (with a right of sub-licence or assignment on the same terms); or failing which
- 73.21.2 procure a suitable alternative to such property and the Authority shall bear the reasonable proven costs of procuring the same.
- 73.22 The Contractor shall at the Authority's request and with the co-operation of the Authority procure the novation or assignment to each or any Follow-on Contractor(s) of the Sub-Contracts.
- 73.23 Once a Sub-Contract is novated or re-assigned to any Follow-on Contractor(s), the parties acknowledge that the Follow-on Contractor(s) shall carry out, perform and discharge all the obligations and liabilities created by or arising under that Sub-Contract, and exercise its rights arising under that Sub-Contract, in place of the transferor.
- 73.24 The Contractor shall indemnify the Authority (and/or (if not the Authority) each or any third party Follow-on Contractor, as applicable) against each loss, liability and cost arising out of any claims made by a party to a Sub-Contract which is assigned or novated to the Authority (or (if not the Authority) third party Follow-on Contractor) pursuant to paragraph 5.5 of this Annex in relation to any matters arising prior to the date of such assignment or novation.
- 73.25 The Authority shall notify the Contractor of any obligation under any Sub-Contract which has been or will be novated or assigned under this paragraph 5 which it is unable to carry out or perform without the assistance of the Contractor. The Contractor shall provide all reasonable assistance to the Authority to enable it to comply with that obligation.
- 73.26 The Contractor shall provide to the Authority, not less than eleven (11) months before the Expiry Date or Termination Date of the Contract whichever is the earlier, a copy of interface agreements entered into with other Authority Contractors in accordance with clause 84 (Working with Other Authority Contractors) of the Contract.
- 73.27 On the Expiry Date the Contractor shall vacate the Licensed Premises in

accordance with the terms of the Schedule 26 (Licence).

- 73.28 With the Authority's consent, the Contractor shall be allowed reasonable access to the Establishment and/or the Licensed Premises in order to carry out winding-down activities in accordance with clause 70.4 (Co-operation on Expiry or Termination) of the Contract.

Documentation

Training Documentation

- 73.29 The Contractor shall provide to the Authority a preliminary status report of the Training Documentation not less than 11 months before the Expiry Date or Termination Date of the Contract whichever is the earlier, An update to the status report, including the planned work up to the Expiry Date, shall be provided to the Authority not less than three months prior to the Expiry Date. A final report shall be provided at the Expiry Date.

Training Equipment Documentation

- 73.30 The Contractor shall provide to the Authority not less than six months before Expiry Date or Termination Date of the Contract whichever is the earlier,, the following training equipment documentation held by the Contractor for systems and equipment in service on the Expiry Date:
- 73.30.1 operator manuals;
 - 73.30.2 maintenance manuals;
 - 73.30.3 schedule of items of routine maintenance and inspection held on the Contractor's equipment maintenance system, together with records of maintenance and inspection that have been undertaken to date, including availability data; and
 - 73.30.4 all systems security related information, including accreditation certificates where appropriate.

Confidential or other Authority Provided Data

- 73.31 The Exit Steering Group shall agree upon the return, retention or destruction of any confidential or Authority provided data by the Contractor at the Expiry Date.

Personnel

SQEP

- 73.32 The Contractor shall provide to the Authority, not less than six months before the Expiry Date or Termination Date of the Contract whichever is the earlier, information relating to Contractor and Military Instructor SQEP competencies engaged in the delivery of the Training Services.

TUPE

- 73.33 Information concerning personnel to whom TUPE may apply shall be provided to the Authority in accordance with Schedule 16 (TUPE) of the Contract.

Government Furnished Resources

73.34 Within one month of the Expiry Date or Termination Date of the Contract whichever is the earlier, the Contractor shall provide a written report on the performance of all GFR to their line manager such that there is continuity of reporting and the individuals are not disadvantaged by the change

Payment on Termination or Expiry

73.35 Closing accounts shall be produced by the Contractor and submitted in accordance with Schedule 6 (Pricing Mechanism).

73.36 In the event a Termination Notice is served to the Contractor by the Authority, the Contractor shall submit a claim for costs reasonably and actually incurred in accordance with clause 67 (Break) or Schedule 4 (Change and Change Management).

Apportionments

73.37 There shall be apportioned between the Authority and the Contractor or (if not the Authority) the third party Follow-on Contractor(s) and the Contractor all outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Contractor Property and Sub-Contracts.

73.38 This apportionment shall be carried out as follows:

73.38.1 the payments shall be annualised and divided by 365 to reach a daily rate;

73.38.2 the Authority shall be responsible for or shall procure that its nominee or the Follow-on Contractor(s) shall be responsible for or entitled to (as the case may be) an amount equal to the number of complete days during the period of the invoice after the transfer multiplied by that daily rate; and

73.38.3 the Contractor shall be responsible for or entitled to (as the case may be) the rest of the invoice.

73.39 Each party shall pay and the Authority shall procure that (where not the Authority) its nominee or third party Follow-on Contractor(s) shall pay any monies due under this paragraph 7 as soon as practicable.

Communications

73.40 The Contractor shall implement a clear and comprehensive Exit Communications Plan and process for imparting information to all stakeholders. This Exit Communications Plan shall detail the activities to be undertaken during the Exit Period to the Authority and Contractor Employees. The Exit Communications Plan shall make clear to all staff engaged in the delivery of the Training Services that, whilst the exit process is a major milestone, day-to-day service delivery operations must continue as normal throughout.

73.41 The Exit Communications Plan shall identify both internal and external stakeholders, the communication triggers and the key messages that need to be

imparted. The Exit Communications Plan shall also contain the timings for TUPE consultations, the issue of company notices, team briefs, bulletins, presentations, letters, press releases, question and answer sessions and face-to-face meetings. The Exit Communications Plan shall also address the following:

- 73.41.1 informing Contractor Employees individually and collectively via:
 - 73.41.2 workforce presentations;
 - 73.41.3 team leader meetings;
 - 73.41.4 cascading team briefings;
 - 73.41.5 regular newsletters; and
- 73.42 Authority and Follow-On Contractor representation at Contractor training delivery and support management weekly planning meetings;
- 73.42.1 informing the Authority, and Follow-On Contractor where necessary, individually and collectively via:
 - 73.42.2 regular briefings to Authority and Follow-On Contractor;
 - 73.42.3 management and governance meetings;
- 73.43 Contractor representation at appropriate RN meetings; and
- 73.43.1 support to the RN as they seek to inform the wider stakeholder community through DINs; and
 - 73.43.2 informing and consulting the Trades Unions, as and when appropriate.

On-going Contractor Support

- 73.44 In accordance with clause 70.2 (Co-operation on Expiry or Termination) of the Contract, for a period of six months after the Expiry Date or Termination, Date the Contractor is required to provide all reasonable assistance, guidance and information to the Follow-On Contractor or the Authority, as the case may be, and shall be paid reasonable costs arising from such provision.

Continuing Obligations

- 73.45 Following the Expiry Date or Termination Date, the obligations of the Contractor and the Authority under certain provisions of the Contract shall continue. Such provisions are detailed at clause 72 (Continuing Obligations) of the Contract.

PART 16 MATTERS TO BE INCLUDED IN SUB-CONTRACTS**74 Matters to be Included in Sub-Contracts**

- 74.1 The Contractor shall ensure that all Sub-Contracts shall at all times include:
- 74.1.1 provisions such that the Sub-Contract shall not be rescinded, or varied in such a way as to alter or extinguish any rights granted to the Authority without the prior written consent of the Authority;
 - 74.1.2 provisions that the Authority's rights referred to in this Part 16 (Matters to be Included in Sub-Contracts), which are otherwise enforceable under the Contracts (Rights of Third Parties) Act 1999, are not rendered unenforceable; and
 - 74.1.3 a requirement that either party to the Sub-Contract may release to the Authority any of those parts of the Sub-Contract as are necessary to be sufficient to demonstrate compliance with the provisions of this clause and that any such release shall not amount to a breach of any provision of confidentiality contained within the Sub-Contract.
- 74.2 In the provision of external Training Design, it is the Authority's policy to meet its requirements through the greatest possible use of competitive procurement. The purpose is to provide the Authority with full visibility of the sub-contract competition process and to give reassurance to any companies competing for sub-contract opportunities that the process has been conducted fairly. Notwithstanding the involvement of the Authority in any sub-contract competition activity, the Contractor, will remain wholly responsible for the selection and performance of all sub-contractors.
- 74.3 This process may be supplemented by additional protocols for handling specific aspects of the sub-contract competition process where the Authority and the Contractor consider this appropriate.

Initiation of the Competition Process

- 74.4 On agreement of those sub-contract tasks that are to be met through competition, the Contractor shall appoint a Tender Manager¹ and advise the CDO of their identity and contact details. The Tender Manager shall be responsible for the management and administration of the sub-contract competition exercises. The Tender Manager shall also arrange for the issue of a notice to all Contractor personnel advising of their appointment and identifying any other Contractor personnel who are to be involved in the evaluation of tenders for sub-contracts. This notice shall stress the importance of confidentiality and impartiality in all sub-contract competition activities.
- 74.5 As the estimated value of any sub-contracts will be in excess of [£10,000 GBP (Ten Thousand Pounds) ex Vat], the Contractor should advertise them in the Sub-

¹ This need not be a full-time or permanent post

contracts Opportunities section of the Authority Defence Contracts Bulletin.

- 74.6 The Tender Manager shall prepare lists of prospective tenderers based on their knowledge of the market place for the items in question, any responses to the Defence Contracts Bulletin entries, and any specific provisions of Government policy notified to them. In particular the Tender Manager shall observe the policy of treating overseas companies on an equal footing with UK companies. The Tender Manager shall seek the consent of the Authority, which consent shall not unreasonably be withheld, to the proposed lists of companies, and draw particular attention to those sub-contract tasks for which it is proposed that the contractor or an affiliated or subsidiary company, or a company with which the Contractor has a commercial relationship, is to be invited to tender. The Authority will be entitled to suggest potential tenderers to the Tender Manager, but it will be the Tender Manager's responsibility for proposing such tenderers.
- 74.7 The Tender Manager shall produce a set of Terms and Conditions governing each planned Invitation to Tender (ITT). These will reflect those contained in the Contract between the Contractor and the Authority insofar as they impinge on the Sub-Contractor and its performance of any Sub-Contract. The Terms and Conditions placed upon a sub-contractor shall reflect the requirements of Clauses 74 to 80 and, shall not be more onerous than those of the Contract, without the prior consent of the Authority, which consent shall not unreasonably be withheld.
- 74.8 Evaluation criteria for each sub-contract competition shall be proposed by the Tender Manager, agreed with the Authority, which agreement shall not unreasonably be withheld, and published to tenderers. Where appropriate these shall be recorded in a separate protocol.
- 74.9 The ITT must include a comprehensive statement of the requirement. Where the ITT includes data packs these shall be complete and accurate and to a level of detail sufficient to enable the Training Design work to be completed in accordance with Schedule 2, Annex C, Appendix 1. Complete copies of all proposed ITTs and associated material shall be sent to the Authority prior to issue. Where this is not practicable, the Tender Manager shall arrange for the ITT and associated material to be made available for inspection by representatives of the Authority. The Contractor shall agree with the Authority as soon as is reasonably practicable those ITTs that shall be the subject of prior Authority approval before issue.
- 74.10 The ITT shall clearly identify the dates and times for the return and opening of tenders, and the intended programme for tender evaluation and award of sub-contracts. A covering letter shall be issued with each ITT re-stating the dates and times for the return and opening of tenders and identifying the Tender Manager as the sole point of contact for any queries in the period between issue of the ITTs and award of sub-contracts.
- 74.11 Prospective tenderers shall be instructed to bring any error, omission or ambiguity in the ITT to the attention of the Tender Manager. Any such communication shall immediately be copied to the Authority. If an error, omission or ambiguity is accepted by the Tender Manager and necessitates correction of the ITT or

associated documentation, the Tender Manager shall inform the Authority and arrange for corrected material to be transmitted to all tenderers in parallel and copied to the Authority .

- 74.12 Where it is considered that a bidder's conference is necessary to ensure comprehension of the requirement, this will be arranged by the Tender Manager. The Authority will be represented at any conference held. The Tender Manager shall produce a record of any questions asked and answers given at the Bidders' Conference, and provide copies to all those invited to tender.

Receipt and Evaluation of Tender Responses

- 74.13 Tenderers shall be requested to submit an agreed number of copies of each of their technical and commercial responses to the ITT by the due date and time. In the interests of commercial confidentiality, each tenderer shall be requested to double pack its response. The inner package only shall show that the contents are a competitive tender to be opened on a certain date by the Tender Manager. The commercial and technical proposals are to be submitted in separate envelopes within the inner package with their contents clearly marked.

- 74.14 All responses received from tenderers shall, on receipt by the Tender Manager, be stored in a secure location or container to which only the Tender Manager has access. They shall be opened on the due day by the Tender Manager in the presence of a representative of the Authority.

- 74.15 The representative of the Authority shall examine carefully each page of the commercial proposal of each tenderer's response to verify that no alterations have been made to it. If any amendment or alteration to any page of the commercial proposal is found, this will be brought to the attention of the Tender Manager. Both the Tender Manager and the representative of the Authority shall certify their knowledge of the amendment by initialling and dating the amendment or alteration.

- 74.16 The Tender Manager shall produce a log of all tenders received in response to each ITT. This shall be signed by the Tender Manager and the representative of the Authority . The Authority's representative will remove one copy of each of the technical proposals contained in each tender, together with all copies of the commercial proposals. The Tender Manager will retain the remaining copy or copies of each tenderer's technical proposals for the purposes of evaluation.

- 74.17 The Tender Manager shall be responsible for arranging and overseeing evaluation of the technical proposals based on the agreed evaluation criteria. On completion, the Tender Manager shall make a recommendation on technical grounds to the Authority. Supporting evaluation documentation shall be provided to Authority in a form of a report.

- 74.18 In cases where the contractor or the Authority wish to employ the services of a

third party to assist in the evaluation of tenders, appropriate terms of reference for the third party will be agreed between the Contractor and the Authority.

- 74.19 The commercial proposals shall be made available to the Tender Manager for assessment only on receipt of the technical recommendation. The Tender Manager shall then arrange for a final recommendation to be made to the Authority which will normally be the lowest priced compliant tender in accordance with clause 19.5. A full supporting case for the recommendation shall be provided. The Authority shall advise the Tender Manager promptly and in writing if for any reason it does not agree with the recommended sub-contractors stating its concerns. The Tender Manager shall arrange for a review of the recommendation. Any continuing disagreement shall be brought to the attention of the Level 1 Chairman for resolution.
- 74.20 If, following assessment of the commercial proposals, the Tender Manager considers that there is scope to obtain better value for money by a further round of tendering or through Post Tender Negotiations, they shall immediately inform the Authority with their proposals for this activity. This shall be conducted with the same regard for confidentiality as the initial round of tendering, using any of the above procedures where appropriate. The Authority shall advise of any special arrangements it wishes to introduce in the event that the Contractor or an affiliated or subsidiary company, or a company with which the Contractor has a commercial relationship, is to be involved in this activity.

Notification of Tender Results

- 74.21 The Tender Manager shall arrange for the simultaneous notification of all tenderers of the outcome of the competition. Unsuccessful tenderers shall be advised of those factors which rendered their submission unacceptable and be provided with an indication of the broad percentage price difference between their tender and that selected. If requested by an unsuccessful tenderer, the Tender Manager shall arrange for the provision of a formal debrief: the Authority may wish to have a representative present at such debriefs. The nature of any debrief and the scope of any information to be divulged is to be agreed between the Tender Manager and the Authority, which agreement shall not unreasonably be withheld.

Records

- 74.22 The Contractor shall retain the detailed records of Tender Manager for each of the sub-contract competition procedures. These records may be needed by the Authority for audit purposes and should only be destroyed with the agreement of the relevant Authority commercial officer.
- 74.23 In accordance with this Part 16 (Matters to be Included in Sub-Contracts), the Authority shall be entitled to directly enforce its contractual rights from the Sub-Contractors pursuant to its right under the Contracts (Rights of Third Parties) Act 1999.

75 Secrecy and Security

- 75.1 The Contractor shall ensure that all Sub-Contracts shall include provisions for placing the Sub-Contractor under obligations in relation to secrecy and security corresponding to (and of equal effect on the Sub-Contractor to) those placed on the Contractor by the requirements set out or referred to in Part 13 (Security and Confidentiality).
- 75.2 The Contractor shall (and shall procure that its Sub-Contractors shall) give such notices, directions, requirements and decisions to the Sub-Contractors as may be necessary to bring the provisions relating to secrecy and security which are included in Sub-Contracts pursuant to this clause 75 into operation in such cases and to such extent as the Authority may direct.
- 75.3 The Contractor shall give the Authority such Information and particulars as the Authority may from time to time require for the purposes of satisfying the Authority that the obligations imposed by or under the provisions of this clause 75 have been and are being observed, and as to what the Contractor has done or is doing or proposes to do to secure the observance of those obligations and to prevent any breach.
- 75.4 Nothing in this clause 75 shall be construed as intended to prevent any person from giving any Information or doing anything on any occasion when it is, by virtue of any Legislation, the duty of that person to give that Information or do that thing.

76 Security Measures - Provisions to be included in Sub-Contracts

The Official Secrets Acts

- 76.1 The Sub-Contractor shall:
- 76.1.1 take all reasonable steps to ensure that all Sub-Contractor Employees engaged on any work in connection with this Contract have notice that the Official Secrets Acts 1911-1989 apply to them and will continue so to apply after the completion or termination of this Contract; and
- 76.1.2 if directed by the Contractor or the Authority, ensure that any Sub-Contractor Employee shall sign a statement acknowledging that, both during the Contract Period and after its completion or termination, he is bound by the Official Secrets Acts 1911-1989 (and where applicable by any other Legislation).

Security Measures

- 76.2 Unless it has the written authorisation of the Authority to do otherwise, neither the Sub-Contractor nor any of the Sub-Contractor Employees shall, either before or after the completion or termination of this Contract, do or permit to be done anything which they know or ought reasonably to know may result in Secret Matter being disclosed to or acquired by a person in any of the following categories:
- 76.2.1 who is not a British citizen;
- 76.2.2 who does not hold the appropriate authority for access to the

protected matter;

- 76.2.3 in respect of whom the Authority has notified the Sub-Contractor in writing that the Secret Matter shall not be disclosed to or acquired by that person;
- 76.2.4 who is not a Sub-Contractor Employee; or
- 76.2.5 who is a Sub-Contractor Employee and has no need to know the information for the proper performance of this Contract.
- 76.3 Unless it has the written permission of the Authority to do otherwise, the Sub-Contractor and the Sub-Contractor Employees shall, both before and after the Expiry Date or Termination Date, take all reasonable steps to ensure that:
- 76.3.1 no photograph of, or pertaining to, any Secret Matter shall be taken and no copy of or extract from any Secret Matter shall be made except to the extent necessary for the proper performance of this Contract; and
- 76.3.2 any Secret Matter is at all times strictly safeguarded in accordance with the Security Policy Framework 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 Sub-Contractor has taken or is taking reasonable steps as required by this clause 76.3, shall be final and conclusive.
- 76.4 The Sub-Contractor shall:
- provide to the Authority:
- 76.4.1 upon request, such records giving particulars of those Sub-Contractor Employees who have had at any time, access to any Secret Matter that is required to be kept in accordance with clause 76.3b;
- 76.4.2 upon request, such information as the Authority may from time to time require so as to be satisfied that the Sub-Contractor and the Sub-Contractor Employees are complying with their obligations under this clause, including the measures taken or proposed by the Sub-Contractor so as to comply with its obligations and to prevent any breach of them; and
- 76.4.3 full particulars of any failure by the Sub-Contractor and the Sub-Contractor Employees to comply with any obligations relating to Secret Matter arising under this clause immediately upon such failure becoming apparent; and
- 76.4.4 ensure that, for the purpose of checking the Sub-Contractor's compliance with the obligation in clause 76.3b, a representative of the Contractor or the Authority shall be entitled at any time to enter and inspect any premises used by the Sub-Contractor which are in any way connected with this Contract and inspect any document or thing in any such premises, which is being used or made for the purposes of this Contract. Such representative shall be entitled to all such

information as it may reasonably require.

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

Sub-Contracts

- 76.6 If the Sub-Contractor proposes to make a sub-contract which will involve the disclosure of Secret Matter to the sub-contractor, the Sub-Contractor shall:
- 76.6.1 submit for approval of the Authority the name of the proposed sub-contractor, a statement of the work to be carried out and any other details known to the Sub-Contractor which the Authority shall reasonably require;
 - 76.6.2 incorporate into the sub-contract the terms of this clause 76 and such secrecy and security obligations as the Authority shall direct; and
 - 76.6.3 inform the Authority immediately if it becomes aware of any breach by the sub-contractor of any secrecy or security obligation and, if requested to do so by the Authority, terminate the sub-contract.

Termination

- 76.7 The Contractor shall be entitled to terminate the Sub-Contract immediately if:
- 76.7.1 the Sub-Contractor is in breach of any obligation under this clause 76; or
 - 76.7.2 the Sub-Contractor is in breach of any secrecy or security obligation imposed by any other contract with the Crown where the Authority considers the circumstances of the breach jeopardise the secrecy or security of the Secret Matter and notifies the Contractor accordingly.

77 Discrimination, Equality and Diversity - Provisions to be included in Sub-Contract

- 77.1 The Sub-Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act 2010 or any statutory modification or re-enactment relating to discrimination in employment.
- 77.2 Where in connection with the Sub-Contract, the Sub-Contractor is required to carry out work on the Authority's premises or alongside the Authority's employees on any other premises in a manner which any third party might reasonably assume to be a role which is being undertaken by an employee of the Authority, the Sub-Contractor shall comply with the reasonable directions of the Authority or the Contractor in order to enable the Authority to fulfil its duties under the Equality Act 2010 or otherwise as set out in clause 77.1. Those directions shall include but not be limited to the directions set out in clauses 77.6 and 77.7.
- 77.3 The Sub-Contractor shall take all reasonable steps to procure the observance of the provisions of clauses 77.1 and 77.2 by any servants, employees or agents of

the Sub-Contractor.

- 77.4 If the Sub-Contractor becomes aware of any prosecution or proceedings brought under the Equality Act 2010 or otherwise as set out in clause 77.1 against the Sub-Contractor, any servants, employees or agents of the Sub-Contractor and any sub-contractors employed in performance of the Sub-Contract, the Sub-Contractor shall immediately notify the Contractor and the Authority at the addresses specified in this Contract. The Sub-Contractor shall not be required to notify the Authority if to do so would be in breach of any duty of confidentiality between the Sub-Contractor and any of the Sub-Contractor Employees.
- 77.5 Notification by the Sub-Contractor of any information under this clause 77 shall not prejudice any rights or obligations of the Sub-Contractor or the Contractor under the Sub-Contract.
- 77.6 In connection with clause 77.2, the Sub-Contractor shall so far as is reasonable promote good relations between persons of different racial groups (whether defined by colour, race, nationality, or ethnic or national origin) by:
- 77.6.1 encouraging the use of verbal and non-verbal language which will not cause racial offence;
 - 77.6.2 encouraging the use of words or terms in written communications which will not cause racial offence;
 - 77.6.3 discouraging any form of racial stereotyping;
 - 77.6.4 encouraging behaviour which will not create restrictions between racial groups; and
 - 77.6.5 encouraging behaviour which respects racial differences.
- 77.7 The Sub-Contractor is encouraged to bring to the attention of the Authority any measures which might promote good relations between different racial groups.

78 Sub-Contractor IPR

- 78.1 The Contractor shall ensure that all Sub-Contracts shall include:
- 78.1.1 a licence for the Authority under IPR owned or controlled by a Sub-Contractor in the same terms as the licence the Authority receives in relation to IPR owned or controlled by a Contractor as set out in Part 12 (Intellectual Property); and
 - 78.1.2 an assignment of rights in IPR owned or controlled by a Sub-Contractor in the same terms as the assignment to the Authority of IPR owned or controlled by a Contractor as set out in Part 12 (Intellectual Property); and
 - 78.1.3 provisions that the Authority and the Contractor may register, in favour of the Authority, any licence of registered IPR owned or controlled by a third party.
- 78.2 The Contractor shall not enter into any Sub-Contract concerned with this Contract, nor extend any Sub-Contract derived from this Contract, unless the Authority has

stated in writing to the Contractor that the Authority does not require any further assurance in respect of IPR beyond the Contractor meeting those obligations set out under clause 78.1. However, where the obligations under clause 78.1 are considered insufficient by the Authority, the Contractor shall not enter into any Sub-Contract concerned with this Contract nor extend any Sub-Contract derived from this Contract without first ensuring that the Authority obtains, through a direct agreement with the Sub-Contractor, the assurances that the Authority requires in respect of IPR on the same basis as provided for under this Contract in respect of Contractor owned or controlled IPR.

79 Other Provisions

79.1 The Contractor shall also ensure that all Sub-Contracts contain provisions capable of giving effect to the requirements of the following:

clause 13 (Transport Overseas);

clause 14 (Injuries, Disease And Dangerous Occurrences);

clause 20 (Contractor's Personnel At Government Establishments);

clause 21 (Liability In Respect Of Damage To Authority Property);

clause 22 (Contractor's Property);

clause 23 (Contractor's Representatives);

clause 24 (Health And Safety Hazard Control);

clause 27 (Contractor's Conduct on Authority Establishments);

clause 29 (Issued Property);

clause 30 (Accounting for the Property of the Authority)

clause 37 (Contractor's Records);

clause 52 (Foreground Intellectual Property);

clause 53 (Background Intellectual Property);

clause 61 (Observance of Regulations);

clause 62 (Disclosure of Information);

clause 64 (Notification of Change of Control);

clause 66 (Failure of Performance);

clause 67 (Break);

clause 68 (Termination for Corrupt Gifts and Fraud);

clause 70 (Co-Operation on Expiry or Termination of Contract);

clause 81 (Quality Assurance);

clause 86 (Assignment);

clause 91 (Law of the Contract and Jurisdiction); and

clause 100 (Protection of Personal Data).

80 Sub-Contracting

- 80.1 The Contractor shall ensure (and shall secure that all Sub-Contractors ensure) that all Sub-Contracts include a requirement for any further Sub-Contracts of lower tiers to contain provisions capable of giving effect to all of the provisions of this Part 16 (Matters to be Included in Sub-Contracts), to the extent reasonably required by the Authority.
- 80.2 The Contractor shall perform its obligations under, and observe all the terms of, any Sub-Contract which it has entered into with a Sub-Contractor.
- 80.3 Nothing in this Contract shall prohibit or prevent any Sub-Contractor employed by the Contractor from being employed by the Authority at any Establishment.
- 80.4 Prior to entering into any sub-contract, the Contractor shall notify the proposed sub-contractor that the Contractor is not, by virtue of prior agreement with the Authority, entitled to place a contract with any sub-contractor which does not comply with the conditions of this Part 16 (Matters to be Included in Sub-Contracts).
- 80.5 The Contractor shall retain, for 2 years from the Termination Date or the Expiry Date as the case may be (or such other period as the Authority may notify to the Contractor), a copy of all Sub-Contracts (or the relevant parts) sufficient to demonstrate the Authority's rights with respect to Part 16 (Matters to be Included in Sub-Contracts), including rights in respect of IPR held by a Sub-Contractor and shall provide certified copies of such records to the Authority upon request.
- 80.6 The Contractor shall inform the Authority immediately when it becomes aware of any breach by any Sub-Contractor of any of the requirements set out or referred to in Part 13 (Security and Confidentiality) and, if requested to do so by the Authority, shall terminate the relevant Sub-Contract.

Change of Sub-Contractors and Terms of Sub-Contracts

- 80.7 By entering into this Contract, the Authority approves the Sub-Contractors appointed by the Contractor which the Contractor has notified to the Authority as at the date of this Contract.
- 80.8 If the Contractor wishes to replace a Sub-Contractor or add an additional sub-contractor, the Contractor shall submit to the Authority:
- 80.8.1 the name of the proposed sub-contractor;
 - 80.8.2 a statement of the work to be carried out by such proposed sub-contractor;
 - 80.8.3 a copy of the proposed sub-contract which shall include the matters required pursuant to Part 16 (Matters to be Included in Sub-Contracts); and

- 80.8.4 any other details known to the Contractor which the Authority may reasonably require.
- 80.9 The Authority may, at its sole discretion, seek to acquire the same rights from a proposed sub-contractor as are recited in Part 12 (Intellectual Property Rights) by means of a direct IPR agreement with a proposed sub-contractor, and the Contractor may not place a Sub-Contract until the Authority has confirmed in writing either that it has entered into such a direct agreement or that it does not wish to do so. Should the Authority opt for such a direct agreement, the Authority shall inform the Contractor, provided always that the Authority shall be responsible for its own costs in procuring and negotiating any such direct agreements.
- 80.10 The Authority shall (acting reasonably) confirm or reject the identity of the proposed sub-contractor and/or the terms of the proposed sub-contract within 30 Business Days of the Contractor's proposed change of Sub Contractor to this Contract (submitted pursuant to clause 80.8 above), provided that it shall be reasonable for the Authority to reject any proposed sub-contractor who is not a suitable substitute Sub-Contractor and/or who will not be appointed under a sub-contract including the matters required pursuant to this Part 16 (Matters to be Included in Sub-Contracts).
- 80.11 The Contractor shall not, in respect of this Contract, employ a proposed new sub-contractor and/or use a proposed sub-contract, and shall ensure that a Sub-Contractor does not, in respect of this Contract, employ a sub-contractor and/or use a proposed sub-contract, rejected by the Authority pursuant to clause 80.10 above.
- 80.12 On:
- 80.12.1 the granting of Authority's approval pursuant to clause 80.10; and
- 80.12.2 the entering into of the relevant sub-contract documentation by the parties to it,
- the proposed new sub-contractor and sub-contract shall become a Sub-Contractor and Sub-Contract respectively for the purposes of this Contract.

Sub-Contracting to Supported Employment Enterprises

- 80.13 When placing Sub-Contracts, the Contractor is asked to give consideration, as far as possible, to the placing of work on a competitive basis with Supported Employment Enterprises.

Prompt Payment

- 80.14 Where the Contractor enters into a Sub-Contract for the purpose of performing this Contract, a term shall be included in such Sub-Contract which requires payment to be made to the supplier or contractor within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the Sub-Contract requirements.

PART 17 GENERAL CONTRACT PROVISIONS**81 Quality Assurance**

- 81.1 The Contractor shall develop, implement and comply with the following Quality Standards which shall cover all aspects of the provision of the Training Services under this Contract:
- 81.1.1 AQAP 2110 Edition D Version 1 – NATO Quality Assurance Requirements for Design, Development and Production;
 - 81.1.2 AQAP 2105 Edition 2 – NATO Requirements for Deliverable Quality Plans;
 - 81.1.3 BS EN ISO 9001:2008 (9001:2015) - Quality Management Systems;
 - 81.1.4 BS EN ISO 14001:2004 (14001:2015) - Environmental Management Systems; and
 - 81.1.5 DSAT QS 001:2008 - The Defence Systems Approach to Training.
- 81.2 The Contractor shall have achieved certification to BS EN ISO 9001:2008 – (Quality Management Systems) standard by Service Commencement Date and BS EN ISO 9001:2015 by September 2018. The Contractor shall have achieved certification to BS EN ISO 14001:2004 – (Environmental Management Systems) standard no later than three months after Service Commencement Date and BS EN ISO 14001:2015 by September 2018. Certification at these standards will be maintained at these or the applicable equivalent standards for the Contract Period.
- 81.3 The Parties shall comply with their respective obligations set out in DEFSTAN 05-61 (Quality Assurance Procedural Requirements - Part 1, Part 4 and Part 9)). Concessions shall be managed in accordance with DEFSTAN 05-61 Part 1, Issue 6 – Quality Assurance Procedural Requirements – Concessions. Sub-Contractors shall be managed in accordance with DEFSTAN 05-61 Part 4 Issue 3 (Including Amendment 28 January 2011) – Quality Assurance Procedural Requirements – Contractor’s Working Parties. Safety critical items shall be subject to independent inspection in accordance with DEFSTAN 05-61 Part 9, Issue 5 – Quality Assurance Procedural Requirements – Independent Inspection Requirements for Safety Critical Items.
- 81.4 The Parties shall use AQAP 2009 Edition 3 dated March 2010 for guidance on the application and interpretation of AQAPs.

82 Deliverable Quality Plan

- 82.1 The Contractor shall comply with its obligations in the Deliverable Quality Plan. Notwithstanding that the Deliverable Quality Plan will have been seen and agreed by the Authority, the Contractor shall be solely responsible for the accuracy, suitability and applicability of the Deliverable Quality Plan throughout the Contract Period.

83 Spare Capacity

- 83.1 The Contractor shall not, without the prior written consent of the Authority, carry

out any Commercial Work during the Contract Period.

- 83.2 Before undertaking any Commercial Work, the Contractor shall submit detailed proposals in respect of the Commercial Work to the Authority and shall request the consent of the Authority for such Commercial Work. The Authority shall be entitled to withhold its consent at its absolute discretion.
- 83.3 In the event that the Authority consents to the Contractor undertaking Commercial Work pursuant to clause 83.2 above, the Parties shall enter into a separate agreement governing the relationship between the Parties in relation to the Commercial Work which shall repeat the obligations of each of the Parties set out in this clause 83.
- 83.4 The Contractor shall provide to the Authority a report every month with details of the costs incurred and profit made in relation to any Commercial Work carried out during the Contract Period.
- 83.5 The Contractor shall not charge any costs associated with Commercial Work to the Authority as part of the Contract Price. Any Commercial Work carried out for the Authority or any other Government Department shall be charged directly to the relevant customer of such Commercial Work and not as part of the Contract Price.
- 83.6 The requirements of this Contract shall take precedence over any Commercial Work and the Contractor shall not carry out any Commercial Work which may have an adverse impact on the provision of the Training Services. The Contractor shall organise its programme of Commercial Work to ensure there is no such adverse impact on the Training Services.
- 83.7 The Authority shall reserve its rights to contract with third parties for any spare capacity. For the avoidance of doubt, this Contract does not grant the Contractor exclusive rights over spare capacity.

84 Working with Other Authority Contractors

- 84.1 The Contractor shall co-operate and liaise in good faith with all other Authority Contractors at the Establishments as necessary to enable it to perform its obligations under this Contract.
- 84.2 In performing its obligations under this Contract the Contractor shall have regard to the obligations of the Authority under any other contracts entered into in relation to the Establishments insofar as the Contractor has been given notice of any such obligations at any time and shall not by any act, omission or default do anything to cause or contribute to any breach by the Authority of any such obligation.
- 84.3 At the request of the Authority, the Contractor shall enter into good faith discussions with the Authority and any other relevant Authority Contractor, to agree an interface agreement. The Contractor shall not be obliged to incur any liability under any such interface agreement such that the aggregate of its liability under the interface agreement and this Contract exceeds the maximum aggregate liability of this Contract set out in clause 44 (Indemnities).

85 Management of Contractor Waste

- 85.1 The Parties agree that:
- 85.1.1 the Authority shall be responsible for the safe disposal, in accordance with the WEEE Directive of any electrical and electronic equipment supplied to the Contractor as GFA in accordance with Schedule 2 (Statement of Requirements) Annex D; and
 - 85.1.2 the Contractor shall be responsible for the safe disposal, in accordance with the WEEE Directive of any electrical and electronic equipment procured by the Contractor in connection with the delivery of Training Services under this Contract.

86 Assignment

Assignment of this Contract by the Contractor

- 86.1 Subject to Part 16 (Matters to be Included in Sub-Contracts), the Contractor shall not sub-contract, assign, underlet, charge, sell, bargain or otherwise deal in any way with the benefit of this Contract in whole or in part except with the prior written consent of the Authority's Representative.

Transfer of this Contract by the Authority

- 86.2 The rights and obligations of the Authority under this Contract shall not be assigned, novated or otherwise transferred (whether by virtue of any Legislation or any scheme pursuant to any Legislation or otherwise) other than in respect of the whole of this Contract to any person, other than to any public body (being a single entity) acquiring the whole of this Contract and having the legal capacity, power and authority to become a party to and to perform the obligations of the Authority under this Contract being:
- 86.2.1 a Minister of the Crown pursuant to an order under the Ministers of the Crown Act 1975; or
 - 86.2.2 any other public body whose obligations under this Contract are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Contractor) by the Authority or a Minister of the Crown having the legal capacity, power and authority to perform the obligations under the guarantee and the obligations of the Authority under this Contract.

87 Deed of Indemnity Given by a Parent Company in Respect of a Subsidiary

- 87.1 The Contractor shall procure execution and delivery of a guarantee in the form set out in Schedule 19 (Deed of Indemnity Given by a Parent Company in Respect of a Subsidiary) by the [Parent Company Name] on the Effective Date [if applicable].

88 Measures in a Crisis

- 88.1 If, at any time, the Authority believes, in its sole opinion, that there exist circumstances to which clause 88.2 applies, the Authority's Representative may issue a written notice to the Contractor's Representative of such belief.

- 88.2 The circumstances referred to in clause 88.1 are where, in view of:
- 88.2.1 the national interest, the requirements of national security, or the occurrence of a state of transition to war, war or other emergency (whether or not involving hostilities); and/or
 - 88.2.2 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; and/or
 - 88.2.3 a request by NATO, the United Nations, the European Union or any other country for support and assistance in relation to international obligations,
- it is necessary, appropriate, or desirable for the Authority to take all or any of the measures described in clause 88.4 and/or clause 88.5.
- 88.3 Measures in a Crisis shall cease to apply when the Authority's Representative issues a written notice to that effect to the Contractor's Representative and thereafter the Contractor shall continue to be bound by the provisions of this Contract.

Effect of Implementation of Measures in a Crisis

- 88.4 If the Authority's Representative has issued the notice contemplated in clause 88.1 the Authority's Representative may require the Contractor, within such period as the Authority's Representative in its sole discretion specifies (but provided that such period is reasonable taking into account all relevant circumstances), to provide such information in the possession, knowledge or control of the Contractor as the Authority's Representative may, in its sole discretion, require including information relating to all or any of the following matters:
- 88.4.1 the provision of the Training Services currently being carried out by the Contractor for the Authority and any third parties; and/or
 - 88.4.2 the provision of the Training Services to be carried out by the Contractor (and due to commence within a period specified by the Authority) for the Authority and any third parties; and/or
 - 88.4.3 the Contractor's current deployment of its employees whether inside or outside the Establishments; and/or
 - 88.4.4 all supporting equipment and documentation currently held by the Contractor and the location of such equipment and documentation,
- and the Contractor shall promptly and diligently comply fully with the requirement to provide such information.
- 88.5 Upon providing the Authority's Representative with the information requested pursuant to clause 88.4, 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's Representative, discuss in good faith with the Authority's Representative 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, the current provision of

the Training Services, or to be provided, by the Contractor. These shall be in order to deal with the circumstances which gave rise to the issuing of a notice pursuant to clause 88.1, including the following matters:

- 88.5.1 the revision (including the early completion, suspension or cancellation) of any provision of the Training Services for the Authority;
- 88.5.2 the early completion, suspension or cancellation of any services by the Contractor for third parties; and
- 88.5.3 the immediate implementation of new services,

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

Authority's Overriding Rights

- 88.6 Notwithstanding any provision to the contrary in this Contract, and notwithstanding that any of the measures described in clause 88.5 may not have been taken, required to be taken, or have been completed, the Authority may, at any time and in its sole discretion, step-in to this Contract, pursuant to clause 89 and/or the Authority's Representative may instruct the Contractor:
 - 88.6.1 to increase, to suspend, or to cancel, any part of the Training Services carried out by the Contractor, to remove (permanently or temporarily) the property of third parties from the Establishments and to take all reasonable steps to minimise and mitigate any loss or damage to the Contractor;
 - 88.6.2 to accelerate to early completion or to suspend the provision of the Training Services;
 - 88.6.3 to carry out any changes whatsoever to this Contract required by the Authority without reference to Part 14 (Change) of this Contract; and
 - 88.6.4 to deploy its employees in accordance with the Authority's directions,and the Contractor shall promptly and diligently comply with any instruction issued by the Authority's Representative referred to in this clause 88.6.
- 88.7 The Contractor shall not be required to take, or refrain from, any action which:
 - 88.7.1 is outside the power or technical capability or capacity of the Contractor or its Sub-Contractors;
 - 88.7.2 requires the Contractor to infringe any Law; or
 - 88.7.3 is beyond the financial capacity of the Contractor (unless the Authority meets any costs arising as a result of such action as and when such costs accrue to the Contractor).

Authority Indemnity on Measures in a Crisis

- 88.8 If the Authority instructs the Contractor pursuant to this clause 88.8 to take actions not otherwise required under this Contract, the Authority shall indemnify

the Contractor against any losses from any claim or action for damages by a third party against the Contractor arising out of any action which the Authority may require the Contractor to take pursuant to clause 88.6 provided that:

- 88.8.1 the Contractor shall promptly notify the Authority in writing of any such claim or action or threatened claim or action;
- 88.8.2 the Contractor shall act in accordance with the Authority's instructions regarding the manner in which such claim or action or threatened claim or action is to be dealt with or regarding the conduct of any legal proceedings; and
- 88.8.3 the Contractor shall not compromise the Authority's position in any way whatsoever by making statements or admissions (other than in accordance with the Authority's instructions) and shall do nothing which could prejudice the defence of any such claim or action or threatened claim or action.
- 88.8.4 To the extent that such work is not covered by express agreement between the Parties, the Authority shall pay to the Contractor a fair and reasonable price for any work carried out by the Contractor in complying with the Authority's instructions under clause 88.6.

89 Authority Step-In

- 89.1 In this clause 89, references to the Authority taking action shall be deemed to include references to the Authority procuring the taking of action by others on behalf of the Authority.
- 89.2 If the Authority believes it needs to take action in connection with the Training Services due to the matters specified in clause 88.2, then the Authority shall be entitled to take action in accordance with clauses 89.5 and 89.6.
- 89.3 If the Authority has stepped into this Contract pursuant to clause 89.2, the provisions of clause 89.9 shall apply.
- 89.4 If the Authority reasonably believes that it needs to take action in connection with the Training Services;
 - 89.4.1 because a serious risk exists to the health or safety of persons or property or to the environment; and/or
 - 89.4.2 to discharge a statutory duty; and/or
 - 89.4.3 because the Authority invokes clause 89; and/or
 - 89.4.4 because a Contractor Default has occurred,then the Authority shall be entitled to take action in accordance with clause 89.5 and 89.6.
- 89.5 If clause 89.2 or 89.4 apply and the Authority wishes to take action, the Authority's Representative shall notify the Contractor's Representative of the following:
 - 89.5.1 the action it wishes to take (or procures a third party to take);

- 89.5.2 the reason for such action;
 - 89.5.3 the date it wishes to commence such action;
 - 89.5.4 the time period which it believes shall be necessary for such action;
and
 - 89.5.5 to the extent practicable, the effect on the Contractor and its obligation to provide the Training Services during the period such action is being taken.
- 89.6 Following service of such notice, the Authority shall take such action as notified under clause 89.5 and any consequential additional action as it reasonably believes is necessary (together, the "Required Action") and the Contractor shall give all reasonable assistance to the Authority or it's appointed third party while it is taking the Required Action.

Effect of Step-In on Contractor Default

- 89.7 If the Required Action is taken as a result of a Contractor Default then for so long as and to the extent that the Required Action is taken, and this prevents the Contractor from providing the Training Services:
- 89.7.1 the Contractor shall be relieved from its obligations to provide such part of the Training Services; and
 - 89.7.2 in respect of the period in which the Authority is taking Required Action, the Contract Price due from the Authority to the Contractor shall be adjusted accordingly and the Contractor shall pay to the Authority any costs incurred by it taking the Required Action to the extent such costs are in excess of the Contract Price which would have been due to the Contractor if the Contractor had been providing the Training Services affected by the Required Action.
- 89.8 The Authority's right to take any Required Action for Contractor Default under clause 89.7 does not waive the Authority's right to terminate in accordance with clause 66 (Failure of Performance).

Effect of Step-In Without Contractor Default

- 89.9 Subject to clause 89.10, if the Required Action is taken other than as a result of a breach of the obligations of the Contractor under this Contract, then for so long as and to the extent that the Required Action is taken, and this prevents the Contractor from providing any part of the Training Services:
- 89.9.1 the Contractor shall be relieved from its obligations to provide such part of the Training Services; and
 - 89.9.2 in respect of the period in which the Authority is taking the Required Action and provided that the Contractor provides the Authority with reasonable assistance (such assistance to be at the expense of the Authority to the extent incremental costs are incurred), the Contract Price due from the Authority to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations and

providing the Training Services affected by the Required Action in full over that period.

Authority Step-Out

- 89.10 The Authority's Representative may at any time during the period of the Required Action notify the Contractor's Representative that the Authority wishes to cease the Required Action and the date on which it intends to cease the Required Action.
- 89.11 On the date on which the Required Action ceases:
- 89.11.1 the Authority will be released from all of its obligations and liabilities in relation to the Required Action arising prior to the cessation of the Required Action other than its obligations to pay the Contractor pursuant to this clause 89; and
- 89.11.2 the Contractor shall resume all or any part of the Training Services which were the subject of the Required Action.

90 Dispute Resolution

- 90.1 The Parties shall attempt to resolve in good faith any dispute arising out of or relating to this Contract through negotiations between the respective Representatives of the Parties having authority to settle the matter in accordance with Schedule 3 (Governance and Contract Management).
- 90.2 In the event that the dispute is not resolved by negotiation (or where the Parties have agreed to use an Alternative Dispute Resolution procedure, by the use of such procedure) in accordance with Schedule 3 (Governance and Contract Management), the dispute shall, be referred to arbitration in accordance with clauses 90.3 to 90.6 below.
- 90.3 The Party initiating the arbitration shall give a written notice (the "Notice of Arbitration") to the other Party. The Notice of Arbitration shall specifically state:
- 90.3.1 that the dispute is referred to arbitration; and
- 90.3.2 the particulars of this Contract out of or in relation to which the dispute arises.
- 90.4 Unless otherwise agreed in writing by the Parties, the arbitration and these clauses 90.1 to 90.6 shall be governed by the provisions of the Arbitration Act 1996.
- 90.5 It is agreed between the Parties that for the purposes of the arbitration, the arbitrator shall have the power to make provisional awards as provided for in section 39 of the Arbitration Act 1996.
- 90.6 The arbitration process and anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential as between the Parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise. No report relating to anything said, done or produced in or in relation to the arbitration process may be made beyond the tribunal, the Parties, their legal representatives and any person necessary to the conduct of the proceedings, without the concurrence of all the Parties to the arbitration.

91 Law of the Contract and Jurisdiction

- 91.1 This Contract shall be considered as a contract made in England and subject to English Law.
- 91.2 Subject to clause 90 (Dispute Resolution) and without prejudice to the dispute resolution process set out in that clause 90, each Party hereby irrevocably submits and agrees to the exclusive jurisdiction of the Courts of England to resolve, and the laws of England to govern, any actions, proceedings, controversy or claim of whatever nature arising out of or relating to this Contract or breach.
- 91.3 Other jurisdictions may apply solely for the purpose of giving effect to this clause 91 and for the enforcement of any judgement, order or award given under English jurisdiction.

92 Recourse to Public Funds

- 92.1 The Contractor shall at all times perform its obligations under this Contract at its own risk and without recourse to Government or other public funds or guarantees now or in the future, save with the prior written agreement of the Authority's Representative.
- 92.2 The Contractor confirms that it has not applied and has no intention (as at the date of this Contract) of applying for any Government or European Union grants or funding or any other public funds or guarantees for the purpose of performing its obligations under this Contract. If the Contractor is or becomes entitled to apply for any such grants or funding in relation to its obligations under this Contract, it shall inform the Authority's Representative and obtain its consent before submitting the relevant application. The Authority's agreement to the Contractor's application will be given on condition that, should the Contractor receive any such grant or funding, the payments made by the Authority to the Contractor in accordance with this Contract will be reduced by the amount of the grant or funding.

93 Independent Contractor

- 93.1 Nothing in this Contract shall be construed as creating a partnership or as a contract of employment between the Authority and the Contractor.
- 93.2 Save as expressly provided otherwise in this Contract, the Contractor shall not be, or be deemed to be, an agent of the Authority, and the Contractor shall not hold itself out as having authority or power to bind the Authority in any way.
- 93.3 Neither Party shall place, or cause to be placed, any orders with suppliers or otherwise incur liabilities in the name of the other Party or any representative of the other Party.

94 Public Relations and Publicity

- 94.1 The Contractor shall not by itself, its employees or agents, and shall procure that its Sub-Contractors shall not:
- 94.1.1 communicate with representatives of the press, television, radio or other communications media on any matter concerning this Contract

or the Project;

- 94.1.2 photograph or film in or upon any Establishment;
- 94.1.3 erect or exhibit on any part of the Establishments any signs or trade boards; or
- 94.1.4 exhibit or attach to any part of the Establishments any notice or advertisement,

unless the Authority's Representative has given its prior written approval or as otherwise required to comply with the Law.

95 Service of Notices

- 95.1 All Notices shall:
 - 95.1.1 be given in writing;
 - 95.1.2 be in a form which can be read, copied and recorded;
 - 95.1.3 be authenticated by signature or by such other method as agreed between the Parties;
 - 95.1.4 be marked for the attention of the appropriate department or officer; and
 - 95.1.5 be marked in a prominent position with the relevant Contract number.
- 95.2 Notices should be delivered by:
 - 95.2.1 hand; or
 - 95.2.2 first-class prepaid post (or airmail, in the case of Notices to or from overseas).
 - 95.2.3 Notices shall be deemed to have been received:
 - 95.2.4 if delivered by hand, on the day of delivery if it is a Business Day and otherwise on the first Business Day immediately following the day of delivery; and
 - 95.2.5 if sent by first-class prepaid post (or airmail, if appropriate), on the third Business Day (or on the tenth Business Day, in the case of airmail) after the day of posting.
- 95.3 The addresses of each Party to which all Notices shall be sent are those specified in this Contract, or such other address as either Party may by written Notice specify to the other for the purpose of this clause 95.
- 95.4 Where either Party requests written confirmation of any communication which does not constitute a Notice, such request shall not unreasonably be refused.

96 Waiver

- 96.1 No act or omission of either Party shall by itself amount to a waiver of any right or remedy unless expressly stated by that Party in writing. In particular, no reasonable delay in exercising any right or remedy shall by itself constitute a waiver of that right or remedy.
- 96.2 No waiver in respect of any right or remedy shall operate as a waiver in respect of any other right or remedy and nor shall it amend, delete or add to the terms, conditions or provisions of this Contract unless (and then only to the extent) expressly stated in that waiver.

97 Severability

- 97.1 If any provision of this Contract is held to be invalid, illegal or unenforceable to any extent then:
- 97.2 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
- 97.2.1 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.

98 Counterparts

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

99 Freedom of Information

- 99.1 The Contractor shall, so far as matters involve the Contractor or related information, facilitate the Authority's compliance with the Freedom of Information Act 2000, the Data Protection Act 2000, the Environmental Information Regulations 2004 and any other applicable Legislation governing access to information (the "FOI Legislation").
- 99.2 The Contractor acknowledges that, in order to be compliant with the FOI Legislation, the Authority may be obliged to provide information, on request, to third parties that relates to this Contract and/or any part of the preceding tender process.
- 99.3 Notwithstanding anything in this Contract to the contrary, including the obligations of confidentiality imposed on the Parties pursuant to clause 62 (Disclosure of Information), if the Authority receives a request for information falling within the scope of the FOI Legislation, the Authority shall, subject to clause 99.4, be entitled to disclose all information (in whatever form) as necessary in order to ensure its compliance with the FOI Legislation (and in this regard the Authority's decision as to whether it is necessary to disclose such information to ensure compliance shall be final and binding on the Contractor).
- 99.4 Prior to disclosing any information that the Authority believes to be the Contractor's Commercially Sensitive Information, the Authority shall consult with the Contractor as to the proposed disclosure and subsequently shall notify the

Contractor of its decision whether or not to disclose the information in question.

- 99.5 If the Authority receives a request for information falling within the scope of the FOI Legislation, and requires the Contractor's assistance in obtaining such information, the Contractor shall respond to any related request for assistance from the Authority, at its own cost and within 10 days of receiving the request for assistance or such shorter period as the Authority may prescribe as being necessary to comply with its obligations under the FOI Legislation.
- 99.6 The Authority shall not be liable for any loss, damage, harm or other detriment suffered by the Contractor arising from the disclosure of any information falling within the scope of the FOI Legislation or as otherwise disclosed by the Authority as permitted under clause 99.3.

100 Protection Of Personal Data (Where Personal Data is being processed on behalf of the Authority)

- 100.1 The Personal Data to be processed by the Contractor on behalf of the Authority under this Contract is set out in the completed DEFFORM 532 attached to this Contract at Schedule 27 (DEFFORM 532). The completed DEFFORM 532 forms part of the Specification for the Contract. In respect of that Personal Data, the Authority is the Data Controller and the Contractor is the Data Processor.
- 100.2 In the performance of this Contract, the Authority shall comply with its obligations as a Data Controller under the Data Protection Act ("DPA").
- 100.3 The Contractor shall, in relation to the Personal Data transferred or acquired as referenced in clause 100.1:
- 100.3.1 maintain a valid and up to date registration or notification under the DPA covering the data processing to be performed in connection with the provision of Training Services;
 - 100.3.2 process the Personal Data on behalf of the Authority only in accordance with instructions from the Authority as set out in this Contract;
 - 100.3.3 process the Personal Data only to the extent, and in a manner, necessary for the performance of this Contract and as the DPA requires;
 - 100.3.4 process the Personal Data only for the period necessary to meet the Contractor's obligations under this Contract and dispose of the Personal Data in accordance with the Authority's reasonable written instructions. The Authority shall respond to a request from the Contractor for disposal instructions for the Personal Data within 20 Business Days except where otherwise stated in this Contract;
 - 100.3.5 not process or transfer any such Personal Data to any country or territory outside the United Kingdom without the prior written consent of the Authority;
 - 100.3.6 take reasonable steps to ensure that any employees and agents of the Contractor who have access to the Personal Data have the necessary probity by undertaking the Government's Baseline

Personnel Security Standard or other standard as specified in this Contract; and

- 100.3.7 procure that all Sub-Contracts for the Processing of Personal Data under this Contract are subject to terms substantially the same as and no less stringent than the terms contained in this clause 100.

Sub-Contracts

100.4 The Contractor shall:

100.4.1 only subcontract the Processing of Personal Data under the Contract to those Sub-Contractors identified by the Contractor to the Authority at the time of entering into this Contract; and

100.4.2 obtain prior written consent from the Authority, which shall not be unreasonably withheld, to subcontract Data Processing to any other Sub-Contractor not identified under clause 100.4.1.

100.5 Upon receipt of a request for consent under clause 100.4 above, the Authority shall reply in writing within 20 Business Days. In response, the Authority shall:

100.5.1 grant consent;

100.5.2 refuse consent, stating the reasons; or

100.5.3 request a reasonable extension of time to be agreed to conduct reasonable investigations into the suitability of the Sub-Contractor, giving due consideration to any representations from the Contractor regarding the potential impact of that extension on the Contractor's ability to perform its obligations under the Contract.

The Authority shall not unreasonably withhold consent under this clause 100.5.

Security Measures

100.6 Before processing the Personal Data and Sensitive Personal Data, the Contractor shall as a minimum standard, implement and maintain all appropriate technical and organisational security measures to the standard set out in the Security Policy Framework and the Personal Data Aspects Letter. These minimum measures may be supplemented by any additional measures specified in this Contract. In all cases these measures shall:

100.6.1 be appropriate to the harm that might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data;

100.6.2 have regard to the nature of the Personal Data that is to be protected; and

100.6.3 include taking reasonable steps to ensure that staff having access to the Personal Data are aware of their responsibilities in relation to that data.

100.7 The Contractor shall permit the Authority, subject to reasonable prior written notice and to reasonable and appropriate confidentiality and other undertakings,

to audit and inspect the Contractor's facilities and processes for Processing the Personal Data under this Contract and shall comply with all reasonable requests or directions by the Authority to enable the Authority to verify that the Contractor is in compliance with its obligations under this clause 100 and the DPA.

Data Subject Requests

- 100.8 The Contractor shall maintain a record of the number of Data Subject requests received directly by the Contractor and the timescales in which the requests and any supporting Personal Data or relevant information were forwarded to the Authority, and provide this information to the Authority from time to time, as requested.
- 100.9 The Contractor shall notify the Authority as soon as reasonably practicable and no later than 10 Business Days from receipt of a written request from a Data Subject, or a third party on behalf of a Data Subject, to have access to that Data Subject's Personal Data. The Contractor shall pass to the Authority the relevant Personal Data to which the Data Subject is entitled under the DPA to enable the Authority to respond to the request as the Data Controller.
- 100.10 Where the Authority notifies the Contractor in writing that it has received a written request from a Data Subject, or a Third Party on behalf of a Data Subject, for that Data Subject's Personal Data and that Personal Data is processed on behalf of the Authority by the Contractor, the Contractor shall provide the Personal Data to which the Data Subject is entitled under the DPA to the Authority within 15 Business Days of notification by the Authority to the Contractor of full details of the request.

Complaints under the DPA

- 100.11 Where:
- 100.11.1 the Authority receives a written request or complaint about its compliance with the DPA or with any other legislation relevant to the Processing of Personal Data and privacy; and
- 100.11.2 the Authority considers that the Contractor's obligations relating to the Processing of the Personal Data are relevant to such a request or complaint,

the Contractor shall provide the Authority with reasonable co-operation and assistance to facilitate its compliance with the DPA. The Contractor shall provide that co-operation and assistance at the Authority's expense, which shall be agreed in accordance with the pricing terms set out in this Contract or, where there are no pricing terms, in accordance with paragraph 20 (Price Fixing) in Schedule 6 (Pricing Mechanism).

- 100.12 Where the Contractor receives a request or complaint about the Authority's compliance with the DPA, it shall pass the request or complaint on to the Authority as soon as reasonably practical and within 10 Business Days of receipt, to enable the Authority to respond to it as the Data Controller.

Disclosure of Personal Data by the Contractor

- 100.13 The Contractor shall not disclose Personal Data to any third parties other than:
- 100.13.1 to employees and Sub-Contractors to whom such disclosure is reasonably necessary in order for the Contractor to provide the Training Services; or
 - 100.13.2 to the extent required under the DPA and/or a court order,
- provided that disclosure under clause 100.13.1 is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this clause 100 and that the Contractor shall notify the Authority's Representative of any disclosure of Personal Data which either the Contractor or a Sub-Contractor is required to make under clause 100.13.2 immediately upon becoming aware of such a requirement.
- 100.14 The Contractor shall not be in breach of this clause 100 where it can show that any further disclosure of the Personal Data was made solely and to the extent necessary to comply with any applicable statutory, judicial or regulatory obligation. The Contractor shall notify the Authority of any request for disclosure made in those circumstances as soon as reasonably possible prior to disclosure unless prohibited by Law.
- 100.15 The Contractor shall promptly notify the Authority in writing as soon as it is aware of any incident of:
- 100.15.1 unauthorised or unlawful Processing;
 - 100.15.2 accidental loss, destruction or damage;
 - 100.15.3 theft;
 - 100.15.4 sale; or
 - 100.15.5 unlawful transfer
- of the Personal Data (an "Incident").

101 Entire Agreement

- 101.1 This Contract constitutes the entire agreement between the Parties relating to the subject matter of this Contract. This Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.

102 Third Parties' Rights

- 102.1 Except as provided in clause 102.2 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 declare that they have no intention to grant any such right.
- 102.2 Where, and only where, this Contract expressly states that a third party shall be entitled to enforce a term of this Contract:
- 102.2.1 the said third party shall be entitled to enforce that term in its own right;

- 102.2.2 the Contractor shall inform the said third party as soon as is reasonably practicable of the existence of the relevant right, together with any other terms (including the terms of this clause 102) relevant to the exercise of that right; and
- 102.3 the third party's rights shall be subject to:
- 102.3.1 the resolution of any relevant dispute pursuant to clause 90 (Dispute Resolution); and
- 102.3.2 clause 91 (Law of the Contract and Jurisdiction).

103 Contract Amendments

- 103.1 This Contract may not be amended except in accordance with Schedule 4 (Change and Change Management) and by the written agreement of the duly authorised representatives of the Parties.
- 103.2 The written agreement of the Parties shall be obtained only by:
- 103.2.1 a serially numbered amendment being issued to the Contractor by the Authority. The amendment shall come into force only when the Contractor has despatched to the Authority an unqualified acceptance of the Authority's offer on DEFFORM 10 set out in Schedule 24 (DEFFORM 10B); or
- 103.2.2 the despatch by the Authority of a serially numbered amendment letter as an unqualified acceptance of an offer from the Contractor.
- 103.3 Any purported amendment to this Contract which does not satisfy the terms of this clause 103 shall be of no effect.
- 103.4 Where an amendment to this Contract covering changed or additional requirements involves a change in price, the price shall be agreed prior to any authority to proceed being given by the Authority. However, in exceptional circumstances where the Authority wishes to add to this Contract requirement work which is unpriced, the Authority shall have the right to negotiate prices under the terms of Schedule 7 (Pricing of Change).

104 Mitigation

- 104.1 Each of the Authority and Contractor shall at all times take all reasonable steps to minimise and mitigate any loss for which it is entitled to bring a claim against the other Party to this Contract.

105 Decoupling

- 105.1 If the Contractor shall enter 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 contractors relating to or connected with any other contracts as aforesaid shall, regardless of any negligence on its part or their part:
- 105.1.1 give the Contractor any right under this Contract to an extension of

time or additional payment or damages or any other relief or remedy whatsoever against the Authority; or

- 105.1.2 affect, modify, reduce or extinguish either the obligations of the Contractor or the rights or remedies of the Authority (including without limitation the right to liquidated damages under this Contract); or
- 105.1.3 be taken to amend, add to, delete or waive any term or clause of this Contract.

106 Transparency

- 106.1 Notwithstanding any other term of this Contract, including clause 62 (Disclosure of Information), the Contractor understands that the Authority may publish the Transparency Information to the general public. The Contractor shall assist and cooperate with the Authority to enable the Authority to publish the Transparency Information.
- 106.2 Before publishing the Transparency Information to the general public in accordance with clause 106.1, 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 Legislation, including the Contractor Commercially Sensitive Information.
- 106.3 The Authority may consult with the Contractor before redacting any information from the Transparency Information in accordance with clause 106.2. 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 Legislation.
- 106.4 For the avoidance of doubt, nothing in this clause 106 shall affect the Contractor's rights at Law.