



Defence  
Infrastructure  
Organisation

**RENTED LIVING ACCOMMODATION PROJECT**

**BOOKLET 2 - CONDITIONS OF CONTRACT**

**Contract Number: 700219314**

**Date: 10 JUNE 2022**

**Version 1.0**

## **CONDITIONS OF CONTRACT**

1	GENERAL CONDITIONS OF CONTRACT	3
2	DEFINITIONS AND INTERPRETATION	5
3	DUE DILIGENCE	6
4	WARRANTIES	7
5	PERIOD OF CONTRACT	9
6	MOBILISATION AND DE-MOBILISATION	10
7	CONTRACTOR OBLIGATIONS	11
8	PRICE AND PAYMENT	14
9	RISK	19
10	PERFORMANCE	20
11	LIABILITY	23
12	DAMAGE TO ACCOMMODATION	24
13	INSURANCE	25
14	PUBLIC RELATIONS	27
15	TEMPORARY ACCOMMODATION	27
16	CHANGE	28
17	CONTINUOUS IMPROVEMENT	29
18	BENCHMARKING	29
19	TERMINATION	30
20	FRAUD	32
21	EMPLOYMENT MATTERS	34
22	RIGHTS AND REMEDIES	35
23	PARTNERSHIP OR AGENCY	35
24	EFFICIENCY MEASURES	35
25	OPEN BOOK ACCOUNTING	36
26	SUB-CONTRACTING	37
27	STEP IN RIGHTS	38
28	COUNTERPARTS	39
29	ENTIRE AGREEMENT	39
30	CONTINUING OBLIGATIONS	39
31	AMENDMENTS TO CONTRACT	40
32	AUTHORISATION BY THE CROWN FOR THE USE OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS	40
SCHEDULE 1	DEFINITIONS	41
SCHEDULE 2	DE-MOBILISATION PLAN	53
SCHEDULE 3	MOBILISATION PLAN	54
SCHEDULE 4	PERFORMANCE MANAGEMENT	56
SCHEDULE 5	EXIT MANAGEMENT PLAN	64
SCHEDULE 6	TUPE PART 1	65
Appendix 1 to Schedule 6 Part 1		69
TUPE PART 2		72
Appendix 1 to Schedule 6 Part 2		79
Appendix 2 to Schedule 6 Part 2		81
PART A		
PART B		
SCHEDULE 7	CHANGE CONTROL PROCEDURE	84
Appendix 1 to Schedule 7		87
Appendix 2 to Schedule 7		88
SCHEDULE 8	REQUIRED INSURANCES	91
SCHEDULE 9	CONTRACTOR'S COMMERCIALLY SENSITIVE INFORMATION	94
DEFFORM 111	Addresses and Other Information	

(attached as a separate document)  
DEFFORM 532B Personal Data Particulars  
(attached as a separate document)

1. **GENERAL CONDITIONS OF CONTRACT**

The following Defence Conditions (DEFCONs) and their associated forms (DEFFORMs) shall hereby be incorporated into this Contract:-

- DEFCON 5J (Edn 18/11/16) - Unique Identifiers
- DEFCON 90 (Edn 11/06) - Copyright (applicable to all documentation except that relating to IT Management System)
- DEFCON 91 (Edn 11/06) - Intellectual Property Rights in Software
- DEFCON 129J (Edn 18/11/16) - The Use Of The Electronic Business Delivery Form
- DEFCON 501 (11/17) - Definitions and Interpretations
- DEFCON 502 (Edn 05/17) - Specifications Changes
- DEFCON 503 (Edn 12/14) - Formal Amendments to Contract
- DEFCON 507 (Edn 10/18) - Delivery (Applicable to Furniture)
- DEFCON 513 (Edn 11/16) - Value Added Tax
- DEFCON 514 (Edn 08/15) - Material Breach
- DEFCON 515 (Edn 02/17) - Bankruptcy and Insolvency
- DEFCON 516 (Edn 04/12) - Equality
- DEFCON 518 (Edn 11/12) - Transfer
- DEFCON 520 (Edn 05/18) - Corrupt Gifts and Payments of Commission
- DEFCON 522 (Edn 11/17) - Payment and Recovery of Sums Due
- DEFCON 524 (Edn 02/20) - Rejection
- DEFCON 525 (Edn 10/98) - Acceptance
- DEFCON 526 (Edn 08/02) - Notices
- DEFCON 527 (Edn 09/97) - Waiver
- DEFCON 528 (Edn 07/16) - Import and Export Licences
- DEFCON 529 (Edn 09/97) - Law (English)
- DEFCON 530 (Edn 12/14) - Dispute Resolution (English Law)
- DEFCON 531 (Edn 11/14) - Disclosure of Information

- DEFCON 532B (Edn 05/18) - Protection of Personal Data
- DEFCON 534 (Edn 06/17) - Subcontracting and Prompt Payment
- DEFCON 537 (Edn 06/02) - Rights of Third Parties
- DEFCON 538 (Edn 06/02) - Severability
- DEFCON 539 (Edn 08/13) - Transparency
- DEFCON 550 (Edn 02/14) - Child Labour and Employment
- DEFCON 566 (Edn 12/18) - Change of Control of Contractor
- DEFCON 602A (Edn 12/17) - Quality Assurance (with Deliverable Quality Plan)
- DEFCON 604 (Edn 06/14) - Progress Reports
- DEFCON 606 (Edn 06/14) - Change and Configuration Control Procedure
- DEFCON 608 (Edn 10/14) - Access and Facilities to be Provided by the Contractor
- DEFCON 609 (Edn 08/18) - Contractor's Records
- DEFCON 625 (Edn 10/98) - Co-operation on Expiry of Contract
- DEFCON 632 (Edn 08/12) - Third Party Intellectual Property – Rights and Restrictions
- DEFCON 642 (Edn 06/14) - Progress Meetings
- DEFCON 647 (Edn 04/19) - Financial Management Information
- DEFCON 656B (Edn 08/16) - Termination for Convenience - £5m and over
- DEFCON 658 (Edn 10/17) - Cyber
- DEFCON 660 (Edn 12/15) - Official Sensitive Security Requirements
- DEFCON 670 (Edn 02/17) - Tax Compliance
- DEFCON 675 (Edn 09/19) - Advertising Subcontracts
- DEFCON 678 (Edn 09/19) - SME Spend Data Collection
- DEFCON 691 (Edn 03/15) - Timber and Wood-Derived Products
- DEFCON 694 (Edn 07/18) - Accounting for property of the Authority
- DEFCON 703 (Edn 08/13) - Intellectual Property Rights – Vesting in the Authority (applicable to the IT Management System all records and data relating to Authority Personnel and updates to any GFA)

2. **DEFINITIONS AND INTERPRETATION**

- 2.1 In this Contract, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (Definitions) or the relevant Schedule in which that capitalised expression appears.
- 2.2 In this Contract, unless the context otherwise requires:
- (a) the singular includes the plural and vice versa;
  - (b) reference to a gender includes the other gender and the neuter;
  - (c) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
  - (d) reference to any statute, enactment, order, regulation, or other similar instrument as amended, supplemented, replaced or consolidated by any subsequent statute, enactment, order regulation, or instrument
  - (e) the words “include”, “includes”, “included” “including”, “other”, “in particular”, “for example” and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words “without limitation”, except where explicitly stated otherwise;
  - (f) references to “writing” include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
  - (g) the headings are for ease of reference only and shall not affect the interpretation or construction of this Contract;
  - (h) references to this Contract are references to this Contract as amended from time to time.
- 2.3 Where a standard, policy or document is referred to in this Contract by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Contractor shall notify the Authority and the Parties shall update this Contract with a reference to the replacement hyperlink.
- 2.4 If there is any conflict or inconsistency between the Clauses and the Schedules and/or any Appendices to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
- a) Booklet 1 Form of Agreement;
  - b) Booklet 2 Condition of Contract;
  - c) Contract Data part one;
  - d) Booklets 3, 4 and 5;
  - e) Booklet 6.
- 2.5 The Booklets and their Appendices form part of this Contract.

2.6 In entering into this Contract, the Authority is acting as part of the Crown.

### 3. **DUE DILIGENCE**

3.1 The Contractor acknowledges that:

- (a) the Authority has delivered or made available to the Contractor all of the information and documents that the Contractor considers necessary or relevant for the performance of its obligations under this Contract;
- (b) it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;
- (c) it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the In Service Date (ISD)) of all relevant details relating to:
  - (i) the Authority requirements;
  - (ii) the suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the ISD) future Operating Environment;
  - (iii) the operating processes and procedures and the working methods of the Authority;
  - (iv) the ownership, functionality, capacity, condition and suitability for use in the Services of the Authority; and
  - (v) the existing agreements (including any leases, licences, support, maintenance and other agreements relating to the Operating Environment) referred to in the Due Diligence Information which may be novated to, assigned to or managed by the Contractor under this Contract and/or which the Contractor will require the benefit of for the provision of the Services; and
- (d) the volume of Substitute Accommodation required by the Authority under the Contract is variable and the Authority provides no guarantee of the volume to be procured under the Contract, previous levels of demand for Substitute Accommodation are not necessarily indicative of levels of demand under this Contract and the Contractor shall have no claim against the Authority in respect of the actual level of demand during the Contract Period;
- (e) it has advised the Authority in writing of:
  - (i) each aspect, if any, of the Operating Environment that is not suitable for the provision of the Services;
  - (ii) the actions needed to remedy each such unsuitable aspect;
  - (iii) a timetable for and, to the extent that such costs are to be payable to the Contractor, the costs of those actions; and
  - (iv) any Conflict of Interest the Contractor becomes aware of during the performance of the Contract

- 3.2 The Contractor shall not be excused from the performance of any of its obligations under this Contract on the grounds of, or subject to Clause 3.1 nor shall the Contractor be entitled to recover any additional costs or charges, arising as a result of:
- (a) any unsuitable aspects of the Operating Environment;
  - (b) any misinterpretation of the Authority requirements; and/or
  - (c) any failure by the Contractor to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.
- 3.3 Any dispensations or relaxations in respect of the regulations described by this Contract or the JSPs shall come in effect only if sanctioned by the Commercial Branch. The Contractor shall not be entitled to claim any additional costs in the event that the Authority does not approve any dispensation or relaxation.

#### 4. **WARRANTIES**

- 4.1 The Authority represents and warrants that:
- (a) it has full capacity and authority to enter into and to perform this Contract;
  - (b) this Contract is executed by its duly authorised representative; and
  - (c) there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Contract.
- 4.2 The Contractor represents and warrants that:
- (a) it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
  - (b) it has full capacity and authority to enter into, to exercise its rights and perform its obligations under, the Contract;
  - (c) this Contract is executed by its duly authorised representative;
  - (d) it has all necessary consents and regulatory approvals to enter into this Contract;
  - (e) there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it or any of its affiliates that might affect its ability to perform its obligations under this Contract and from the ISD and for so long as the Contract remains in force that the Authority will be given written notice of any action, suits or proceedings or administrative body or arbitration tribunal pending which may adversely affect the Contractor's ability to perform its obligations under the Contract.
  - (f) its execution, delivery and performance of its obligations under this Contract will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;

- (g) its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
  - (h) all written statements and representations in any written submissions made by the Contractor as part of the procurement process, including without limitation its response to the Pre-Qualification Questionnaire and ITT (if applicable), its Tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Contract or to the extent that the Contractor has otherwise disclosed to the Authority in writing prior to the date of this Contract;
  - (i) it has all necessary rights in and to the Licensed Software, the Third Party IPRs, the Contractor Background IPRs and any other materials made available by the Contractor (and/or any Sub-contractor) to the Authority which are necessary for the performance of the Contractor's obligations under this Contract and/or the receipt of the Services by the Authority;
  - (j) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Contract; and
  - (k) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue. For so long as the Contract remains in force it shall give the Authority written notice of any proceedings or other steps that have been taken but not discharged (nor to the best of the knowledge of the Contractor, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues.
- 4.3 The representations and warranties set out in Clause 4.2 shall be deemed to be repeated by the Contractor on the ISD (if later than the date of signature of this Contract) by reference to the facts then existing.
- 4.4 If at any time a Party becomes aware that a representation or warranty given by it under Clause 4.1 or 4.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 4.5 Each of the representations and warranties set out in Clauses 4.1 and 4.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Contract.
- 4.6 For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination which the Authority may have in respect of breach of that provision by the Contractor.
- 4.7 Except as expressly stated in this Contract, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.



## 5. **PERIOD OF CONTRACT**

- 5.1 Subject to Clause 5.2, this Contract and the rights and obligations of the Parties to this Contract shall take effect from the ISD for a five (5) year period (the Initial Term). The Authority may opt to extend the period for an initial extension period of one (1) year and thereafter for a further extension period of one (1) year in accordance with Clause 5.6.
- 5.2 The Contract will expire automatically at the end of the Initial Term or at the end of the First or Second Extension Period (as the case may be) unless it is otherwise terminated. The Contractor shall comply with the requirements of Booklet 3, Module A, section 26 which details the De-mobilisation requirements.
- 5.3 The following provisions shall take effect on the ISD:
- (a) Clauses 1 (General Conditions of Contract), 2 (Definitions and Interpretation), 3 (Due Diligence), 4 (Warranties), 5 (Period of Contract), 6 (Mobilisation and De-mobilisation) 7.1 to 7.4, 7.8 to 7.14 and 7.18 (Contractor Obligations), 8 (Price and Payment), 9 Risk, 11 (Liability), 12 (Damage to Accommodation), 13 (Insurance), 14 (Public Relations), 15 (Temporary Accommodation), 16 (Change), 19 (Termination), 20 (Fraud), 21 (Employment Matters), 22 (Rights and Remedies), 23 (Partnership or Agency), 25 (Open Book Accounting), 26 (Sub-Contracting), 27 (Step-in Rights), 28 (Counterparts), 29 (Entire Agreement), 30 (Continuing Obligations).
  - (b) Booklets 3, 4, 5 and 6 and Appendices.
- 5.4 Subject to Clauses 5.4, 5.5 and 30, this Contract shall terminate on the earlier of:
- (a) the Expiry Date; or
  - (b) the Termination Date.
- 5.5 During the Run-Off Period, the Contractor shall continue to provide the Services in relation to Accommodation which was subject to a tenancy agreement prior to the Expiry Date or Termination Date.
- 5.6 The Authority shall have an option to extend the Initial Term of this Contract for an initial extension period of one (1) year (the First Extension Period) and thereafter for a further extension period of one (1) year (the Second Extension Period) on the same terms and conditions by giving written notice to the Contractor no later than six (6) months prior to, or such other mutually agreed period prior to, the expiry of the Initial Term and/or First Extension Period (as the case may be) .
- 5.7 Within two (2) weeks of receipt of the written notice, the Contractor shall confirm to the Authority whether it accepts or rejects an option to extend the term of the Contract. A rejection of the extension request can only be made on the following grounds:
- (a) the Contractor would be in a materially worse position financially if it accepts the extension; or
  - (b) It is unlawful to accept the extension.

If the Contractor rejects the extension pursuant to ground (a) it shall accompany its response with a suggested Change pursuant to Schedule 7 (Change Control Procedure) to enable the Contractor and the Authority to achieve a no better/ no worse position if the Contractor accepts the extension. The Authority may (or may not)

exercise its option on this basis pursuant to Clause 5.5 without the Contractor's right to reject.

**6. MOBILISATION AND DE-MOBILISATION**

- 6.1 Each Party shall procure that the Mobilisation Activities and De-mobilisation Activities for which it is responsible, are satisfied in accordance with the programme set out in the Schedule 3 (Mobilisation Plan) and Schedule 2 (De-mobilisation Plan) and Booklet 3, Module A, Section 20 and Section 26.
- 6.2 The Contractor will finalise (subject to the Authority's consent) any outstanding details required for the Mobilisation Plan in accordance with Schedule 3 within 28 Calendar Days of Contract Award.
- 6.3 The Contractor's Representative (or such other member of the Contractor Personnel as may be identified to the Authority) shall be responsible for communicating with the Authority throughout the Mobilisation and De-mobilisation Periods, which may include providing further information to the Authority in order to allow the Authority to consider whether or not the Contractor has passed the Acceptance Tests.
- 6.4 The Authority shall be entitled, by written notice to the Contractor, to waive any of the Mobilisation or De-mobilisation Activities in whole or in part without having an adverse impact on any other obligations of the Contractor which shall remain to be fulfilled (as far as reasonably practicable).

**Mobilisation**

- 6.5 The Authority shall be responsible for certifying compliance with the Mobilisation Plan by conducting Acceptance Tests of processes and systems in accordance with Schedule 3 (Mobilisation Plan).
- 6.6 The Authority shall provide the Contractor with no less than five (5) Business Days written notice of the time, date and place where any Acceptance Tests shall be carried out. The Contractor shall provide all reasonable cooperation to the Authority in carrying out the Acceptance Tests.
- 6.7 Within ten (10) Business Days of carrying out any Acceptance Test, the Authority shall give written notice to the Contractor stating whether:
  - (a) the Contractor has passed the Acceptance Test; or
  - (b) the Contractor has failed the Acceptance Test, in which case the Contractor shall remedy all conditions giving rise to such failure.
- 6.8 The Contractor shall notify the Authority when it considers that all conditions giving rise to a failed Acceptance Test have been remedied, following which the Authority shall carry out a further Acceptance Test and notify the Contractor of the outcome in accordance with Clause 6.6. The Contractor shall be required to comply with this Clause 6.7 until the Contractor receives notice from the Authority in accordance with Clause 6.6(a).
- 6.9 Subject to Clause 6.3, within five (5) Business Days of:
  - (a) the Contractor receiving notice from the Authority under Clause 6.6 (a) in respect of all Acceptance Tests set out in the Mobilisation Plan; and

(b) the Authority completing all of the Mobilisation Activities for which it is responsible, the Authority shall provide written notice to the Contractor certifying that Full Acceptance has been achieved, whereupon this Contract shall become unconditional and effective.

6.10 If any of the Mobilisation Activities have not been satisfied or waived on or before ISD (or an alternative date specified in the Mobilisation Plan), the Authority shall have the right to:

- (a) elect to terminate this Contract forthwith and as soon as reasonably practicable and no payment will be due by either Party to the other by way of compensation or for Services provided. Clause 30 (Continuing Obligations) shall apply notwithstanding such termination; or
- (b) at its own discretion, provide the Contractor with a reasonable timeframe to complete any of the outstanding Mobilisation Activities. Failure to complete the outstanding Mobilisation Activities within this revised time frame will lead to automatic termination of the Contract.

### **De-mobilisation**

6.10 The Contractor prepared a De-mobilisation Plan as part of the Contractor's Tender as detailed in Booklet 3, Module A, Section 26, De-mobilisation and the provisions of the De-mobilisation Plan will be brought into effect no later than six (6) months before the Expiry Date and shall co-operate fully with the Authority to ensure an orderly migration of the Services to the Authority or, at the Authority's request, a Replacement Contractor.

### **Exit Management Plan**

6.11 The Contractor prepared an Exit Management Plan as part of the Contractor's Tender, in accordance with Booklet 3, Module A, Section 25, Exit Management Plan, for which final approval by the Authority will be sought no later than two (2) months after ISD. The Contractor shall comply with the Exit Management Plan, as approved by the Authority, and shall review the Exit Management Plan during the Contract Period in accordance with the requirements of Booklet 3, Module A, Section 25, Exit Management Plan.

## **7. CONTRACTOR OBLIGATIONS**

### **The Services**

7.1 The Contractor shall ensure that the Services comply in all respects with Booklet 3 and all provisions of this Contract.

7.2 In providing the Services the Contractor shall perform its obligations under this Contract in accordance with:

- (a) all applicable Law;
- (b) Good Industry Practice;
- (c) Security Measures including but not limited to DEFCON 659A;
- (d) the Quality Plans;

- (e) the Contractor's own established procedures and practices to the extent the same do not conflict with the requirements of (a) to (d);
- 7.3 The Contractor shall continue to perform all of its obligations under this Contract and shall not suspend the supply of the Services, notwithstanding:
  - (a) any withholding of the Service Credits by the Authority pursuant to Clause 10 (Performance); and/or
  - (b) the existence of an unresolved Dispute.
- 7.4 The Contractor shall ensure that all personnel employed or utilised to deliver the Contract, shall:
  - (a) be security cleared to a minimum of Baseline Personnel Security Standard (BPSS) level in accordance with Security Policy;
  - (b) the Contract Manager, when appointed shall be SC Cleared upon appointment; and
  - (c) carry a form of identification with them at all times which makes clear their identity and status as an employee of the Contractor and present such upon request to the Authority or its representatives, Applicants or Occupants.

#### **Deliverable Quality Plan**

- 7.5 The Contractor shall deliver to the Authority, one (1) month prior to ISD, a Deliverable Quality Plan in accordance with Booklet 3, Module A, Section 12.3.
- 7.6 The Contractor shall obtain the Authority Representative's written approval of the Deliverable Quality Plan before implementing it, which approval shall not be unreasonably withheld or delayed. The Contractor acknowledges and accepts that the Authority's approval shall not act as an endorsement of the Deliverable Quality Plan and shall not relieve the Contractor of its responsibility for ensuring that the Services are provided to the standard required by this Contract.
- 7.7 Following the approval by the Authority of the Deliverable Quality Plan:
  - (a) the Contractor shall design and deliver all Contract Deliverables in accordance with the Deliverable Quality Plan;
  - (b) the Contractor shall review at least annually and present any proposed updates to the Authority for approval; and
  - (c) any Changes to the Deliverable Quality Plan shall be agreed in accordance with the Change Control Procedure.

#### **Risk Management**

- 7.8 The Contractor prepared a Risk Management Plan as part of the Contractor's Tender and shall keep an up-to-date fully costed Risk Register and Risk Mitigation Plan. The Authority shall be provided with a full copy of the Risk Management Plan, Risk Register and Risk Mitigation Plan upon request.

## **Business Continuity Management Plan**

- 7.9 The Authority shall be provided with a copy of the Business Continuity Management Plan prepared as part of the Contractor's Tender upon request. The Contractor shall keep the Business Continuity Management Plan up-to-date regularly and no later than every three (3) months.

## **Environmental Requirements**

- 7.10 The Contractor shall prepare a Safety, Health and Environmental Plan in respect of his responsibilities and undertakings to and for the Authority and other appropriate Parties in performing the Contract in accordance with Booklet 3, Module A Management Services, Section 17. The Contractor shall adopt a sound proactive environmental approach that identifies, considers, and where possible, mitigates the environmental impacts of its supply chain within the Safety, Health and the Environment Plan. The Contractor shall provide evidence of so doing to the Authority on demand.

## **Retention of Records**

- 7.11 In addition to the provisions of DEFCON 609 and DEFFORM 315 the Contractor shall retain all records (paper, electronic, photographic etc) in respect of the property, Occupant, financial transactions and other related documentation relating to the provision of the Services for a period of six (6) years from the date that a property or Occupant has been removed from the Substitute Accommodation Scheme.
- 7.12 All financial records shall be retained for the Term of the Contract and for a further period of six (6) years after expiry or termination of the Contract.

## **Audit**

- 7.13 In addition to any other rights under the Contract, the Authority and its agents shall have an immediate right to audit the books and records being maintained by the Contractor whilst undertaking this Contract, including those books and records relating to any costs and expenses incurred by the Contractor or charged to the Authority and including those books and records being maintained by the Contractor's Sub-contractors.

## **Health and Safety**

- 7.14 The Contractor shall comply with all Authority Safety, Health and Environment Policy, (SHEP), regulations and requirements in connection with the performance of the Contract Deliverables and shall provide a dedicated point of contact who has responsibility for SHEP in accordance with Booklet 3, Module A Management Services, Section 17.
- 7.15 The SHEP Plan provided by the Contractor for ISD shall be maintained and will assess SHEP risks and shall ensure that there are no breaches to the Health and Safety at Work Act.

## **Licence to Occupy and Property Acceptance Certificate**

- 7.16 Service Personnel occupying Substitute Accommodation shall do so under the terms of the appropriate Licence to Occupy (LTO). The Contractor shall ensure that Applicants sign the LTO and also at the same time the PAC before being allowed to move into Substitute Accommodation. The Contractor shall not request the Applicant to sign either the LTO or the PAC prior to the approval of the Accommodation by the

Authority. The Contractor shall comply with the requirements of Booklet 3, Module E, Section 5.

## **Cyber**

- 7.17 Further to DEFCON 658 the Cyber Risk Profile of the Contract is “Low”, as defined in Def Stan 05-138.

## **8. PRICE AND PAYMENT**

- 8.1 In consideration of the Contractor carrying out its obligations under this Contract, including the performance of the Services and provision of any Contract Deliverables and the payment provisions contained in this Clause and DEFCON 522, the Authority shall pay the Contractor:

- (a) **Monthly Service Charge:** An Interim Price which shall consist of:

- (i) Fixed Annual Management Service Fee on a pro-rata basis.
- (ii) Transaction Costs (these will be based on Annual Estimated Demand of number of transactions and shall not include risk, Profit or any other mark-up as detailed at Booklet 5 and covers all of the specified activities carried out by the Contractor to source Accommodation and Move In, house and Move Out Occupants) on a pro-rata basis. The Annual Estimated Demand will be presented in Booklet 5 5L07 and 5L08.
- (iii) Profit (this shall not apply to risk) on a percentage basis.
- (iv) Maximum Annual Risk Pot on a pro-rata basis.

Subject to Clause 8.2, payment to the Contractor of the Monthly Service Charge detailed at Booklet 5, leaflet 5L01 shall be an Interim Price paid in 12 equal instalments and made monthly in arrears, in pounds sterling and by electronic transfer in accordance with DEFCON 522. On each anniversary of the ISD, payments will be reconciled in accordance with Clause 8.7 (Annual Reconciliation Exercise).

- (b) **Monthly Rental Fee:** An Interim Price which consists of the Annual Estimated Demand of number of rental properties per type per Region multiplied by the Maximum Monthly Rental Costs detailed at Booklet 5 (Pricing Document) to produce an annual figure which will be paid in 12 equal instalments and paid in advance of each month. The Annual Estimated Demand will be presented in Booklet 5 leaflet 5L08. On each anniversary of the ISD, payments will be reconciled with in respect of Actual Demand for properties, in accordance with Clause 8.7 (Annual Reconciliation Exercise).

It shall not include risk, Profit or any other mark-up. The Monthly Rental Fee shall be reconciled annually against actual rents paid capped to the Maximum Monthly Rental Fee and actual property numbers delivered in each Region.

The Regions detailed in Booklet 5, 5L02, 5L03 and 5L08 are defined as follows:

**London** – *Greater London*

**South East** – *Hampshire, West Sussex, East Sussex, Kent, Surrey, Berkshire, Oxfordshire, Buckinghamshire, Hertfordshire and Isle of Wight*

**South West** – *Cornwall, Devon, Dorset, Somerset, Wiltshire and Gloucestershire*

## **Wales**

**Midlands** – *Herefordshire, Worcestershire, Warwickshire, Leicestershire, Lincolnshire, Nottinghamshire, Derbyshire, Staffordshire, Cheshire, Shropshire, Rutland and West Midlands*

**East of England** – *Northamptonshire, Bedfordshire, Cambridgeshire, Essex, Suffolk and Norfolk*

**Yorkshire, Humberside & North East** – *South Yorkshire, East Riding of Yorkshire, West Yorkshire, North Yorkshire, County Durham, Tyne and Wear and Northumberland*

**Manchester, Merseyside and North West** – *Greater Manchester, Merseyside, Lancashire and Cumbria*

**Scotland (Central & Borders)** – *Dumfries & Galloway, Scottish Borders, Ayrshire, Lanarkshire, Dunbartonshire, Renfrewshire, Argyll & Bute, Stirling, Perth & Kinross, Angus, Aberdeenshire and Moray*

## **Highlands & Islands (including Northern Ireland and Isle of Man)**

- (c) **Utilities and Furniture** Payment for Utilities and Furniture costs will be passed through at cost to the Authority with no additional costs or charges included. The Furniture Pass through Cost will be determined by the Schedule of Rates in Booklet 5 (Pricing Booklet). The Contractor shall submit a claim, specifying the details of the cost incurred at the beginning of the month, for the period covering the preceding month. This cost shall not include any uplifts such as Profit or Overheads. Payment will be made in arrears each month.
- (d) **Property Damages** Payment for Property Damage caused by the Occupant during occupation will be passed through at cost to the Authority with no additional costs or charges included. The Contractor shall submit a claim specifying details in accordance with Clause 12 (Damage to Accommodation) at the beginning of the month, for the period covering the preceding month. Payment will be made in arrears each month.
- (e) **Gainshare** Payment will be made on an annual basis following reconciliation and in accordance with the Gainshare calculation under Clauses 8.8 to 8.10.
- (f) **Mobilisation** Payment will be made in milestones in arrears following satisfactory Acceptance Tests in accordance with Booklet 3, Module A, Section 20. The Mobilisation milestone payment plan will be as tendered in Booklet 5 (Pricing Document). There shall only be one milestone payments in each thirty (30) Calendar Days period from the commencement of the Mobilisation Period.
- (g) **De-mobilisation** Payments will be made in milestones in arrears following satisfactory completion of activities in accordance with Schedule 2 and Booklet 3, Module A, Section 26. The De-mobilisation milestone payment plan will be as tendered in Booklet 5 (Pricing Document). There shall only be one milestone payments in each thirty (30) Calendar Days period from the commencement of the De-mobilisation Period.

- 8.2 During the Run-Off Period, the Monthly Service Charge shall be adjusted in accordance with Booklet 5 to reflect the reduction in Accommodation being managed by the Contractor.

- 8.3. The Annual Estimated Demand of the number and type of Accommodation in respect to year one only will be the subject of discussion and agreement at the Contract “Kick Off” meeting, to enable the first Monthly Rental Fee to be paid on Contract ISD. The Annual Estimated Demand will be presented in Booklet 5, 5L08.
- 8.4 Prior to ISD, and during the Mobilisation Period, should costs become payable by the Authority in respect of any tenancy agreements entered into, Transaction Costs and Utility and Furniture costs, the Contractor shall submit an invoice at the beginning of the month, for the period covering the preceding month for direct payment. Such claims shall be for costs incurred and shall not include the Annual Management Service Fee, or any other costs associated with the Monthly Service Charge detailed at Clause 8.1(a). Payment will be made in arrears each month.
- 8.5 The Contractor shall submit all claims for payment to the Authority, using a properly prepared message structure and format for an invoice, in accordance with DEFCON 522.
- 8.6 All valid, properly prepared invoices submitted to the Authority in accordance with this Contract shall be paid by the Authority within thirty (30) Calendar Days unless these are disputed by the Authority. Upon submission of the electronic invoice by the Contractor, the Authority will receipt the request on the Contracting, Purchasing & Finance system for the notified sum.
- 8.7 On each anniversary of the ISD an Annual Reconciliation Exercise shall be undertaken to compare the Interim Price paid calculated on the basis of Annual Estimated Demand and the Maximum Annual Price based on Actual Demand during the twelve (12) month period. The Contractor shall present the reconciliation calculation with all supporting data to the Authority in the form of a report no later than two (2) months following each anniversary of the ISD. The Authority will review all data within a reasonable timeframe and raise queries with the Contractor as required. If the data is acceptable and undisputed, the Authority Representative will confirm acceptance of the reconciliation in writing. In the month following the completion of the reconciliation exercise, the monthly payment(s) will be adjusted to reflect the agreed reconciliation.
- 8.8 Gainshare shall be calculated by the Contractor and presented with all supporting information to the Authority for agreement as part of the Annual Reconciliation Exercise on each anniversary of the ISD for the preceding Contract Year as the difference between the Maximum Annual Price, calculated as a sum of the following elements:
- Maximum Monthly Rental Costs x Actual Demand
  - Transaction Costs x Actual Transactions
  - Fixed Annual Management Service Fee
  - Profit (calculated as a percentage of Maximum Monthly Rental Costs x Actual Demand + Transaction Costs x Actual Transactions + Annual Management Service Fee)
  - Annual Risk Pot

and the Actual Annual Price, calculated as a sum of the following elements:

- Actual Rental Costs (capped at the Maximum Monthly Rental Cost in each instance) x Actual Demand
- Transaction Costs x Actual Transactions
- Fixed Annual Management Service Fee



- Profit (calculated as a percentage of the Actual Rental Costs x Actual Demand + Transaction Costs x Actual Transactions + Annual Management Service Fee
  - Actual Annual Risk Pot costs.
- 8.9 Where the Gainshare calculation results in credit this shall be shared in accordance with the share ratio 70:30 (Authority: Contractor) and the Authority's share offset against the Contractor's next monthly invoice and successive invoices until satisfied.
- 8.10 Where the Gainshare calculation results in an Actual Annual Price Payable that is greater than the Maximum Annual Price, the Authority's liability shall be limited to the Maximum Annual Price and the Contractor will make up the shortfall and shall bear any losses.
- 8.11 The data and information to be provided by the Contractor for the Annual Reconciliation Exercise and Gainshare calculation shall include, but not be limited to:
- (a) Actual Rental Costs including Temporary Accommodation costs by TLB holder with supporting monthly data, adjusted accordingly for Temporary Accommodation costs which may fluctuate.
  - (b) Transaction Costs for all transactional types with supporting monthly data, showing monthly adjustments and a final end of Contract Year Report.
  - (c) Reconciliation and Gainshare report presented in line with the worked example at Booklet 5, Leaflet 5L09, supporting by a breakdown of all costings.
  - (d) Gainshare calculations supported by monthly breakdown of rental income including Temporary Accommodation maximum rental figures.
  - (e) Risk Event costs incurred for all agreed claims including summary of spend against each Risk Event and all supporting data and information.
  - (f) Any other relevant information which supports the Annual Reconciliation Exercise and Gainshare calculation, as reasonably required by the Authority.
- 8.12 A non-contractual worked example of the Annual Reconciliation Exercise and Gainshare calculations can be found at Booklet 5, 5L09 for illustrative purposes.
- 8.13 The Annual Price Review may result in prices either increasing or remaining fixed without change. It may result in a price increase of Maximum Monthly Rental Costs, Annual Management Service Fee, Transaction Costs and De-mobilisation Costs of no more than the Consumer Price Index (CPI) where it can be demonstrated to the satisfaction of the Authority that cost increases have or will be incurred in the upcoming Contract Year and the Contractor can evidence action they have undertaken to limit the impact of any such increases. The Variation of Price formula at Clause 8.14 below shall be applied to each individual element of pricing listed in this Clause 8.13 ensuring only published monthly data is used and that provisional data is not considered within the formula. 100% of the value each applicable element identified in this Clause 8.13 will be considered variable.
- 8.14 The Fixed Prices stated in the Booklet 5 are set at ISD price levels. The prices do not include provision beyond this date for increases or decreases in the market price of the Services being purchased. Any such variation shall be calculated on the anniversary of the ISD and presented at the Annual Price Review in accordance with the following formula:

$$V = P (O_i/O_0) - P$$

Where:

V represents the Variation of Price

P represents the Fixed Price as stated in Booklet 5

O represents the Consumer Price Index

O<sub>0</sub> represents the average published CPI figure for the base period of September 2021 to November 2021

O<sub>i</sub> represents the average published CPI figure for the subsequent period.

Each subsequent period which O<sub>i</sub> represents is as follows:

- (i) Contract Year 2 the average of Aug 2022 to Oct 2022
- (ii) Contract Year 3 the average of Aug 2023 to Oct 2023
- (iii) Contract Year 4 the average of Aug 2024 to Oct 2024
- (iv) Contract Year 5 the average of Aug 2025 to Oct 2025
- (v) Option Year 6 the average of Aug 2026 to Oct 2026
- (vi) Option Year 7 the average of Aug 2027 to Oct 2027

The published monthly data to be used at O<sub>0</sub> and O<sub>i</sub> is set according to the ISD and the months used will be adjusted accordingly at Contract Award to reflect the agreed ISD. The data used for the CPI figure at O<sub>0</sub> and O<sub>i</sub> listed above shall be the only data used in the Variation of Price calculation at the Annual Price Review, any subsequent published monthly or annual data shall not result in retrospective amendments to the agreed pricing.

- 8.16 Indices published with a 'B' or 'F' marker, or a suppressed value, in the last three (3) years are not valid for Variation of Price Clauses and shall not be used. Where the price index has an 'F' marker or suppression applied to it during the Term of the Contract, the Authority and the Contractor shall agree an appropriate replacement index or indices. The replacement index or indices shall cover, to the maximum extent possible, the same economic activities as the original index or indices.
- 8.17 In the event that any material changes are made to the CPI (e.g. a revised statistical base date) during the period of the Contract and before final adjustment of the final Contract Price, then the re-basing methodology outlined by the Office for National Statistics (ONS) to match the original index to the new series shall be applied.
- 8.18 In the event the CPI cease to be published (e.g. because of a change in the Standard Industrial Classification) the Authority and the Contractor shall agree an appropriate replacement index or indices, which shall cover to the maximum extent possible the same economic activities as the original index or indices. The methodology outlined by the ONS used for rebasing indices shall then be applied.
- 8.19 Notwithstanding the above, any extant index agreed in the Contract shall continue to be used as long as it is available and subject to ONS revisions policy. Payments calculated using the extant index during its currency shall not be amended retrospectively as a result of any change to the index or indices.
- 8.20 The Contractor shall notify the Authority of any factor having a material bearing on the operation of these provisions such as to cause a significant divergence from their intended purpose, in order that both Parties may consider whether any change in this provision would be appropriate.

- 8.21 Price amendments calculated under this Clause shall be submitted by the Contractor to the Commercial Branch, certified to the effect that the “requirements of Clause 8.14 to 8.20 have been met”.
- 8.22 In accordance with Clause 25 (Open Book Accounting) of the Contract, the Contractor shall maintain current and accurate records to allow the Authority to verify the basis for any adjustments made to the tendered prices during the Annual Price Review. The Contractor shall maintain up to date financial data on its Information System in respect of rental costs agreed, Transaction Costs accrued, Service Credits levied and Annual Risk Pot usage so that the Authority can access ‘live’ data at all times. The financial position will be reviewed by the Parties at the Monthly Project Meetings to ensure that the Contract is performing to expectations and remedial action will be agreed as necessary. Within one (1) month of the end of each Contract Year the Authority’s Contract Management Team (comprising of the Commercial Manager, the Project Manager and any other co-opted representatives) and the Contractor will review financial performance during the preceding year, consider demand forecasts in respect of the next Contract Year and evaluate past and future market trends. Utilising this information, the Parties will agree pricing levels following the calculation of the variation in accordance with Clause 8.13 above, for the year ahead.
- 8.23 In accordance with Booklet 3, Module C Section 4 SSSA Parking Facilities the Contractor shall provide a parking space for each Occupant who requires one. The Contractor is liable for additional costs, over and above the Actual Rental Cost for the associated property, incurred as a result of sourcing parking provision. If at the time of the Occupation End Certificate being issued, a credit is due in relation to payments made for parking provision, any reimbursement received by the Contractor shall be offset against the Annual Risk Pot.
- 8.24 Except as otherwise provided, each Party shall bear its own costs and expenses incurred in respect of compliance with its obligations under this Contract.

## 9. **RISK**

- 9.1 The following are Authority risks:
- a) Negligence, breach of statutory duty with breach of Contract by the Authority (or by any person employed by or contracted to him except the Contractor) in the performance of the Services resulting directly in any claims for compensation which are not foreseen at the ISD.
  - b) Loss of or damage in transfer to Government Furnished Assets supplied to the Contractor by the Authority, or by others on the Authority’s behalf, until the Contractor has received and accepted them.
  - c) Loss of or damage to Government Furnished Assets due to war, civil war, rebellion, revolution, insurrection, military or usurped power, strikes, riots and civil commotion.
  - d) Downtime in the provision of Hosting Environment in accordance with Booklet 3, Module A, AL03, not directly attributable to the Contractor.
  - e) Costs associated with changes to the Authority’s JSP policy after ISD.
  - f) Change of Law specifically relevant to the private rental market which is not foreseeable at ISD.
  - g) Dilapidation claims by Landlords for damage to Accommodation caused by Service Personnel.

- 9.2. From the ISD until the Expiry Date, the risks which are not listed in Clause 9.1 above shall be assumed by the Contractor, subject to Clause 9.3 below.
- 9.3. Specific Risk Events tendered by the Contractor are reflected in the Annual Risk Pot as set out in Booklet 5 (Pricing Document).
- 9.4. The Risk Events detailed in Booklet 5 (Pricing Document) will be defined, and their definitions must include precise and discrete descriptions, triggers, assessed costs, and mechanism of calculating cost as detailed in the tendered Risk Register. No payment in excess of the price, or payment calculation of price described within Booklet 5 (Annual Risk Pot) will be paid. An Annual Risk Pot will be agreed for each Contract Year and no entitlements pursuant to the tendered Risk Register shall be paid to the Contractor in excess of the Annual Risk Pot.
- 9.5. If a Risk Event listed in the agreed Annual Risk Pot materialises, the Authority will confirm whether the cost is properly payable at its discretion per Risk Event (based on the claim submitted by the Contractor) up to the maximum as set out for each individual Risk Event in the Annual Risk Pot table at Booklet 5 (Pricing Document). The Contractor will be required to submit evidence to the Authority including, details of the trigger event, causation for each instance where a Risk Event arises, mitigation and the costs incurred.
- 9.6. The Annual Risk Pot and agreed Risk Events shall form part of the agreed Risk Management Plan and Risk Mitigation Plan. The Risk Management Plan will be subject to monitoring and review throughout the life of the Contract in accordance with Clause 7.8.
- 9.7. Details of claims from the Annual Risk Pot shall be presented to the Authority in the Monthly Report in accordance with Booklet 2, Conditions of Contract, 10.7(b) and Quarterly Report in accordance with Booklet 2, Conditions of Contract, 10.8(h).
- 9.8. If any risk arises that is not included in Annual Risk Pot in Booklet 5 (Pricing Document), no payments will be made for these risks.
- 9.9. The total Annual Risk Pot value for each Risk Event stated in Booklet 5, is the maximum amount that can be claimed over each Contract Year and is subject to each individual agreed Risk Event being triggered. Depletion of the Annual Risk Pot does not relieve the Contractor of their obligations to mitigate the risk should it occur after the Annual Risk Pot has been expended.
- 9.10. Each Risk Event is timebound within each Annual Risk Pot meaning that it is only relevant for the associated Contract Year. No amount can be transferred to another Contract Year or accrued.
- 9.11. If a Risk Event is related to an activity which has been completed or is specific to a time period which has passed, the Risk Event will be deemed to have expired, meaning that no further claim can be made against the relevant Annual Risk Pot amount.

## 10. **PERFORMANCE**

- 10.1. The Contractor shall perform the Services in such a manner as to ensure that the achieved level of performance in respect of a KPI is equal to or higher than the KPI Target applicable to that KPI.

- 10.2 If there is a Service Failure in a KPI Calculation Period, the Contractor shall pay to the Authority the Service Credits accrued in accordance with Schedule 4 (Performance Management), where applicable. Service Credit applied to a KPI Calculation Period will be presented to the Contractor in writing in the form a pay less notice, following the Monthly Progress Meeting.
- 10.3 Where existing Services are varied and new Services are added, target KPIs for the same will be agreed between the Parties and included within Schedule 4 (Performance Management) as appropriate. Any such variations, additions or amendments shall constitute a Change and shall be subject to the procedures set out in Schedule 7 (Change Control Procedure).
- 10.4 The Contractor shall provide records and management reports summarising performance against KPIs as provided for in Clause 10.7 below.
- 10.5 The Contractor shall by ISD develop and thereafter maintain a database to monitor its performance against the KPIs and in accordance with Schedule 4 (Performance Management). Prior to ISD, any aspect of delivery completed by the Contractor will be exempt from the KPI Service Credit regime.
- 10.6 This contract falls in scope of the Outsourcing Playbook and in line with the cross government transparency agenda, where applicable, a performance rating against three mutually agreed KPIs will be reported on and made publicly available to demonstrate the contract is delivering its objectives. Ratings to be used for reporting purposed are to be determined following Contract Award.

#### **Performance Monitoring and Management Meetings**

- 10.7 The Contractor shall nominate a Contractor's Delivery Manager (CDM) who will attend, together with other Contractor's Representatives as appropriate, a Monthly Progress Meeting with the Authority. The Contractor shall also attend a quarterly strategic meeting with attendance by suitably empowered representatives to address Contract wide issues.
- 10.8 No later than five (5) Business Days after the end of the month and prior to the Monthly Progress Meeting, the Contractor shall provide a report to the Authority detailing:
- (a) Evidence that all deliverables identified in the Contract are being met, including but not limited to the KPIs in accordance with Contract Deliverables, Booklet 3, Module A, Section 10.6.1.
  - (b) Evidence of the risks attached to the delivery of the Contract and the implemented and proposed mitigations, including details, costs and causation of Risk Events which have materialised and have resulted in a cost against the Annual Risk Pot.
  - (c) Health and safety issues and mitigations
  - (d) Communications including all external and internal communications
  - (e) Evidence of the Contractor's Quality and Assurance Control checks, results and mitigations
  - (f) Gainshare Payments made to the Contractor (only to be included in the month following the Annual Price Reconciliation and Gainshare calculation)

- (g) Savings achieved by the Authority through the Gainshare scheme (only to be included in the month following the Annual Price Reconciliation and Gainshare calculation)
- (h) Monthly total and cumulative annual total payments and savings
- (i) Evidence of Complaints and the Contractor's Complaint management
- (j) Evidence of the customer surveys, feedback and continuous improvement regime
- (k) Case specific issues and any other relevant issues – e.g. any identified policy changes potentially impacting on the delivery of the Contract. The Contractor shall comply with the requirements of Booklet 3, Module A, Section 10.06.13
- (l) Bedspace Management including the availability of existing bedspaces, percentage of bedspace utilisation against KPI 2.3 (Schedule 4, Performance Management), voids, and plans to increase potential utilisation
- (m) Quality Management activities completed in the previous month, as set out in the Contractor's Quality Plan and agreed by the Authority.

The Monthly Report shall contain all data, data analysis, data summaries and recommendations that are necessary to enable the Authority to ascertain the success or otherwise of the Contractor's delivery of the Contract.

10.9 Five (5) Business Days before the quarterly Strategic Meetings the Contractor shall provide a report to the Authority detailing:

- (a) Pan Contract issues, e.g., industry and market capacity and capability to deliver the Contract, specific delivery issues, bulk relocations etc.
- (b) Policy issues, e.g., changes in policy which may affect the delivery of the Contract, introduction of new policy etc.
- (c) Health and safety governance and analysis
- (d) Analysis of performance trends
- (e) Contract Deliverables and Contract delivery
- (f) Identification and promotion of best practice
- (g) Disputes unable to be resolved
- (h) Exploitation of opportunities – including discharge of the Contractor's obligations in relation to continuous improvement in accordance with Clause 17 (Continuous Improvement) below.
- (i) Risk management and risk maturity, including details, costs and causation of Risk Events which have materialised and resulted in a cost incurred against the Annual Risk Pot.
- (j) Communications with stakeholders
- (k) Quality Management

- (l) Complaints continuous improvement plan
- (m) Customer survey trends and issues
- (n) Benchmark analysis
- (o) Maintenance Services Performance

## **11. LIABILITY**

### **Indemnities**

- 11.1 The Contractor shall indemnify and keep indemnified the Authority against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of this Contract, to the extent that any such loss or claim is due to the breach of Contract, negligence, wilful default or fraud of itself or of its employees or of any of its Representatives or Sub-contractors save to the extent that the same is directly caused by or directly arises from the negligence, breach of this Contract or applicable law by the Authority or its representatives (excluding any Contractor's Personnel).

### **Limitation of Liability**

- 11.2 Subject to Clauses 11.4 and 11.5, neither Party shall be liable to the other Party (as far as permitted by law) for indirect special or consequential loss or damage in connection with the Contract which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.
- 11.3 Each Party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant Party is entitled to bring a claim against the other Party pursuant to this Contract.
- 11.4 Subject to Clauses 11.3, 11.5 and 11.6 the Contractor's total aggregate liability ("the Contractor's Cap"):
- (a) in respect of Service Credits, is limited, in each KPI Calculation Period, to £146,375, unless the Contractor has committed a Catastrophic Failure whereby the Service Credit Cap shall increase to £204,925.00 in accordance with Schedule 4 (Performance Management); and
  - (b) under clause 2 of DEFCON 514 shall not exceed £15,000,000 (fifteen million pounds) in aggregate for each Contract Year.
- 11.5 Nothing in this Contract shall operate to limit or exclude the Contractor's liability:
- (a) for:
    - i. any interest payable in relation to the late payment of any sum due and payable by the Contractor to the Authority under this Contract;
    - ii. any amount payable by the Contractor to the Authority in relation to TUPE or pensions to the extent expressly provided for under this Contract;

- (b) for any liability that would not have been incurred but for the Contractor failing to carry out one or more of the risk mitigation activities specified in the Risk Management Plan and Risk Mitigation Plan;
- (c) in relation to any matter governed by Clause 11.4(b) where any applicable limitation of liability forming part of that provision has been agreed by the Authority in reliance on information (including in relation to insurance) submitted by or on behalf of the Contractor prior to Contract Award, such information being inaccurate or untrue;
- (d) under DEFCONs 91, 520, and 632;
- (e) for death or personal injury caused by the Contractor's negligence or the negligence of any of its personnel, agents, consultants or Sub-contractors;
- (f) for fraud, fraudulent misrepresentation, wilful misconduct or negligence;
- (g) in relation to the termination of this Contract on the basis of abandonment by the Contractor;
- (h) for breach of the terms implied by Section 2 of the Supply of Goods and Services Act 1982; or
- (i) for any other liability which cannot be limited or excluded under general (including statute and common) law.

11.6 The Contractor's Cap shall not apply to or be reduced by:

- (a) the Contractor's share or excess payable under any insurance policy held by the Contractor including the Required Insurances; and/or
- (b) the proceeds received from any Required Insurance.

11.7 The rights of the Authority under this Contract are in addition to, and not exclusive of, any rights or remedies provided by general (including statute and common) law.

## 12. **DAMAGE TO ACCOMMODATION**

- 12.1 In the event that the Contractor finds it necessary to pay a holding deposit or security deposit to ensure that a property or properties are available to meet the requirements of the Contract then the Contractor shall bear the entire cost of such deposit and any associated or subsequent costs. The Contractor shall not recover the cost of the deposit or associated or subsequent costs from the Authority or the Occupant nor shall he inflate property rental costs or other costs to accommodate the cost of such deposits.
- 12.2 The Contractor shall manage all damages during and at the end of occupancy and will manage claims with the Landlords. Details of claims by Landlords and any such negotiation by the Contractor are to be recorded on the Contractor's Information System.
- 12.3 Any claim relating to damage to Accommodation which shall include damage to any fixtures, fittings, furniture, items or equipment provided with the Accommodation, shall



be submitted to the Authority and not the Occupant and dealt with in accordance with this Clause 12.

- 12.4 Immediately upon receiving a claim from a Landlord relating to damage to Accommodation the Contractor shall:
- (a) ensure that no liability is admitted or payment is authorised unless in accordance with this Clause 12;
  - (b) obtain quotations for repair or replacement of the damage which:
    - (i) for claims of £100 (ex VAT) or greater are broken down into labour, material and equipment elements; and
    - (ii) for claims of £500 (ex VAT) or greater shall include at least two quotations from different suppliers;
  - (c) verify the reasonableness of quotations by reference to appropriate, recognised costings for similar items and replacement costs assessed against national retail price lists;
  - (d) ensure that quotations take into account fair wear and tear (in accordance with published Association of Residential Letting Agents guidelines (and any items identified in the 14 Day Observation Report defined in Booklet 3, Module E, Section 6.6 and 6.7)) and make appropriate deductions for depreciation and remaining life expectancy of fixtures, fittings and appliances;
  - (e) use reasonable endeavours to reduce the value of any such claims by negotiation with the Landlord.
- 12.5 The Contractor shall settle all reasonable claims relating to damage to Accommodation with the Landlord and shall on a monthly basis submit to the Authority a written statement of account which identifies the Accommodation, the Occupant, the amount claimed (broken down in accordance with Clause 12.2) and explains how the Contractor has satisfied the requirements of Clause 12.2 in relation to each claim and in accordance with Booklet 3, Module D, Section 4.0.
- 12.6 The Authority shall reimburse the Contractor for all claims submitted in accordance with this Clause 12. The Authority shall not be liable for claims which:
- (a) are covered by a contract of insurance held by the Contractor or the Landlord;
  - (b) relate to fair wear and tear;
  - (c) are above market standard;
- 12.7 Once the Contractor has settled a claim for damages that he considers have been generated by an Occupant he shall provide the details to the Authority. The Authority will consider what cost if any to recover from the Occupant. Monies received by the Authority from the Occupant following such cost recovery shall remain with the Authority and shall not be passed to the Contractor.
- 12.8 The Contractor shall provide all reasonable assistance to the Authority at no additional cost in the event that the Authority brings a claim against an Occupant in relation to damage to Accommodation, including but not limited to providing documents and attendance at court.

## 13 **INSURANCE**

- 13.1 Without prejudice to its obligations to the Authority under this Contract including its liability to indemnify or otherwise be liable to the Authority under this Contract, the Contractor shall for the periods specified in Schedule 8 (Required Insurances) take out and maintain, or procure the taking out and maintenance of, the insurances as set out in Schedule 8 (Required Insurances) and any other insurances as may be required by applicable 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.
- 13.2 The Required Insurances shall be taken out and maintained with insurers who are appropriately regulated, of good financial standing and of good repute in the international insurance market.
- 13.3 Where specified in Schedule 8 (Required Insurances) the Contractor shall:
- (a) 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 the provision of the Services under this Contract;
  - (b) take or procure the taking of all reasonable risk management and risk control measures in relation to the Contract as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
  - (c) promptly notify the insurer(s) in writing of any relevant material fact under any insurances of which the Contractor is or becomes aware; and
  - (d) hold all policies in respect of the insurances and cause any insurance broker effecting the insurances to hold any insurance slips and other evidence of placing cover representing any of the Required Insurances to which it is a Party.
- 13.4 The Contractor shall not take any action or fail to take any action or, insofar as is reasonably within its power, permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Required Insurances.
- 13.5 Where the Contractor has failed to purchase any of the Required Insurances or maintain any of the Required Insurances in full force and effect, 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. The Authority shall be entitled to recover the premium and other reasonable costs incurred in connection therewith as a debt due from the Contractor.
- 13.6 The Contractor shall, from the Effective Date of this Contract and within fifteen (15) Calendar Days after the renewal of any of the Required Insurances, provide evidence, in a form satisfactory to the Authority, that relevant Required Insurances are in full force and effect and meet the requirements of this Clause 13 and Schedule 8 (Required Insurances). The supply to the Authority of any evidence of insurance cover in compliance with the requirements of this Clause 13 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.

- 13.7 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.
- 13.8 The Contractor shall promptly notify to insurers any matter arising from, or in relation to, 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 this Contract, the Contractor shall co-operate with the Authority and assist it in dealing with such claims at no additional cost, including without limitation providing information and documentation in a timely manner. Except where the Authority is the claimant Party, the Contractor shall give the Authority notice within twenty (20) Calendar Days after any insurance claim in excess of £50,000 relating to or arising out of this on any of the Required Insurances or which, but for the application of the applicable policy excess, would be made on any of the insurances and (if required by the Authority) full details of the incident giving rise to the claim.
- 13.9 Where any Required Insurance requires payment of a premium, the Contractor shall be liable for such premium, including any increase in premium.
- 13.10 Where any Required Insurance referred to in Schedule 8 (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.

14. **PUBLIC RELATIONS**

- 14.1 Neither the Contractor, nor Contractor Personnel, shall communicate with any communication media representatives in relation to the Contract or the performance of the Services unless specifically granted permission to do so, in writing, by the Authority.
- 14.2 Information deriving from the Contract relating to the Crown may not be communicated to a third party without specific permission to do so, in writing from the Authority.

15. **TEMPORARY ACCOMMODATION**

- 15.1 The Contractor shall provide Temporary Accommodation for Occupants and Applicants where:
- (a) the Contractor has failed to provide Suitable Accommodation;
  - (b) the Accommodation provided to an Occupant and/or Applicant is, in the reasonable opinion of the Authority, Unsuitable Accommodation, which may include (but is not limited to) instances where:-
    - (i) the Required By Date is not achieved by the Contractor;
    - (ii) reported maintenance issues have not been resolved by the Contractor to the satisfaction of the Authority (acting reasonably);
    - (iii) property is deemed Uninhabitable by the Contractor or the Authority (as described in Booklet 3, Module D, Section 2.0);
    - (iv) the Applicant reasonably rejects a property deemed acceptable by the Authority;

- (v) the welfare of the Occupant requires it e.g. anti-social behaviour.
  - (c) the Authority has served a notice of instruction to provide Temporary Accommodation for the circumstances detailed in (a) and (b).
- 15.2 Upon 15.1 (a) or (b) arising or the Contractor receiving the notice of instruction to provide Temporary Accommodation, the Contractor shall make the necessary arrangements to move the Occupants and/or Applicants and their belongings to the Temporary Accommodation. The Contractor shall provide Occupants and/or Applicants with all reasonable assistance to facilitate their move and minimise inconvenience. The Contractor shall also be responsible for directly reimbursing the Occupant and/or Applicant in line with actual costs within the mandated limits described in JSP 752, and/or as advised by the Authority on a case by case basis.
- 15.3 Temporary Accommodation shall be provided which:
- (a) is suitable for the Occupant and/or Applicant taking into account their individual circumstances and requirements;
  - (b) meets or exceeds the Occupant's and/or Applicant's level of Entitlement;
  - (c) minimises, as far as is reasonably practicable, the disruption to the Occupant and/or Applicant and takes into account distance to amenities and local schooling currently enjoyed by the Occupant and/or Applicant.
  - (d) Where Temporary Accommodation is provided by way of a hotel, the hotel shall not be less than three star quality and shall be provided within the same radius to duty station as their current or required Accommodation.
- 15.4 Should the Authority decide a permanent solution is required a new Application will be submitted. The Contractor shall remain responsible for providing Temporary Accommodation to Occupants and/or Applicants until the Occupant and/or Applicant has been provided with Suitable Accommodation.
- 15.5 The cost of providing Temporary Accommodation over and above the Maximum Monthly Rental Costs shall be borne by the Contractor in accordance with Clause 15.6. The Authority will pay up to the Maximum Monthly Rental Costs where applicable and shall not pay for more than one property per Occupant.
- 15.6 The provisions of this Clause 16 are subject to exclusions set out in Booklet 3, Module A, Section 3.20.1 - 3.20.5.

## 16. **CHANGE**

- 16.1 Any requirement for a Change shall be subject to Schedule 7 (Change Control Procedure).
- 16.2 The Contractor acknowledges and agrees that the Authority may issue a Notice of Change in accordance with Schedule 7 (Change Control Procedure) in order that the Authority may:
- (a) itself perform any services similar to the Services;
  - (b) contract with any third party to perform any services similar to the Services;

(c) adjust the Services to accommodate changes to Authority or Government policy.

16.3 The Authority is currently reviewing Substitute Accommodation in the context of a wider, comprehensive Accommodation strategy that considers the Future Accommodation Model (FAM) and the principles of the Accommodation 'offer' to Service Personnel and is fully engaged with the emerging footprint strategy for the estate as a whole. The conclusion of the review could potentially result in changes to policies which require amendment to the Substitute Accommodation service provided under this Contract. In such circumstances, the Parties shall agree an equitable Contract change to reflect the evolving policies and to take advantage of any associated cost savings in accordance with Schedule 7 (Change Control Procedure).

## **17. CONTINUOUS IMPROVEMENT**

17.1 The Contractor shall have an ongoing obligation throughout the Term of the Contract to identify new or potential improvements to the Services. As part of this obligation the Contractor shall identify and report to the Authority's Authorised Representative quarterly in the first Contract Year and once every six (6) months for the remainder of the Term of the Contract on:

- (a) the emergence of new and evolving relevant technologies which could improve the Services;
- (b) new or potential improvements to the Services including the reduction of rents and/or associated costs, the quality, responsiveness, procedures, benchmarking methods, performance mechanisms and customer support services in relation to the Services;
- (c) new or potential improvements to the interfaces or integration of the Services with other services provided by third Parties or the Authority which might result in efficiency or productivity gains or in reduction of operational risk; and
- (d) changes in ways of working that would enable the Services to be delivered at lower costs and/or bring greater benefits to the Authority.

17.2 Any potential Changes highlighted, by the Authority or the Contractor, in accordance with Schedule 7, (Change Control Procedure) shall be addressed by the Parties using the Change Control Procedure, and any savings generated as a direct consequence of such Change, as measured against the Charges payable by the Authority, shall be shared between the Parties in accordance with Clause 24 (Efficiency Measures).

## **18. BENCHMARKING**

18.1 Subject to Clause 17.1(b), the Authority may from time to time commission an independent benchmarking expert to conduct a holistic and comprehensive review of the performance of the Services, in order to support the recommendations of improvement opportunities.

18.2 The Parties agree that, subject to DEFCON 531 and DEFCON 539, they shall each disclose all relevant information to the independent benchmark expert, which they may reasonably require in order to conduct a full and open assessment of the performance of the Services, having regard at all times regard to Schedule 9 (Commercially Sensitive Information) provided that any independent benchmark expert shall be required to enter into a confidentiality agreement with both Parties, as appropriate.

- 18.3 Any disclosure under Clause 18.2 above shall include all relevant existing benchmarking materials which the Parties may hold, subject to any confidentiality and intellectual property restrictions that may apply to such information.
- 18.4 All benchmarking reviews shall consider Clause 17, Continuous Improvement activities, where applicable.

19. **TERMINATION**

- 19.1 In addition to the rights of termination contained in the DEFCONS referred to in Clause 1 (General Conditions of Contract), the Authority may terminate this agreement in whole or part in accordance with this Clause 19.

**Termination for Contractor Default**

- 19.2 Subject to Clause 19.3, if a Contractor Default has occurred, the Authority has a right to terminate all or part of this Contract by serving a termination notice on the Contractor stating:
- (a) that the Authority is terminating this Contract (in whole or in part) for Contractor Default;
  - (b) the type and nature of Contractor Default that has occurred, giving reasonable details; and
  - (c) that this Contract shall terminate (in whole or in part) on the date specified in the termination notice, unless (in the case of a breach under limb (a) or (b) of the definition of Contractor Default) the breach is rectified in accordance with Clause 19.3.
- 19.3 In the case of a breach under limbs (a) or (b) of the definition of Contractor Default the notice period shall be not less than twenty-eight (28) Calendar Days and the Contractor may propose to the Authority a rectification programme to address the breach within the notice period.
- 19.4 If, at the sole discretion of the Authority, the rectification programme proposed pursuant to Clause 19.3 is acceptable and the Contractor implements the accepted rectification programme in accordance with its terms, the termination notice referred to in Clause 19.2 shall be deemed to be revoked and this Contract shall continue.
- 19.5 If no acceptable rectification programme has been put forward in accordance with Clause 19.3 or the Contractor fails to rectify the breach within the time period specified in the termination notice, the Authority has a right to terminate the Contract in accordance with the termination notice or upon such other subsequent date at the Authority's discretion.

**Termination for convenience by the Authority**

- 19.6 Without affecting any other right or remedy available to it, in accordance with DEFCON 656B, the Authority may terminate this agreement at any time by serving a termination notice on the Contractor stating that:
- (a) the Authority is terminating all or part of this Contract voluntarily; and

- (b) this Contract (or part thereof) shall terminate on the date specified in the termination notice, which shall be not less than three (3) months from the date of receipt of the termination notice by the Contractor.
- 19.7 In the event of such notice being given, the Authority may at any time before expiration of the notice be entitled to exercise such of the following powers as it considers expedient:
  - (a) to direct the Contractor, where work has not been commenced, to refrain from commencing work;
  - (b) to direct the Contractor to complete in accordance with the Contract all or any of the Services, or any part or component thereof, which shall be paid for at the agreed Contract Price or where no agreement exists a fair and reasonable price;
  - (c) to direct the Contractor to determine on the best possible terms any and all sub-contracts (including any leases for properties being utilised to deliver the Services).
- 19.8 This Contract (or part thereof) shall terminate on the date specified in the termination notice referred to in Clause 19.6.
- 19.9 If the Authority terminates part of this Contract pursuant to Clause 19.6, the Authority shall permit appropriate adjustments to be made to the Charges to reflect such partial termination. If changes to the non-terminated parts of this Contract are required as a result of such partial termination, such changes shall be made in accordance with Clause 16 (Change).
- 19.10 For the avoidance of doubt, the Contractor acknowledges and agrees that the Authority may terminate all or part of the Contract in order that the Authority may:
  - (a) itself perform the Services or any services similar to the Services; or
  - (b) contract with any third party to perform the Services or any services similar to the Services.

#### **Compensation on termination for Contractor Default**

- 19.11 On termination of this Contract (in whole or in part) pursuant to Clause 19.2 the Authority shall have no further liability to make payments to the Contractor from the Termination Date and the Contractor hereby indemnifies the Authority against any such losses or costs which the Authority may suffer as a result of any such termination for Contractor Default.

#### **Compensation on termination for convenience by the Authority**

- 19.12 On termination of this Contract (in whole or in part) pursuant to Clause 19.6 the Contractor shall be entitled to (subject to any Authority rights of set-off):
  - (a) on termination of the whole of this Contract only:
    - (i) payment of any approved and unpaid amounts outstanding at the Termination Date;
    - (ii) in respect of any work carried out up to the Termination Date, the amount which would have been payable if this Contract had not been terminated

and the Contractor had been entitled to and had made a payment claim on the Termination Date;

(iii) costs, liabilities or expenditure reasonably and properly chargeable by the Contractor in connection with the Contract to the extent to that the said costs, liabilities or expenditure would otherwise represent an unavoidable loss by the Contractor by reason of the determination of the Contract; and

(iv) De-mobilisation Costs.

(b) on termination of part of the Contract:

(i) any approved and unpaid amounts outstanding at the Termination Date in respect of the terminated part of the Contract;

(ii) in respect of any work carried out up to the Termination Date in relation to the terminated part of the Contract, the amount which would have been payable if that part of the Contract had not been terminated and the Contractor had been entitled to and had made a payment claim on the Termination Date;

(iii) costs, liabilities or expenditure reasonably and properly chargeable by the Contractor in connection with the terminated part of this Contract to the extent to that the said costs, liabilities or expenditure would otherwise represent an unavoidable loss by the Contractor by reason of the determination of the Contract; and

(iv) De-mobilisation Costs relating to the terminated part of this Contract.

### **Exclusivity of remedy**

19.13 Any payment of compensation pursuant to this Clause 19 shall be in full satisfaction of any claim which can be made against the Authority by the Contractor in relation to the termination of this Contract. The compensation payable under this Clause 19 shall be the sole remedy of the Contractor against the Authority in respect of the termination of this Contract.

### **Exit arrangements on termination of Contract**

19.14 If this Contract is terminated in whole or in part for any reason, the provisions of the Schedule 5 (Exit Management Plan) shall come into effect and the Contractor shall co-operate fully with the Authority to ensure an orderly migration of the Services to the Authority or, at the Authority's request, a Replacement Contractor in accordance with Booklet 3, Module A, Section 25.0.

19.15 If compliance with Clause 19.14 extends beyond the Contract Period the Contractor shall undertake to provide such services as may be required arising from the transfer of responsibility provided such services are within the capacity of the Contractor's organisation.

19.16 The Authority shall pay to the Contractor the fair and reasonable costs of providing assistance pursuant to Clauses 19.14 and 19.15, above but only in respect of assistance rendered after the expiry of the Contract Period or the Termination Date (if earlier) and to the extent that such costs are not covered by the Contractor's De-mobilisation Costs.



- 19.17 For the purposes of this Clause 19 all references to the Contractor include any receiver, manager, administrator or liquidator of the Contractor.
- 19.18 On termination of this agreement and on satisfactory completion of the Exit Management Plan (or where reasonably so required by the Authority before such completion) the Contractor shall procure that all data and other material belonging to the Authority (and all media of any nature containing information and data belonging to the Authority or relating to the Services), shall be delivered to the Authority forthwith and the Contractor's Authorised Representative shall certify full compliance with this Clause 19.

## 20 **FRAUD**

- 20.1 The Contractor warrants that in entering the Contract he has not committed any fraud and has a robust fraud prevention and ethics policy which concurs with the Authority's zero tolerance regime with regard to fraud and theft.
- 20.2 The Contractor shall ensure that his Sub-contractors are under equivalent contractual obligations as are set out in this and shall take all practicable steps to prevent fraud or the risk of fraud arising and shall disclose the relevant provisions within the Sub-contractor's contracts upon request by the Authority.
- 20.3 The Contractor warrants that he has read, and shall procure that his employees, agents and Sub-contractors shall comply with the detailed anti-fraud measures and recommendations set out in this Clause 20.
- 20.4 The Contractor shall procure that his employees and agents shall comply and ensure the compliance of the Sub-contractor with the Contractor's fraud policy.
- 20.5 The Contractor shall produce and maintain a Fraud Risk Register of potential fraud and theft risks to the Contract and show what controls they propose to address the risks identified, which shall be reviewed and updated monthly by the Contractor.
- 20.6 The Contractor shall keep and maintain all relevant records, invoices, approvals, notes, minutes of meetings and all such other original documents as may be required to verify work carried out by the Contractor and his Sub-contractor so that they may be provided upon request by the Authority.
- 20.7 The Contractor shall, carry out an internal audit on a period not greater than six (6) monthly. Where the Contractor or its parent is a PLC the audit committee of the Contractor or PLC Company shall manage and be responsible for such audit. Where the Contractor is a joint venture Company, or a non-PLC, that company or Joint Venture Company shall be set up as an audit committee to manage and be responsible for such audit. The audit committee shall:
- (a) report to the Authority in respect of the standards achieved in the audit;
  - (b) notify the Authority of any fraud identified in any internal or external audit; and
  - (c) make recommendations to the Authority as to measures which should be taken to improve on fraud prevention and forward an action plan to show recommendations are put in place and ensure these are acted upon.
- 20.8 Without prejudice to DEFCON 531, the Contractor shall immediately report to the Authority any circumstances giving rise to fraud within his own organisation, that of his Sub-contractor or the Authority or otherwise in relation to the Contract and shall provide

all such relevant information which may assist the Authority in dealing with such report efficiently and effectively.

- 20.9 The Contractor shall immediately report to the Authority any act or omission, whether fraudulent, inadvertent or accidental which has resulted or could result in the Authority being charged for work and/or Services which have not been carried out.
- 20.10 Where the Authority in its sole discretion determines that the Contractor has committed fraud then it shall be entitled to, by written notice, either terminate the Contract or remove any part(s) of the Sub-contractor from the Contract in which case the Contractor shall fully comply with the Authority.
- 20.11 The Contractor shall fully co-operate and comply with any investigations and enquiries initiated by the Authority, The Fraud Incident and Irregularity Reporting Unit (FIIRU), the National Audit Office, the Police, or any other organisation identified by the Authority and/or any organisation acting on behalf of any of them. The Contractor shall ensure that his Sub-contractors shall comply with identical conditions to be included within the Sub-contractor's contracts, extracts of which are to be provided upon request by the Authority.
- 20.12 The Authority shall be entitled to set-off, deduct, abate or recover as a debt against the Contractor all monies and losses howsoever arising in connection with or sustained as a consequence of fraud including all associated investigation costs.
- 20.13 Any fraud related actions under this Clause 20 may be brought by the Authority or such other appropriate body by civil or criminal proceedings. Such proceedings shall be brought in the English courts unless the Parties otherwise agree.
- 20.14 The Contractor shall report any, fraud, bribery, corruption, or any other dishonest irregularity in connection to this Contract to:
- Defence Regulatory Reporting Cell Hotline
- 0800 161 3665 (UK) or
- +44 1371 85 4881 (Overseas)

## 21. **EMPLOYMENT MATTERS**

### **TUPE**

- 21.1 The Parties agree that the provisions of Schedule 6 (TUPE) shall apply to any Relevant Transfer of Staff under this Contract.

### **Personnel used to provide the Services**

- 21.2 At all times, the Contractor shall ensure that:
- (a) each of the Contractor's Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
  - (b) there is an adequate number of Contractor's Personnel to provide the Services properly;

- (c) only those people who are authorised by the Contractor (under the authorisation procedure to be agreed between the Parties) are involved in providing the Services; and
  - (d) all of the Contractor's Personnel comply with all of the Authority's policies including those that apply to persons who are allowed access to the applicable Authority's premises, provided that on or after the date of this Contract, any updates, amendments and/or new Authority policies which the Authority requires the Contractor (and Contractor's Personnel) to comply with shall be a Change and subject to the procedures set out in Schedule 7 (Change Control Procedure).
- 21.3 The Authority may refuse to grant access to, and remove, any of the Contractor's Personnel who do not comply with any such policies, or if they otherwise present a security threat.
- 21.4 The Contractor shall replace any of the Contractor's Personnel who the Authority reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Contractor's Personnel for any reason, the Contractor shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
- 21.5 The Contractor shall maintain up-to-date personnel records on the Contractor's Personnel engaged in the provision of the Services and shall provide information to the Authority as the Authority reasonably requests on the Contractor's Personnel. The Contractor shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.
- 21.6 The Contractor shall use its best endeavours to ensure continuity of personnel and to ensure that the turnover rate of its Staff engaged in the provision or management of the Services is at least as good at the prevailing industry norm for similar services, locations and environments.

## **22 RIGHTS AND REMEDIES**

- 22.1 Except as expressly provided in this Contract, the rights and remedies provided under this Contract are in addition to, and not exclusive of, any rights or remedies provided by Law.

## **23 PARTNERSHIP OR AGENCY**

- 23.1 Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party.
- 23.2 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

## **24 EFFICIENCY MEASURES**

- 24.1 If the Contractor proposes an Efficiency Measure the provisions of this Clause 24 shall apply.
- 24.2 The Contractor shall present any proposed improvement in writing at the next appropriate Monthly Progress Meeting and shall include:

- (a) a brief overview of the Efficiency Measure identified;
  - (b) the anticipated operational impact (including, without limitation, an assessment of quality, reliability and other relevant factors) of the Efficiency Measure on the delivery of the Services by the Contractor in accordance with this Contract;
  - (c) the financial benefits of the Efficiency Measure to the Authority (including, without limitation, details of the associated cost savings and projected reduction to the Service Credits); and
  - (d) advice to the Authority of any risks associated with the Efficiency Measure.
- 24.3 The Contractor shall provide the Authority with such further information relating to the proposed Efficiency Measure as the Authority requests.
- 24.4 This Clause 24 shall only apply to new leases and new agreements entered into at ISD or during the Contract Period for properties not subject to an existing agreement or any pre-existing agreements which were transferred to the Contractor at ISD. This Clause 24 does not apply to any agreements extended beyond the current Contract on existing terms.

## 25. **OPEN BOOK ACCOUNTING**

- 25.1 The Contractor shall maintain and shall procure that any Sub-contractors maintain current and accurate books relating to the provision of the Services and the performance of the Contractor's obligations in this Contract including without limitation the information referred to in Clause 25.2 below and in doing so shall, as appropriate, observe and comply with;
- (a) Generally acceptable accounting principles consisting of all extant Statements of Standard Accounting Practice (SSAPs), Financial Reporting Standards (FRSs) Urgent Task Force Abstracts, the Companies Act 1985 and any relevant industry-specific authoritative guidance; or
  - (b) internationally generally accepted accounting practice, comprising to the extent adopted by the European Commission, all extant International Financial Reporting Standards (IFRSs), International Accounting Standards (IASs), interpretations of the International Financial Reporting Interpretations Committee and its predecessor body, and other relevant industry specific authoritative guidance.
- 25.2 The information referred to in paragraph 25.1 above is as follows;
- (a) administrative Overheads;
  - (b) payments made to its Sub-contractors and any other suppliers for providing any goods services or materials in connection with the Services;
  - (c) capital and revenue expenditure either directly incurred in respect of or directly attributable to the performance of the Contractor's obligations in this Contract; and
  - (d) such other items as the Authority may reasonably require to conduct cost audits for verification of cost expenditure or estimated expenditure.
- 25.3 The Contractor shall operate a system of open book accounting which identifies all cost components, cost levels and profit margins relating to this Contract and shall make such information available to the Authority as required pursuant to the terms of this

Contract or as otherwise requested by the Authority having been given reasonable notice. For such purposes, the Contractor shall:

- (a) nominate an individual with specific responsibility for the preparation and maintenance of financial, commercial and management information;
- (b) maintain and provide that information in accordance with GAAP-IFRS and further provide any summary of that information as required by the Authority.

25.4 The Contractor is to ensure that all financial information provided by the Contractor to the Authority or its Authorised Representatives is certified as being complete and accurate by the company secretary of the Contractor.

25.5 For the purpose of:

- (a) the examination and certification of the accounts of the Authority; and/or
- (b) any examination pursuant to Section 6(1) of the National Audit Act 1983 or any re-enactment thereof of the economy, efficiency and effectiveness with which the Authority has used its resources. The National Audit Office or its representatives may examine such documents including records (whether or not on the Contractor's systems) as it or they 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 it considers necessary.

25.6 Throughout the Term of the Contract the Contractor shall furnish to the Authority as soon as they become available (and in respect of the Contractor's audited financial statements in any event within sixty (60) Calendar Days of the end of each of its annual financial periods), copies of any income statement relating to the performance of this Contract and of the Contractor's audited financial statement.

## 26. **SUB-CONTRACTING**

26.1 The Contractor shall ensure to the extent that they are applicable that the terms of this Contract are included in any sub-contracts placed by it for any part of the work under the Contract and the Contractor will not place sub-contracts with any Party unless that Party agrees to assume the same obligations corresponding to those imposed on the Contractor under this Contract. The Contractor will nevertheless remain liable for the due observance of this Contract by its personnel.

26.2 The Contractor shall submit the proposed conditions of contract for each sub-contract to the Authority Representative for acceptance unless the Authority Representative has agreed that no submission is required. The Contractor shall not appoint a Sub-contractor on the proposed sub-contract conditions submitted without prior written consent from the Authority Representative. The Authority may decline to consent to the proposed sub-contract conditions if:

- (a) they will not allow the Contractor to deliver the Services or
- (b) they do not operate so as to allow the Authority step-in rights as set out in Clause 27 (Step In Rights) below.

26.3 The Contractor shall, in relation to the subletting of any portion of the Services:

- (a) procure that the relevant sub-contract will, in all respects be compatible with the terms of this Contract and that all applicable obligations are contained within the terms and conditions of the relevant sub-contract; and

(b) provide to the Authority on demand certified copies of any sub-contract.

26.4 The Contractor shall work with its Sub-contractors and where possible encourage participation of Small Medium Enterprises (SMEs), non-traditional defence suppliers, third sector bodies or social enterprises in the supply chain to reinforce the capability and competitiveness of the value chain. In doing this the Contractor should demonstrate how capability and diversity within the supply chain will be maintained or built, setting out how it will factor key policy drivers such as competition, innovation and skills into the Contractor's supply chain.

26.5 The Greening Government Commitments describe the actions UK government departments and their agencies will take to reduce their impacts on the environment. This contains targets covering the following: Reducing Admissions; Improving Waste Management; Reducing Water Use; Buying Greener Products and Services; Being open and transparent, as set out in the Policy Paper issued with the tender. The Contractor shall work with its Sub-contractors in regard to the Greening Government Commitments to demonstrate it can effectively manage resources, particularly through reducing waste, increased recycling and use of low impact products, for example low embodied carbon and water, minimised use of scarce materials and optimised durability of products.

## 27 **STEP IN RIGHTS**

27.1 The Contractor shall procure (by way of inclusion of relevant provisions in the sub-contracts in the form of rights directly enforceable by the Authority pursuant to the Contracts (Rights of Third Parties) Act 1999 and/or the warranties to be given to the Authority by the Sub-contractors) that:

- (a) in the event of determination of this Contract then its Sub-contractors will, if so required by notice in writing given by the Authority, accept the instructions of the Authority or his appointee to the exclusion of the Contractor in respect of the service upon the terms and conditions of the relevant sub-contracts. The Contractor acknowledges that the Sub-contractors will be entitled to rely on a notice from the Authority as conclusive evidence for the purposes of the relevant sub-contract/warranty of this Contract of the determination of the Contractor's employment under this Contract and further acknowledges that such acceptance of the instructions of the Authority to the exclusion of the Contractor will not constitute any breach of a Sub-contractor's obligations to the Contractor under its sub-contract;
- (b) his Sub-contractors do not exercise any right of determination of their employment under the sub-contract without having first:
  - (i) copied to the Authority any written notices required to be sent prior to there being an entitlement to give notice that such employment is to be determined; and
  - (ii) given to the Authority two weeks' prior written notice that it has the right under its sub-contract to determine its employment thereunder;
- (c) the Authority may, not later than the expiry of the notice period set out in Clause 27.1(b)(ii) above, require the Sub-contractor by notice in writing to accept the instructions of the Authority or his appointee to the exclusion of the Contractor in respect of the service on the terms and conditions of the sub-contract.

- 27.2 It will be a condition of any notice given by the Authority under this Clause 27 that the Authority or its appointee accepts liability for payment of the sums certified as due/properly due to the Sub-contractor under the sub-contract and for the performance of the Contractor's obligations there under, including for the avoidance of doubt, payment for any sums outstanding at the date of such notice. The Contractor shall procure that the sub-contracts provide that upon the issue of any step-in notice by the Authority, the sub-contracts will continue in full force and effect as if they had been made between the Authority and the Sub-contractor ab initio and no right of determination had arisen and that where the Authority steps in to the sub-contracts, the Sub-contractors will be liable to the Authority in lieu of the Contractor.

## 28 **COUNTERPARTS**

- 28.1 This Contract may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Contract, but all the counterparts shall together constitute the same Contract. No counterpart shall be effective until each Party has executed at least one counterpart.

## 29 **ENTIRE AGREEMENT**

- 29.1 This Contract, the Booklets and the documents appended to it or otherwise referred to in it constitutes the entire agreement between the Parties and supersedes, and neither Party has relied upon, any agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 29.2 Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation (or negligent misstatement) based on any statement in this Contract. The condition shall not exclude liability in respect of any fraudulent misrepresentation.

## 30. **CONTINUING OBLIGATIONS**

- 30.1 Save as otherwise expressly provided in this Contract, the expiry or termination of this Contract shall not affect the continuing rights and obligations of the Parties under:

- DEFCONs 529, 530; 531; 532b; 609; 625; 632; 703;
- Clauses 2; 5; 7.11 to 7.13; 11; 14; 21; 23; 29; 30;
- Schedule 1 (Definitions).

or 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.

- 30.2 In addition, to the rights and obligations referred to in Clause 30.1, the following rights and obligations shall continue to apply during the Run-Off Period:

- DEFCONS 503; 513; 515; 516; 520; 522; 534; 550; 566; 670;

- Clauses 6.1 to 6.3; 7.1 to 7.4; 7.7 to 7.10; 7.14 to 7.16; 8, 9; 10; 12; 13; 15; 16; 19; 20; 21; 25; and
- Booklets 3; 5; and
- Schedules 2, 4, 5, 6, 7, 8, 9.

or any other provision of this Contract which is expressed to apply during the Run-Off Period or which is required to give effect to the Contract during the Run-Off Period.

### 31 **AMENDMENTS TO CONTRACT**

31.1 For the avoidance of doubt any changes to the Contract as a result of Schedule 7 (Change Control Procedure) and DEFCON 503 (Edn 12/14) (Formal Amendments to Contract) can only be agreed and issued by the appropriate Authority's Representative being Commercial Branch as defined in Schedule 1.

### 32 **AUTHORISATION BY THE CROWN FOR USE OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS**

32.1. Notwithstanding any other provisions of the Contract and for the avoidance of doubt, award of the Contract by the Authority and placement of any contract task under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949. The Contractor acknowledges that any such authorisation by the Authority under its statutory powers must be expressly provided in writing, with reference to the acts authorised and the specific intellectual property involved."



## **SCHEDULE 1**

### **DEFINITIONS**

“Acceptance Test(s)” means those tests identified in the columns headed “Acceptance Test Required” in Schedule 3.

“Accommodation” means the SSSA and SSFA provided by the Contractor pursuant to this Contract.

“Actual Annual Price” is the comparison of the Maximum Annual Price against the Actual Demand, Actual Rental Costs, Annual Risk Pot usage and adjusted Profit in accordance with Booklet 2, Conditions of Contract, Para 8.8.

“Actual Demand” means the actual number of Accommodation rented and Transaction Costs throughout the Contract Year.

“Actual Rental Costs” means the actual amount of rental paid by the Contractor in the Contract Year up to the Maximum Monthly Rental Costs.

“Actual Transactions” means the actual number of transactions in accordance with Booklet 5, 5L03 and 5L04 throughout the Contract Year.

“Annual Estimated Demand” means the forecast of demand detailed in Booklet 5, leaflet 5L08 used to calculate the Monthly Service Charge and Monthly Rental Fee, as relevant.

“Annual Management Service Fee” means the management service fee for each Contract Year, outlined in Booklet 5, 5L06.

“Annual Maximum Rental Costs” means the Maximum Monthly Rental Costs multiplied by Annual Estimated Demand.

“Annual Price Payable” means the Actual Annual Price plus any Gainshare due to the Contractor.

“Annual Price Review” means the review of prices in accordance with the Variation of Price Clauses resulting in price increase on Maximum Monthly Rental Costs, Annual Management Service Fee, Transaction Costs and De-mobilisation costs of no more than Consumer Price Index.

“Annual Reconciliation Exercise” means the exercise which takes place on the anniversary of ISD and reconciles the Interim Price against Actual Demand to calculate the Maximum Annual Price. Refer to Booklet 2, Conditions of Contract, Para 8.7.

“Annual Risk Pot” means the maximum risk provision for the specified Risk Events agreed between the Authority and Contractor per Contract Year that will, should the defined risk materialise, be paid by the Authority to the Contractor in accordance with and to the value defined in Booklet 5 leaflet 5L06.

“Annual Transaction Costs” means the Transaction Costs multiplied by the Annual Estimated Demand of transactions, which form part of the Interim Price and Monthly Service Charge.

“Applicant” means an individual (in respect of SSSA) who has or a family (in respect of SSFA) which has submitted an application for Accommodation.

“Application” means the instruction issued by the Authority to the Contractor to provide Accommodation to an Applicant.

“Assurance Tests” means the audits completed by the Authority on the Contractors Contract Delivery in order to satisfy the Authority of the Contractors performance.

“Authorised Representative” means a member of staff empowered to act on behalf of the Contractor or Authority.

“Authority” means the Secretary of State for Defence, acting on behalf of the Crown.

“Authority Assets” means the assets belonging to the Authority.

“Banding Challenges” means those events where an Occupant of Substitute Accommodation challenges the determined Band for Charge of their property, in accordance with the Booklet 3.

“Bedspace Management” means the processes, actions and activities of the Contractor to successfully manage bedspaces in order to utilise existing bedspaces and to propose to the Authority solutions to reduce.

“Booklet 1” means the booklet produced by the Authority detailing the Form of Agreement.

“Booklet 2” means the booklet produced by the Authority detailing the Conditions of Contract under which the Contract shall be governed.

“Booklet 3” means the booklet produced by the Authority detailing the deliverables and requirements.

“Booklet 4” means the booklet produced by the Authority containing Authority Supplier Information.

“Booklet 5” means the booklet detailing the pricing agreed by both Parties in the Contract.

“Booklet 6” means the booklet containing the Contractor’s response to the Authority’s ITT.

“Booklets” means Booklet 1 to Booklet 6.

“Building Regulations” shall mean those legislative and statutory regulations in force throughout the duration of the Contract.

“Business Continuity Management Plan” means the plan the Contractor shall prepare for the Authority setting out in detail its business continuity arrangements for the continuing provision of the Services in the event of disruptive incidents.

“Business Day” means a day on which clearing banks are open for business in the City of London.

“CAAS” means Combined Accommodation Assessment System.

“Calendar Day” means all days in a month, including weekends and holidays.

“Catastrophic Failure” means as defined in paragraph 3.11 of Schedule 4 (Performance Management).

“Change” shall mean any deletion, amendment, alteration or addition to the extent of any obligation of a Party under the Contract.

“Change Control Note” means as defined in paragraph 2.4 of Schedule 7 (Change Control Procedure).

“Change Control Procedure” means the procedure detailed at Schedule 7.

“Change Notice” means as defined in paragraph 2.2 of Schedule 7 (Change Control Procedure).

“Change of Law” means the coming into effect after the date of this Contract of laws and any other instruments/ subordinate legislation having the force of law in England and Wales or any applicable judgment of a relevant court of law which changes the interpretation of the applicable law and is a binding precedent which directly and adversely affects the Contractor’s performance under the Contract in a material way. For the avoidance of doubt, applicable law shall include any applicable statute, ordinance, decree, regulation, or by-law or any rule, circular, directive or any licenses, consent, permit, authorization, concession or other approval issued by any authority which has appropriate jurisdiction.

“Charges” means the charges which are due and payable by the Authority to the Contractor in respect of the Services in accordance with the Contract.

“Commercial Branch” shall mean DIO MOD Commercial Branch, DIO Comrcl 4a, Swales Pavilion, Wyton, Huntingdon, Cambridgeshire PE28 2EA.

“Complaint” means a complaint which relates to an action (or inaction) by the Contractor in the delivery of SFA/SSFA in accordance with the extant accommodation policy made in accordance with JSP464.

“Complaints Process” means the process as detailed in accordance with the Booklet 3, Module B, Section 5.

“Conflict of Interest” means when suppliers seek to operate as a customer friend or Client and a Supplier for the same area of acquisition activity.

“Consistent Failure” means as defined in paragraph 3.10 of Schedule 4 (Performance Management).

“Consumer Price Index or CPI ” means the index published by the ONS Publication D7BT Consumer Price Index (Overall Index) or any alternative index agreed between the Contract and the Authority in accordance with Clause 8.

“Contract Award” means the date that the Contract is awarded to the Contractor.

“Contract Data” means the Contract Data Requirements as specified on DEFFORM 315.

“Contract Deliverables” means the deliverables required by the Contractor in order to successfully deliver the Contract included in Booklet 3 Module A to E.

“Contract Period” means the period from ISD until Expiry Date of the Contract.

“Contract Price” means the costs agreed by the Parties for provision of the Services.

“Contract Year” means a period of 12 months commencing on the In Service Date.

“Contractor” means the supplier appointed by the Authority following the RLAP tendering exercise, to deliver the Services.

“Contractor Background IPR” means confidential information, inventions, discoveries and intellectual property rights identified prior to the signing of the agreement that should have been developed, invented or acquired by the Contractor prior to the Effective Date.

“Contractor’s Cap” has the meaning given to it at Clause 11.4 of this Booklet 2, Conditions of Contract.

“Contractor Default” means any one or more of the following:

- (a) a breach by the Contractor of any of its obligations under this Contract which materially and adversely affects the performance of the Services;
- (b) a Catastrophic Failure;
- (c) a Consistent Failure;
- (d) a breach of Clause 20 (Fraud);
- (e) a 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;

“Contractor’s Delivery Manager, (CDM)”, means the person appointed from time to time by the Contractor and as such notified to the SAPM. The Contractor’s Delivery Manager shall be the initial, single, point of contact with the Authority.

“Contractor Employee” means any person who is an employee or director of the Contractor or who occupies the position of a director of the Contractor, by whatever title given.

“Contractor’s Personnel” shall mean a Contractor Employee or such other person engaged by the Contractor to perform the Services.

“Contractor’s Representative” means a Contractor Employee or such other person engaged by the Contractor to perform the Services

“Contractor’s Security Officer” means the designated representative from either the Contractor and/or Authority monitoring the security of the IS.

“Contractor’s Security Representative (CSR)” means the designated Contractor’s Employee responsible for the required security assurances in accordance with Booklet 3, Module A, Section 16.

“Contractor’s Tender” means the Contractor’s response submitted at Tender and accepted by the Authority.

“Cyber Risk Profile” means the level of cyber risk associated with this Contract, in accordance with Def Stan 05-138.

“Data Protection Legislation” means data which relates to a living individual who can be identified.

“De-mobilisation” means those actions and activities undertaken by the Contractor prior to and on completion of the Contract to bring the Contract to a close and handover to a new supplier where applicable.

“De-mobilisation Activities” means the activities identified in the column headed “De-mobilisation Activities in Schedule 2 of the Contract.

“De-mobilisation Costs” means the cost incurred by the Contractor in performing the De-mobilisation Activities.

“De-mobilisation Period” means the period 6 months prior to the Expiry Date or, in the case of 2 year option, whichever is later, or such notice period prior to the Termination Date during which the Parties

shall facilitate full handover of all Services to a Replacement Contractor in accordance with Clause 6.

“De-mobilisation Plan” means the plan appended at Schedule 2, in the Conditions of Contract.

“Deliverable Quality Plan” shall mean the plan provided by the Contractor to the Authority in accordance with Clause 7.5 to 7.7 of the Contract, and in accordance with the Booklet 3, Module A, Section 12.3.

“DIO Principal Security Adviser (DIO PSA) shall mean the Authority’s representative responsible for the suitable training of the Contractor’s Security Representative (CSR), in order for the CSR to discharge the requirements in accordance with the Booklet 3, Module A, Section 16.

“Dilapidation Claim” means any claim from a Landlord / agent as a result of damages occurred within a Substitute Accommodation property

“Dispute” means any matter or issue arising between the Parties which has not been resolved between the Parties within 30 days (or such period as is agreed between the Parties) of its referral.

“Dispute Resolution Procedure” means DEFCON 530.

“Due Diligence Information” means all materials records and information deemed material to the Contract that the Authority has made available to the Contractor.

“Effective Date” means the date of the start of the Mobilisation Period of this Contract, which will follow the award of this Contract.

“Efficiency Measure” shall mean a measure which improves the Services at no additional cost to the Authority or reduces the cost of providing the Services without impacting on said Services.

“Entitlement” means the entitlement of the Occupant in accordance with the current version of JSP 464 (V1.0 – 7 Sept 15), Volume 1, Part 2 for SSFA and JSP 464 (V1.0 – 7 Sept 15), Volume 2, Part 2 for SSSA.

“Exit Management Plan” means the plan detailed in Schedule 5 of this Contract.

“Expiry Date” means the fifth anniversary of the ISD or any such date that may be agreed should there be an extension to the Contract.

“Final Tenancy End Date” means the expiry of the last tenancy agreement entered into pursuant to this Contract or 6 months from the Expiry Date, whichever is sooner.

“Firm Price” means the price agreed by the Parties for the Services, which is not subject to variation.

“First Extension Period” means the first options period by which the Contract may be extended by the Authority. Specifically, this shall be from the [00/00/2026 to 00/00/27].

“Fixed Price” means the price agreed by the Parties for the Services, which is subject to variation in accordance with the Variation of Price Clauses in the Contract.

“Fixed Unit Rate” the price agreed by the Parties for Transaction Costs and Maximum Monthly Rental Costs for SSSA and SSFA, which is subject to variation in accordance with the Variation of Price Clauses in the Contract.

“Fraud Risk Register” means the register of the risks associated with potential fraud and theft to the Contract including proposed controls.

“Fuel Subsidy Scheme (FSS)” shall mean the scheme to support Occupants occupying a property in excess of 160 square metres who are therefore entitled for assistance in the high cost of heating their property.

“Furniture” means those items required to furnish the Accommodation as set out in in Booklet 3, Module C for SSSA and SSFA.

"Future Accommodation Model" or "FAM" means a project that is piloting a potential new approach to Service Accommodation over 3 years at 3 sites which began in September 2019, with the aim of giving more choice to more Service Personnel over where, how and with whom they live.

“Gainshare” means the gainshare calculation scheme identified in Booklet 2, Clause 8.

“Gainshare Payment” means a payment due to the Contractor in accordance with Booklet 2, Clause 8.8.

“Good Industry Practice” means at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the Services to a customer like the Authority, such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws.

“Health and Safety Regulations” means those current legislative and statutory regulations in force throughout the duration of the Contract.

“Helpline” means as defined in Booklet 3, Module B.

“Hosting Environment (IS)” means as defined in Booklet 3, Module A, AL03.

“Information System” or “IS” means the system provided and maintained by the Contractor in order to achieve the requirements in accordance with Booklet 3, Module A, AL03.

“Initial Term” means the first term of the Contract. Specifically, this shall be from 00/00/21 to 00/00/26.

“In Service Date” or "ISD" means the Contract commencement date following Mobilisation.

“Interim Price” means the price payable by the Authority for the Monthly Rental Fee or Monthly Service Charge based on the relevant part of the Annual Estimated Demand prior to the Annual Reconciliation Exercise.

“Intruder Detection System” means the system designed and utilised by the Contractor in order to detect and resolve events should the IS be under attack, cyber or otherwise.

“Inventory” means the record completed at Move In describing the condition of the property in accordance with the requirements contained within the Booklet 3, Module E, Section 4.

“Joint Venture Company” means an association of two or more individuals or companies engaged in a solitary business enterprise for profit without actual partnership or incorporation.

"JSP" means Joint Service Publication.

“Kick-Off Meeting” means the first meeting with all stakeholders to discuss the Contract Deliverables

“KPI” means the key performance indicators set out in Schedule 4 (Performance Management).

“KPI Calculation Period” means each monthly period from the In Service Date on which progress reports are based in accordance with column H “Method of Measurement” in Table 1 of Schedule 4 (Performance Management).

“KPI Target” shall have the meaning ascribed by Table 1 of Schedule 4 (Performance Management).

“Landlord” means the property owner or his agent supplying property for use as Accommodation under the Contract.

“Law” means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Contractor is bound to comply.

“Licensed Software” means software that permits non-exclusive use of the software application by the Authority and/or the Contractor.

“LTO” refers to the Authority's standard Licence to Occupy contained within JSP 464 (V12.0 – 1 April 2020, Volume 1, Part 2, Annex B to Chapter 5 (SSFA) and V11.0 - 3 Feb 2020 Volume 2, Part 2, Annex B to Chapter 7 (SSSA).

“Management Information” means the data recorded and managed by the Contractor in the delivery of the Contract in accordance with the Booklet 3, Module A, Leaflet AL04.

“Maximum Annual Price” means the adjusted price following the Annual Reconciliation Exercise, comparing the Interim Price based on Annual Estimated Demand against Actual Demand in accordance with Booklet 2, Conditions of Contract 8.7.

“Maximum Monthly Rental Costs” means the maximum rental price payable in any one calendar month by the Authority for specific types of property and per geographic Region as set out in Booklet 5 – Pricing, based on Annual Estimated Demand.

“Mobilisation” means the period between Contract Award and ISD in which the Contractor shall complete all agreed Mobilisation Activities to the satisfaction of the Authority.

“Mobilisation Activities” means those activities by both the Contractor and the Authority in support of the successful Mobilisation of the Contract.

“Mobilisation Longstop Date” means the date which falls six months after the ISD

“Mobilisation Period” means the period beginning on the Effective Date and continuing until ISD; or completion of the Mobilisation Activities to the satisfaction of the Authority.

“Mobilisation Plan” means Schedule 3.

“Module A means” the Contract module relating to management services as set out in the requirements.

“Module B means” the Contract module relating to the helpline as set out in the requirements.

“Module C means” the Contract module relating to the statutory and mandatory items as set out in the requirements.

“Module D means” the Contract module relating to maintenance services as set out in the requirements.

“Module E means” the Contract module relating to housing as set out in the requirements.

“Monthly Progress Meetings” means those meetings in order to satisfy the requirements of the Booklet 3, Module A, Section 10.6.

“Monthly Rental Fee” means the Interim Price paid based on the relevant part of the Annual Estimated Demand, incorporating all rents paid by the Contractor and shall be paid at the beginning of each Calendar Month.

“Monthly Report” is as defined in the Booklet 2, Conditions of Contract, Clause 10.6 to Clause 10.8.

“Monthly Service Charge” means the management service fee paid on a monthly basis in accordance with Booklet 2, Conditions of Contract, Clause 8.1(a).

“Move In” means the physical start of residency of the property by the Applicant.

“Move Out” means the end of tenancy of the property by the Applicant and the physical move from the property by the Occupant.

“Non-Availability Certificate” means the certificate issued to Applicants to confirm the unavailability of either Service Accommodation thereby allowing the request for Substitute Accommodation to be submitted.

“Notice of Change” means that any changes and amendments will be made by utilising the Control Change Procedure

“Notice of Charge” means those charges relating to any damage within a property which may be recovered by the Authority from an Occupant

“Notification of Address” means the appropriate time to be given to Applicants to confirm their address prior to their Required By Date. For Substitute Service Family Accommodation (SSFA) this shall be 14 Calendar Days (for moves within the UK and 28 for overseas) prior to Required By Date, for Substitute Service Single Accommodation (SSSA) this shall be 2 days prior to Required By Date.

“Occupant” means an individual who, or a family which occupies Accommodation supplied by the Contractor pursuant to this Contract.

“Occupation End Certificate” means the documentation completed by the Contractor at Move Out which shall identify any and all deficiencies with the property which may later form a dilapidation charge in accordance with the Booklet 3, Module E, Section 4.5 and 4.6.

“Operating Environment” means the environment in which the Contractor shall deliver the Contract Deliverables.

“Outsourcing Playbook” mean the Government Outsourcing Playbook document published by the Cabinet Office which outlines a series of key policies for making outsourcing decisions and contracting outside suppliers for the delivery of public services.

“Outturn Costs” means actual demand used to calculate annual reconciliation.

“Overheads” means all the Contractor’s expenses attributable to this Contract that are not directly connected with output or otherwise allocated in this Contract. These include but are not limited to



items such as rent, rates, telephone, postage, motors, research, development, utilities, exhibitions, selling, purchasing, sick leave, holidays, waiting time, quality assurance, scrap, legal fees, consultant fees, entertainment, advertising, redundancy, pensions, management, apprentices, canteen, insurance, bank charges, accountancy, subscriptions, discounts, capital expenditure, cost of servicing capital, goodwill written off and appropriations of profit.

“Owner” means the legally recognised owner of any property described during the delivery of the Contract by the Contractor.

“PAC” means Property Acceptance Certificate contained within JSP 464 (V12.0 – 1 April 2020, Volume 1, Part 2, Annex B to Chapter 5 (SSFA) and V11.0 - 3 Feb 2020 Volume 2, Part 2, Annex B to Chapter 7 (SSSA).

“Party” means a party to this Contract and “Parties” shall be construed accordingly.

“Pass through Cost(s)” means costs that will be passed back to the Authority to pay.

“PLC Company” means Public Limited Company which is registered as such under the s4 of the Companies Act 2006.

“Privileged Function” means super user roles within the IS which have a higher set of system/data management functions.

“Profit” means the percentage of profit margin to be applied in accordance with Booklet 5, 5L06.

“Property Damage” means damage caused to the Accommodation by the Service Personnel or Occupant.

“Quality Management” means the process of ensuring that all the activities necessary to deliver organisational outputs meet the Authority and stakeholder requirements.

“Quality Plans” means all required plans in accordance with the Contractor’s obligations to adhere to the requirements contained within the Booklet 3, Module A, Section 12.

“Regions” means those geographical areas referred to in Clause 8.1b and defined in Booklet 5, 5L02, 5L03 and 5L08.

“Relevant Tax Authority” means HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the Contractor is established.

“Relevant Transfer” shall be as defined in Schedule 6 (TUPE).

“Replacement Contractor” means a Contractor selected by the Authority to take over provision of the service

“Required By Date” means the date by which an Applicant shall be provided with Suitable Accommodation.

“Required Insurances” means insurances as may be required by law.

“Risk” is defined as a significant, unplanned, and uncertain event or situation that, should it occur, has an effect on at least one project or programme activity, or business objective. Overall, a risk is assessed by combining its probability and the magnitude of its impact(s) on the objectives and / or performance of the Contract.

“Risk Event” is part of the Annual Risk Pot and is defined as certain risk scenarios which may arise from time to time, but are not part of the intrinsic business as usual risks and are not covered by other agreed payment mechanisms elsewhere in the Contract Booklets, and are risks that in all respects are outside of the control of and could not be reasonably foreseen by the Contractor.

“Risk Management Plan” sets out specific mechanisms by which the relevant risk management strategy will be implemented, defining Risk Management roles, responsibilities, procedures, tools and techniques for the area covered by the plan, and drawing on relevant guidance. In essence, detailing the ‘who’, ‘what’, ‘why’, ‘when’, and ‘how’. Every plan must conform to a strategy and all Risk Management activity should conform to a plan.

“Risk Mitigation Plan” means the plan determining and evaluating risk mitigation, response and fallback; making recommendations on the selection and implementation of feasible risk mitigation, response and fallback, and; assignment of Action Mangers and Action Owners. All plans should detail actions in terms of ‘what’, ‘when’, ‘how’ and ‘by whom’.

“Risk Register” is a register of the risks which are listed in the Contractor’s Mobilisation and transfer of risk plan.

“Run-Off Period” means the period from the Expiry Date to the Final Tenancy End Date.

"Safety, Health and the Environment Plan" means the plan the Contractor shall prepare for the Authority setting out its responsibilities and undertakings to and for the Authority and other appropriate Parties in performing the Contract.

“SAPM” means the Substitute Accommodation Project Manager and his representatives who shall act on behalf of the Authority in carrying out those duties described in the Contract or such person as may be appointed in the capacity for the time being by the Authority.

"SC Cleared" means the government vetting service process by which a person is vetted to the Security Cleared level of clearance required to work with the Authority in the performance of the Contract.

“Second Extension Period” means the second option period by which the Contract may be extended by the Authority. Specifically, this shall be from the 00/00/2027 to 00/00/28.

“Security Policy” means the document entitled “HMG Security Policy Framework” published by the Cabinet Office from time to time and the Authority’s own published security policies.

"Service Accommodation" means single and family accommodation provided and managed by the Authority.

“Service Credits” shall mean the sums attributable to a Service Failure in accordance with Schedule 4 (Performance Management).

“Service Delivery” shall mean performance of the requirements of the Contract.

“Service Delivery Team” means the DIO SD Accommodation Team or its nominated representatives.

“Service Failure” means a failure by the Contractor to provide the Services in accordance with a KPI Target.

“Service Manager” means the individual appointed by the Authority (or his nominated representative) as the responsible official for the purposes of this Contract.

"Service Personnel" means serving military personnel who are members of the UK Armed Forces.

"Services" means the provision of Accommodation and related services, including sub-contracted services, by the Contractor to the Authority in accordance with the Contract.

"SHEP" means Safety, Health and Environment Policy.

"SSFA" means Substitute Service Family Accommodation.

"SSSA" means Substitute Service Single Accommodation.

"Staff" means all persons employed by the Contractor to perform the Contract together with the Contractor's servants, agents and Sub-contractors used in the performance of the Contract.

"Strategic Meetings" shall mean monthly meetings attended by suitably empowered representatives in accordance with Booklet 2, Clause 11.6.

"Sub-contractor" is a person or organisation who has a contract with the Contractor or with a Sub-contractor of any tier to the Contractor where such Sub-contractor had been identified as providing a service.

"Substitute Accommodation" means the provision of family and single living accommodation where Service Accommodation is unavailable.

"Substitute Accommodation Scheme" is a means by which Service Personnel can be provided with Single or Family living accommodation.

"Suitable Accommodation" means Accommodation which is suitable for an Applicant or Occupant in terms of Entitlement and meets requirements of the Booklet 3.

"Suitable Records" means any record or document in relation to the delivery of the Substitute Accommodation scheme.

"Supply Organisations" means those organisations currently providing services to the Authority either directly or indirectly linked to the Contract.

"Temporary Accommodation shall mean accommodation provided to an Applicant or Occupant in accordance with Clause 15 and which:

- (a) is of a temporary or non-permanent nature;
- (b) is immediately available; and
- (c) meets the requirements of Clause 15.3.

"Tender" means the process by which the Authority has invited the Contractor to submit the Contractor's Tender during the procurement process.

"Term of the Contract" has the meaning ascribed by Booklet 2 Conditions of Contract, Clause 5.

"Termination Date" means the date of early termination of this Contract in accordance with its terms.

"Third Party IPR" means confidential information, inventions, discoveries and intellectual property rights belonging to, or developed, invented or acquired by a third party which do not belong to the Authority or to the Contractor.

“TLB” means the Authority budget holder at the command level (i.e. RAF, Army, Navy etc) who is ultimately responsible for their budget in relation to the Contract.

“Transaction Costs” means the Fixed Unit Rates identified at Booklet 5, 5L04 and 5L05 for specified activities.

“Uninhabitable” means any property classed as uninhabitable in accordance with Booklet 3, Module D, Section 2.

“Unsuitable Accommodation” means Accommodation which is unsuitable for the Applicant or Occupant for a reason set out in Booklet 2, Clause 15.1(b) or other reason which is reasonable in the circumstances.

“User Guide” means the documentation issued to each Applicant of Substitute Accommodation in accordance with the Booklet 3, Module A, Section 21.

“Utilities” means the utility services that are connected to the Accommodation; comprising of water and drainage, electrical power, gas, telephone cables and internet cables (or wireless connections).

“Variation of Price Clauses” means Clauses 8.12 to 8.20 in this Contract.

“VCDS 45 Minute List” means those Applicants of Substitute Accommodation in London who are entitled to live within a defined radius of their duty station.

“Violent Profits” means the equivalent of the charges applicable should an Occupant lose their Entitlement and remain with the property.

“14 Day Observation Report” mean the report defined in Booklet 3, Module E, Section 6.6 and 6.7.

## **SCHEDULE 2**

### **DE-MOBILISATION PLAN**

**Minimum headings to be addressed nine (9) months post Contract Award:**

<b>Serial</b>	<b>Responsibility</b>	<b>De-Mobilisation Activity</b>
1	Contractor	
2	Contractor	
3	Contractor	
4	Contractor	
5	Contractor	
6	Contractor	
7	Contractor	
8	Contractor	
9	Contractor	
10	Contractor	
11	Contractor	

**The De-mobilisation plan will be required to be implemented with a minimum of six (6) months remaining of the Contract in accordance with Clause 6 (Mobilisation and De-mobilisation).**

**SCHEDULE 3**  
**DRAFT MOBILISATION PLAN**

<b><u>Serial</u></b>	<b><u>Responsibility</u></b>	<b><u>Mobilisation Activity</u></b>	<b><u>Acceptance Test required</u></b>	<b><u>Evidence Required for Acceptance Test</u></b>	<b><u>Timescales for Completion of Mobilisation Activity and confirmation of successful Acceptance Test</u></b>	<b><u>Timescales to Rectify Issues</u></b>
1	Contractor					
2	Contractor					
3	Contractor					
4	Contractor					
5	Contractor					
6	Contractor					
7	Contractor					
8	Contractor					
9	Contractor					
10	Contractor					
11	Contractor					
12	Contractor					
13	Contractor					
14	Contractor					

15	Contractor					
16	Contractor					
17	Contractor					
18	Contractor					
19	Contractor					
20	Contractor					
20	Contractor					
21	Contractor					
22	Contractor					
23	Contractor					
24	Contractor					
25	Contractor					

**SCHEDULE 4**  
**PERFORMANCE MANAGEMENT**

1. The KPIs which the Parties have agreed shall be used to measure the performance of the Services by the Contractor are contained in the tables below.

**Table 1 – KPI TABLE**

	Contract KPI	Description of performance obligation	Measure of effectiveness: Objective	Method of Measurement	Type of Service Credit	Ratings (For reporting purposes only)
	KPI 1 Timelines	Accommodation shall be obtained and provided to the Occupant or family by the Required By Date (RBD) as instructed by the Authority in accordance with Booklet 3, Module E, Housing, Leaflets EL01 and EL02.				
	1.1	SSFA cases provided Accommodation by the Required By Date (RBD) as instructed by the Authority.	100% of Service Families shall have Substitute Accommodation secured and available for Move In on or before their RBD provided in the accordance with the Contract.	Monthly report to the Authority (Booklet 3, Module A, AL06 Document requirements) detailing achievement against the measurement of effectiveness: Objective, to include details of all instances when the Objective was not met; and proposals to mitigate current and future failure.	Permanent.	To determined jointly post Contract Award (CA).
	1.2	SSSA cases provided Accommodation by the Required By Date (RBD) as instructed by the Authority.	100% of Service Singles shall have Substitute Accommodation secured and available for Move In on or before their RBD provided in the accordance with the Contract.	Monthly report to the Authority (Booklet 3, Module A, AL06 Document requirements) detailing achievement against the measurement of effectiveness: Objective, to include details of all instances when the Objective was not met; and proposals to mitigate current and future failure.	Permanent.	To determined jointly post Contract Award (CA).
	1.3	Temporary Accommodation should be provided where the RBD is missed. This will be minimum 3* hotels for SSSA and equivalent suitable serviced Accommodation for SSFA.	100% of permanent Accommodation sourced within 10 Business Days of RBD.	Monthly Report to the Authority (Booklet 3, Module A, AL06 Document requirements) detailing achievement against the 'Measurement of Effectiveness: Objective', to include details of properties sourced that are not in accordance with the requirements of the Contract. Report to include proposals to mitigate current and future failures	None.	To determined jointly post Contract Award (CA).
	KPI 2 Entitlement / Standard	Substitute Accommodation shall be obtained that's meets the Entitlement, radii/travelling time (defined in JSP464 for singles and families) and standard provided to the Occupants in accordance Booklet 3, Module C, Statutory and Mandatory. Unless directed by the Authority.				
	2.1	Obtain Substitute Accommodation that meets the Applicant's Entitlement, size, radii and travel time as defined in Conditions of Contract.	100% of sourced properties have met the Applicant's Entitlement, size and radii for each Application. The Contractor has provided suitable evidence in order to demonstrate the inability to utilise existing bed spaces.	Monthly Report to the Authority (Booklet 3, Module A, AL06 Document requirements) detailing achievement against the "Measurement of Effectiveness: Objective". To include details of properties sourced that are not to Entitlement, size or radii and/or not in accordance with the requirements of the Contract.	Permanent.	To determined jointly post Contract Award (CA).
	2.2	Accommodation shall be obtained and provided to Occupants to the required standard in accordance with Booklet 3, Module C, Statutory and Mandatory.	100% of sourced properties shall be provided to Applicants of Substitute Accommodation to the required standard in accordance with Contract Deliverables, Booklet 3, Module C, Statutory and Mandatory.	14 Day report accessed by the Authority and timelines provided by the Contractor to provide full detail of standard issues. Review of Move In and Move Out Inventories and any additional items listed in the Booklet 3, Module A, Leaflet AL06 Document requirements.  Monthly Report to the Authority (Booklet 3, Module A, AL06 Document requirements) detailing achievement against the 'Measurement of Effectiveness: Objective', to include details of properties sourced that are not in accordance with the requirements of the Contract. Report to include proposals to mitigate current and future failures	Permanent.	To determined jointly post Contract Award (CA).



	2.3	This shall include the Contractor providing suitable evidence in support of the utilisation of bed spaces prior to the utilisation of new properties for sharing ranks.	Minimum 75% utilisation of bedspaces within multi occupancy properties	Monthly Report to the Authority (Booklet 3, Module A, AL06 Document requirements) detailing achievement against the "Measurement of Effectiveness: Objective". To include regional details of bed space occupancy and void bed spaces.	None.	To determined jointly post Contract Award (CA).
	KPI 3 Customer Service	Customer service shall be provided in accordance with Booklet 3, Module B, Helpline Services and demonstrate consideration of continuous improvement.				
	KPI 3.1	Resolution of Stage 1 Complaints. The Contractor shall manage Complaints in accordance with Booklet 3, Module B, Helpline Services.  This is to include continuous improvement based on the results of the Complaints analysis.	The Contractor shall resolve 100% of Stage 1 Complaints within 10 Business Days of receipt.	Monthly Report to the Authority (Booklet 3, Module A, Leaflet AL06 Document requirements) detailing achievement against the objective, to include details of instances when the target was not met. Quarterly Report to the Quarterly Strategic Meeting detailing the same. Closure will be granted by the Authority at successful resolution at the satisfaction of the complainant.	Temporary.	To determined jointly post Contract Award (CA).
	3.2	Complaints escalated to Stage 2. The Contractor shall manage Complaints in accordance with Booklet 3, Module B, Helpline Services.  This is to include continuous improvement based on the results of the Complaints analysis.	No more than 2% of Complaints escalated to Stage 2 during the period being measured.	Number of Complaints escalated to Stage 2 - a count of the number of Complaints which have escalated to Stage 2 in the period being measured. Number of Complaints received - a count of the number of Complaints received in the period being measured. At the completion of the period being measured, measure the number of unresolved Stage 1 Complaints which have escalated to the Authority as Stage 2 Complaints, expressed as a percentage of the number of Stage 1 Complaints received during the period being measured.  Monthly Report to the Authority (Booklet 3, Module A, AL06 Document requirements) detailing achievement against the objective, to include details of instances when the target was not met. Quarterly Report to the Quarterly Strategic Meeting detailing the same.	None.	To determined jointly post Contract Award (CA).
	3.3	Calls Abandoned. The Contractor shall manage calls abandoned in accordance with Booklet 3, Module B, Helpline Services.	No more than 6% of calls abandoned during the period being measured.	Calls abandoned - a count of the number of calls which failed to be answered by the Helpline and resulted in the call being terminated by the caller, in the period being measured. Calls offered - a count of the total number of calls made to the Helpline in the period being measured. This is to include calls which were not answered. At the completion of the period being measured, measure the number of calls abandoned in the period being measured as a percentage of the total number of calls offered in the period being measured.  Monthly Report to the Authority (Booklet 3, Module A, AL06 Document requirements) detailing achievement against the objective, to include details of instances when the target was not met. Quarterly Report to the Quarterly Strategic Meeting detailing the same.	None.	To determined jointly post Contract Award (CA).
	3.4	Call Answering. The Contractor shall manage call answering in accordance with Booklet 3, Module B, Helpline Services.	95% of calls answered within 120 seconds during the period being measured.	Total time taken for calls to be answered by operatives at the Helpline in the period being measured. Total number of calls answered by operatives at the Helpline in the period being measured. At the completion of the period being measured, measure the average time taken to answer calls to the Helpline.  Monthly Report to the Authority (Booklet 3, Module A, AL06 Document requirements) detailing achievement against the objective, to include details of instances when the target was not met. Quarterly Report to the Quarterly Strategic Meeting detailing the same.	None.	To determined jointly post Contract Award (CA).
	3.5	Other forms of 'automated customer service media.'	To determined jointly based on the Contractor's Tender submission post Contract Award (CA).	To determined jointly based on the Contractor's Tender submission post Contract Award (CA).	None.	To determined jointly post Contract Award (CA).

	KPI4 Maintenance	The Contractor shall manage and resolve all four maintenance categories in accordance with Booklet 3, Module D, Maintenance Services and provide and demonstrate consideration of continuous improvement.				
	4.1	The Contractor shall manage and resolve all Emergency Maintenance issues in accordance with Booklet 3, Module D, Maintenance Services and provide and demonstrate consideration of continuous improvement.	100% of Emergency Maintenance events are managed and resolved in accordance with Contract Deliverables, Booklet 3, Module D, Maintenance Services, Leaflet DL01. The Contractor has provided and demonstrated consideration of continuous improvement.	Monthly Report to the Authority (Booklet 3, Module A, AL06 Document requirements) detailing achievement against the “Measurement of Effectiveness; Objective”, to include details of all instances when the Objective was not met; and proposals to mitigate current and future failure.	Permanent.	To determined jointly post Contract Award (CA).
	4.2	The Contractor shall manage and resolve all Critical Maintenance issues in accordance with Booklet 3, Module D, Maintenance Services and provide and demonstrate consideration of continuous improvement.	95% of Critical Maintenance events are managed and resolved within 12 hours with the remaining 5% resolved with 24 hours, in accordance with Contract Deliverables, Booklet 3, Module D, Maintenance Services. The Contractor has provided and demonstrated consideration of continuous improvement.	Monthly Report to the Authority (Booklet 3, Module A, AL06 Document requirements) detailing achievement against the “Measurement of Effectiveness; Objective”, to include details of all instances when the Objective was not met; and proposals to mitigate current and future failure.	Permanent.	To determined jointly post Contract Award (CA).
	4.3	The Contractor shall manage and resolve all Urgent Maintenance issues in accordance with Booklet 3, Module D, Maintenance Services and provide and demonstrate consideration of continuous improvement.	90% of Urgent Maintenance events are managed and resolved within 5 Business Days with the remaining 10% in an additional 3 Business Days in accordance with Booklet 3, Module D, Maintenance Services. The Contractor has provided and demonstrated consideration of continuous improvement.	Monthly Report to the Authority (Booklet 3, Module A, AL06 Document requirements) & Assurance require detailing achievement against the “Measurement of Effectiveness; Objective”, to include details of all instances when the Objective was not met; and proposals to mitigate current and future failure.	Temporary.	To determined jointly post Contract Award (CA).
	4.4	The Contractor shall manage and resolve all routine maintenance issues in accordance with Booklet 3, Module D, Maintenance Services and provide and demonstrate consideration of continuous improvement.	90% of routine maintenance events are managed and resolved within 15 Business Days with the remaining 10% in an additional 7 Business Days in accordance with in accordance with Booklet 3, Module D, Maintenance Services. The Contractor has provided and demonstrated consideration of continuous improvement.	Monthly Report to the Authority (Booklet 3, Module A, AL06 Document requirements) detailing Assurance require achievement against the “Measurement of Effectiveness; Objective”, to include details of all instances when the Objective was not met; and proposals to mitigate current and future failure.	Temporary.	To determined jointly post Contract Award (CA).
	KPI 5 Manage Data	Capture, record, store and manage the data as required by the employer ensuring flexible, accurate, appropriate and prompt Management Information	Provide the Authority with 100% of justified Management Information as described by Booklet 3, Module A, Leaflet AL04 Man Info and Leaflet AL06 Document Requirement within agreed timescales, to include trend analysis.	Routine Weekly/monthly/quarterly Management Information as defined in the Booklet 3, Module A, Leaflet AL04 Man Info and Leaflet AL06 Document Requirement is received on time whilst ad-hoc requests by the agreed time and date. Integrity Verification/accuracy confirmation is provided by the Contractor for each report provided.	Temporary.	To determined jointly post Contract Award (CA).
	KPI 6 Appointments	The Contractor shall book and attend all pre-approved appointments in accordance with the appointments required for each Occupant/Application in accordance with Booklet 3, Module E, Housing.	100% of all pre-approved appointments to be booked and attended by the Contractor at the agreed time and date with the Occupant/Applicant.	Monthly reports to the Authority (Booklet 3, Module A, AL06 Document requirements) detailing achievement against the objective, including time booked, time arrived and time left appointment.	Permanent.	To determined jointly post Contract Award (CA).

### Calculation of Service Credits

2. If the level of performance of the Contractor during a KPI Calculation Period achieves the KPI Target applicable to that KPI, no Service Credits shall accrue in respect of that KPI.
3. Where applicable, if there is a Service Failure in a KPI Calculation Period, Service Credits shall accrue on the following basis:
  - 3.1 The amount of each Service Credit to be applied will depend upon the number of Service Failures occurring during that KPI Calculation Period in relation to each KPI. The number of Service Failures will be banded in accordance with Table 2 below:

KPI Number	Title	Service Credit Band & Multiplier (£) per Service Failure			
			Band 1	Band 2	Band 3
1	Timelines				
1.1	Timeline for SSFA Cases	No. of Failures	1 - 5	6 - 10	11 - 15
		Multiplier (£)	600	700	800
1.2	Timeline for SSSA Cases	No. of Failures	1 - 15	16 - 25	26 - 30
		Multiplier (£)	350	400	500
1.3	Timeline for Temporary Accommodation	N/A	-	-	-
2	Entitlement and Standard				
2.1	Meet Entitlement, Size, Radii and Travel Time	No. of Failures	1 - 5	6 - 10	11 - 15
		Multiplier (£)	600	700	800
2.2	Meet Standard	No. of Failures	1 - 15	16 - 25	26 - 30
		Multiplier (£)	600	700	800
2.3	Utilisation of Bed Spaces	N/A	-	-	-
3	Customer Service				
3.1	Resolution of Stage 1 Complaints	No. of Failures	1 - 15	16 - 25	26 - 30
		Multiplier (£)	150	200	250
3.2	Stage 2 Complaints	N/A	-	-	-
3.3	Calls Abandoned	N/A	-	-	-
3.4	Call Answering	N/A	-	-	-
3.5	Other forms of customer service	TBC	-	-	-
4	Maintenance				
4.1	Emergency Maintenance	No. of Failures	1 - 5	6 - 10	11 - 15

		Multiplier (£)	750	1000	1250
4.2	Critical Maintenance	No. of Failures	1 - 5	6 - 10	11 - 15
		Multiplier (£)	300	400	500
4.3	Urgent Maintenance	No. of Failures	1 - 25	26 - 50	51 - 75
		Multiplier (£)	150	200	250
4.4	Routine Maintenance	No. of Failures	1 - 25	26 - 50	51 - 75
		Multiplier (£)	75	100	125
5	Manage Data				
5	Manage Data	No. of Failures	1 - 15	16 - 25	26 - 30
		Multiplier (£)	150	200	250
6	Appointments				
6	Appointments	No. of Failures	1 - 25	26 - 45	41 - 50
		Multiplier (£)	150	200	250

*Table 2*

- 3.2 Service Credits shall be calculated by multiplying the number of Service Failures committed in respect of that KPI by the relevant Multiplier in each respective band. This may be expressed using the following formula in relation to each KPI:

$$\text{Service Credit} = \text{Number of Service Failures} \times \text{Multiplier Amount (£)}$$

The total amount of Service Credits shall be capped at £146,375 ("the Service Credits Cap") for each KPI Calculation Period unless the Contractor has committed a Catastrophic Failure in accordance with Clause 3.11 below.

- 3.3 The following KPIs will result in a Service Credit which will be a permanent deduction from the next Monthly Service Charge payment due to the Contractor, which the Contractor will not recover by rectifying the Service Failure:

*KPIs 1.1, 1.2, 2.1, 2.2, 4.1, 4.2 and 6.*

- 3.4 The following KPIs will result in a Service Credits which will be a temporary retention from the next Monthly Service Charge payment due to the Contractor, which the Contractor is able to recover by rectifying the Service Failure in accordance with paragraph 3.5.

*KPIs 3.1, 4.3, 4.4 and 5*

- 3.5 If the Contractor resolves, to the satisfaction of the Authority, all of the Service Failures for which a temporary retention has been applied in accordance with paragraph 3.4 the Authority shall re-credit the retained amount in the following Monthly Service Charge payment.

- 3.6 If on the second consecutive KPI Calculation Period, the Contractor has not resolved a Service Failure in accordance with paragraph 3.5 the Service Credit applicable to that

Service Failure shall become a permanent retention and not recoverable by the Contractor. The Contractor may submit evidence of mitigation to the Authority to request an extension to the temporary retention period. The Authority will review any requests and inform the Contractor of the decision in writing within a reasonable period. Any extension period granted will be determined by the Authority at their discretion.

- 3.7 In accordance with paragraph 3.6 Service Failures which remain unresolved following a permanent retention in subsequent KPI Calculation Periods will result in a Service Credit which will be permanent until the Service Failure has been resolved.
- 3.8 Service Failures which have resulted in a Service Credit in a KPI Calculation Period which remain unresolved at the end of a subsequent KPI Calculation Period shall be treated as a Service Failure in the subsequent KPI Calculation Period and accrue a further Service Credit.
- 3.9 For KPI 5 Management Data, if a failure is identified in a KPI Calculation Period after the KPI Calculation Period in which the data was submitted, it shall be treated as a Service Failure in the KPI Calculation Period in which it was identified and accrue a Service Credit.

#### Consistent Failure

3.10 If the Contractor:

- (a) In respect of KPIs 1.1, 1.2, 2.1, 2.2, 3.1, 4.1, 4.2, 4.3, 4.4 and 6 reaching Band 2 in accordance with Table 2, for three (3) consecutive KPI Calculation Periods; or
- (b) In respect of KPI 5 reaching Band 2 for two (2) consecutive KPI Calculation Periods; or
- (c) reaches Band 2 collectively for KPIs 1.1, 1.2, 2.1 and 2.2 in accordance with Table 2 in any one KPI Calculation Period; or
- (d) reaches Band 2 collectively for KPIs 4.1, 4.2, 4.3 and 4.4 in accordance with Table 2 in any one KPI Calculation Period; or
- (e) in respect of KPI 4.4 where 10 or more failures are open for four (4) consecutive KPI Calculation Periods; or
- (f) is liable to pay the Authority £75,000 in Service Credits for two (2) consecutive KPI Calculation Periods: or
- (g) in respect of KPIs 1.3, 2.3, 3.2, 3.3, 3.4, does not meet the Measure of effectiveness: Objective in Table 1 for three (3) consecutive KPI Calculation Periods.

the Contractor shall have committed a Consistent Failure and the Authority, at its discretion can choose to either:

- i) terminate this Contract in accordance with Clause 19.2 (Contractor's Default)
- ii) notify the Contractor of the Consistent Failure and request a performance improvement plan to be provided and implemented within ten (10) Business Days of receiving the notice.

If the Authority chooses option (ii) above, it reserves its right to terminate the Contract if there is no improvement, in the Authority's opinion, in the next KPI Calculation Period.

### Catastrophic Failure

#### 3.11 If the Contractor:

- (a) Reaches Band 3 for any KPI in accordance with Table 2 in two (2) consecutive KPI Calculation Periods;
- (b) Reaches Band 3 collectively for KPIs 1.1, 1.2, 2.1 and 2.2 in accordance with Table 2 in any one (1) KPI Calculation Period;
- (c) Reaches Band 3 collectively for KPIs 4.1, 4.2, 4.3 and 4.4 in accordance with Table 2 in any one (1) KPI Calculation Period; or
- (d) Reaches Band 3 for KPI 5 in accordance with Table 2 in any one (1) KPI Calculation Period;

the Contractor shall have committed a Catastrophic Failure and the Authority, at its discretion can choose to either:

- (i) terminate this Contract in accordance with Clause 19.2 (Contractor's Default); or
- (ii) notify the Contractor of the Catastrophic Failure and temporarily remove the Band 3 caps in Table 2 above for all KPIs for the next KPI Calculation Period up to an increase of 40% to the Service Credit Cap. Following said notification, the Contractor will be required to demonstrate to the Authority how they plan to remedy the Catastrophic Failure and the proposed timescales.

If the Authority chooses option (ii) above, it reserves its right to terminate the Contract if there is no improvement, in the Authority's opinion, by the end of the next KPI Calculation Period.

- 3.12 Any calculation made in respect of part of a KPI Calculation Period shall be applied on a pro-rata basis.
- 3.13 The Contractor may make representations to the Authority in relation to any extenuating circumstances beyond the Contractor's control, which it wishes the Authority to take into account when applying this Schedule 4. The Authority may, at its absolute discretion, provide such relief to the Contractor as the Authority believes to be fair and reasonable. Representations for any relief of these KPIs are to be made within the Monthly Performance Meetings as per Booklet 3, Module A, Section 11.
- 3.14 Notwithstanding the provisions of Table 1 above or any other provision in the Contract, no KPI Calculation Period shall commence and no Service Credits or right to terminate shall accrue for a period of three (3) months from (as applicable) the date of novation, assignment or other transfer of any lease (in whole or in part) in respect of Accommodation previously provided by the outgoing contractor.
- 3.15 Notwithstanding the provisions of Table 1 above or any other provision in the Contract, no Service Credits in respect of KPI 1.1 or KPI 1.2 or right to terminate for the same shall accrue where the Contractor has provided Temporary Accommodation in accordance with Clause 15 and Booklet 3.

The following is a worked example to assist understanding

Should the Contractor fail to achieve 9 critical maintenance events (KPI 4.2) within a KPI Calculation Period, a permanent deduction of £3,600 shall apply. This being:

Unit Cost = £400 (Based upon Band 2 failure unit cost)

Number of Failures in Month = 9

Total deduction –  $9 \times £400 = £3,600$

Should the Contractor fail to resolve 27 Complaints (KPI 3.1) within a KPI Calculation Period, a temporary retention of £6,750 shall apply. This being:

Unit Cost - £250 (Based upon Band 3 failure unit cost)

Number of Failures in Month = 27

Total deduction =  $27 \times 250 = £6,750$

## **SCHEDULE 5**

### **EXIT MANAGEMENT PLAN**

The Contractor shall provide a full Exit Management Plan for the Authority's approval by no later than two (2) months post ISD, which shall come into effect upon the termination of the Contract in accordance with Clause 19 and shall provide for an orderly migration of the Services to the Authority or a Replacement Contractor. It shall, as a minimum, provide for the following:

- transferring existing leases from the Contractor to a Replacement Contractor in order to preserve continued and uninterrupted occupation for the Occupants
- ensuring the undertaking of Move Outs and lease expiration requirements during the Run-Off Period
- ensuring the continued management of leases during the Run-Off Period, including provisions to preserve continued and uninterrupted occupation for the Occupants
- ensuring that monthly property rentals are not increased unreasonably during implementation of the Exit Management Plan
- transfer of Management Information from the Contractor to the Authority and/or a Replacement Contractor
- ensuring that delivery of the Services is not prejudiced prior to, during or after the implementation of the Exit Management Plan
- the appropriate transfer of all data either contained on the Contractor's IS or in paper form (e.g. customer satisfaction surveys, Occupant User Guides etc) to the Authority and/or a Replacement Contractor
- handover training being provided to the Authority and/or a Replacement Contractor if deemed necessary by the Authority
- appropriate arrangements in respect of any extant extended leases
- appropriate information of all employees affected by TUPE
- a timescale for the implementation of the Exit Management Plan detailing key milestones and a process enabling the Authority to retain a proportion of the Monthly Service Charge if dates are not met.
- a risk management register to collect and describe risks relating to the Exit Management Plan and its implementation. Each risk shall be costed pre and post mitigation and contain appropriate mitigations and shall be updated on a regular basis. The programme for updating the risk management register is to be agreed with the Authority
- a process for the review of the Exit Management Plan during the Contract Period and the agreement of any amendments or revisions with the Authority



## SCHEDULE 6

### TRANSFER REGULATIONS

#### PART 1 - EMPLOYEE TRANSFER ARRANGEMENTS ON ENTRY

##### 1 DEFINITIONS

- 1.2 In this Schedule 6 Part 1, save where otherwise provided, words and terms defined in Schedule 1 (Definitions) of the Contract shall have the meaning ascribed to them in Schedule 1 (Definitions) of the Contract.
- 1.3 Without prejudice to Schedule 1 (Definitions) of the Contract, in this Schedule 6 Part 1 unless the context otherwise requires:

**"Data Protection Legislation"** means: (i) Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (the **"General Data Protection Regulation"**); (ii) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; and (iii) all applicable Law about the processing of personal data and privacy;

**"Employing Sub-Contractor"** means any sub-contractor of the Contractor providing any part of the Services who is or is to be the employer of an Authority Employee or a Previous Contractor Employee.

**"New Provider"** means any replacement service provider or providers engaged to provide the Services (or part thereof) or substantially similar services or the Authority itself where the Services or substantially similar services or part thereof continue to be provided by the Authority after partial termination, termination or expiry of this Contract;

**"Previous Contractor"** means Mears Limited;

**"Previous Contractor Employee"** means an employee of a Previous Contractor who immediately before the Relevant Transfer Date is assigned to carry out the services to be carried out by the Contractor or Sub-contractor under this Contract and who has not been dismissed, resigned, been reassigned or objected to the Relevant Transfer;

**"Relevant Statutory Scheme"** has the same meaning as in Regulation 8 of the Transfer Regulations;

**"Relevant Transfer"** means a transfer to the Contractor or an Employing Sub-Contractor of a Previous Contractor Employee pursuant to this Contract and the Transfer Regulations;

**"Relevant Transfer Date"** means the date on which a Relevant Transfer is effected for Previous Contractor Employees;

**"Services"** shall have the meaning specified in Booklet 2 Conditions of Contract, Schedule 1 (Definitions);

**"Transfer Regulations"** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time and/or the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 (as amended from time to time), as appropriate.

## **2 PREVIOUS CONTRACTOR EMPLOYEES**

### **2.1 Employee Information**

- 2.1.1 No later than three (3) months prior to the Relevant Transfer Date the Authority shall provide to the Contractor the information listed in Appendix 1 of this Schedule 6 Part 1 in respect of Previous Contractor Employees to the extent that such information has been provided to the Authority by the Previous Contractor.
- 2.1.2 The Authority shall provide the Contractor with any update to the information provided under paragraph 2.1.1 as soon as is reasonably practicable, to the extent that such information has been provided to the Authority by the Previous Contractor.
- 2.1.3 The Contractor shall provide any information provided to it by the Authority pursuant to paragraph 2.1.1 to an Employing Sub-Contractor within seven (7) Business Days of receipt to the extent that such Previous Contractor Employees are to transfer to an Employing Sub-Contractor under a Relevant Transfer on the Relevant Transfer Date.
- 2.1.4 Paragraph 2.1.1 is subject to the Authority and any Previous Contractor's obligations in respect of the Data Protection Legislation and any data provided by the Authority in accordance with paragraph 2.1.1 shall be provided in anonymous form in order to enable its disclosure. To the extent anonymous data has been provided by the Authority pursuant to its obligations under Paragraph 2.1.1 above, the Authority shall provide full data no later than twenty-eight (28) days prior to the Relevant Transfer.
- 2.1.5 The Authority does not warrant the accuracy of the information provided under paragraph 2.1.1.

### **2.2 Obligations in respect of Previous Contractor Employees**

- 2.2.1 The Contractor and the Authority acknowledge (and the Contractor shall procure that the Employing Sub-Contractor acknowledges) that the provision of the Services under this Contract will constitute a Relevant Transfer.
- 2.2.2 The Contractor agrees (and will procure that the Employing Sub-Contractor agrees) that from the Relevant Transfer Date the contracts of employment of any Previous Contractor Employees together with any collective agreements (save insofar as such contracts and such agreements relate to benefits for old age, invalidity or survivors under any occupational pension scheme or otherwise do not transfer pursuant to regulation 4A of the Transfer Regulations) will take effect as if originally made between the Contractor or an Employing Sub-Contractor and the Previous Contractor Employees (or the relevant trade union, as the case may be) subject to any variations to such contracts of employment made pursuant to Regulation 9 of the Transfer Regulations, where applicable.
- 2.2.3 The Contractor agrees that it will comply with its obligations under sections 257 and 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005.
- 2.2.4 Save for any liabilities in respect of Previous Contractor Employees under a Relevant Statutory Scheme or Schemes, the Contractor or Employing Sub-Contractor (as the case may be) shall have responsibility for all emoluments and outgoings (including without limitation all wages, bonuses, commissions, payments in respect of holiday taken after the Relevant Transfer Date as appropriate, PAYE, national insurance contributions and contributions to retirement benefit schemes) in relation to the Previous Contractor Employees with effect from and including the Relevant Transfer

Date and shall indemnify the Authority and the Previous Contractor in respect of the same.

## **2.3 Indemnities**

2.3.1 The Contractor shall indemnify and hold harmless the Authority and any Previous Contractor against all demands, claims, liabilities, losses and damages, costs and expenses (including all interest, penalties, legal and other costs and expenses) together with any applicable Value Added and similar taxes or liability for deduction of PAYE tax properly incurred by the Authority or any Previous Contractor arising out of or in connection with:

- (a) any breach by the Contractor and/or any Employing Sub-Contractor of their obligations under Regulation 13 of the Transfer Regulations;
- (b) any act or proposal by the Contractor or any Employing Sub-Contractor prior to or following the Relevant Transfer Date which amounts to a repudiatory breach of contract as referred to in Regulation 4(11) of the Transfer Regulations and/or to make a substantial change in working conditions of any Previous Contractor Employee to the material detriment of that employee. For the purposes of this sub-clause the expressions “repudiatory breach”, “substantial change” and “material detriment” shall have the same meanings as for the purposes of Regulation 4(9) and 4(11) of the Transfer Regulations; and
- (c) any collective agreement or any arrangement with any trade union or staff association after the Relevant Transfer Date.
- (d) Any variations or proposed variations to any Previous Contractor Employee’s terms and conditions of employment pursuant to regulations 4(5) and 4(5B).

## **3 GENERAL PROVISIONS APPLICABLE TO PREVIOUS CONTRACTOR EMPLOYEES AND CONTRACTOR PERSONNEL**

### **3.1 Contractor Indemnity**

3.1.1 The Contractor shall indemnify the Authority and any New Provider against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with the employment or termination of employment by the Contractor or any Employing Sub-Contractor of any person (including the Previous Contractor Employees) engaged in connection with the provision of the Services during the term of this Agreement.

### **3.2 Post Transfer Reporting**

3.2.1 The Contractor shall upon request by the Authority provide (or shall procure that an Employing Sub-Contractor shall provide) the Authority with the following information in respect of the employees who are wholly or mainly employed, assigned or engaged in providing the Services:

- (a) any proposed, agreed or imposed changes to terms and conditions of service;
- (b) disputes relating to compliance with the Transfer Regulations which are regarded as unresolved by a recognised trade union;

- (c) any court action or tribunal proceedings relating to compliance with the Transfer Regulations;
- (d) completed court action or tribunal proceedings relating to compliance with the Transfer Regulations; and
- (e) out of court settlements relating to compliance with the Transfer Regulations if possible having regard to the wording of the settlement.

**PERSONNEL INFORMATION TO BE RELEASED PURSUANT TO THIS AGREEMENT**  
**PART A**

1. Pursuant to paragraph 2.1.1 of this Schedule 6 Part 1, the written statement of employment particulars as required by section 1 of the Employment Rights Act 1996 together with the following information (save where that information is included within that statement) will be provided to the extent it is not included within the written statement of employment particulars:

1.1 **Personal, Employment and Career**

- a) Age;
- b) Security Vetting Clearance;
- c) Job title;
- d) Work location;
- e) Conditioned hours of work;
- f) Employment Status;
- g) Details of training and operating licensing required for Statutory and Health and Safety reasons;
- h) Details of training or sponsorship commitments;
- i) Standard annual leave entitlement and current leave year entitlement and record;
- j) Annual leave reckonable service date;
- k) Details of disciplinary or grievance proceedings taken by or against transferring employees in the last two years;
- l) Information of any legal proceedings between employees and their employer within the previous two years or any such proceedings that the transferor has reasonable grounds to believe that an employee may bring against the transferee arising out of their employment with the transferor;
- m) Issue of Uniform/Protective Clothing;
- n) Working Time Directive opt-out forms; and
- o) Date from which the latest period of continuous employment began.

1.2 **Performance Appraisal**

- a) The current year's performance appraisal;
- b) Current year's training plan (if it exists); and
- c) Performance Pay Recommendations (PPR) forms completed in the current reporting year, or where relevant, any bonus entitlements;

1.3 **Superannuation and Pay**

- a) Maternity leave or other long-term leave of absence (meaning more than 4 weeks) planned or taken within the last two years;
- b) Annual salary and rates of pay band/grade;

- c) Shifts, unsociable hours or other premium rates of pay;
- d) Overtime history for the preceding twelve-month period;
- e) Allowances and bonuses for the preceding twelve-month period;
- f) Details of outstanding loan, advances on salary or debts;
- g) Cumulative pay for tax and pension purposes;
- h) Cumulative tax paid;
- i) National Insurance Number;
- j) National Insurance contribution rate;
- k) Other payments or deductions being made for statutory reasons;
- l) Any other voluntary deductions from pay;
- m) Pension Scheme Membership;
- n) For pension purposes, the notional reckonable service date;
- o) Pensionable pay history for three years to date of transfer;
- p) Percentage of any pay currently contributed under additional voluntary contribution arrangements; and
- q) Percentage of pay currently contributed under any added years arrangements.

#### 1.4 **Medical**

- a) Sickness and absence records for the immediately preceding four-year period; and
- b) Details of any active restoring efficiency case for health purposes.

#### 1.5 **Disciplinary**

- a) Details of any active restoring efficiency case for reasons of performance; and
- b) Details of any active disciplinary cases where corrective action is on going.

#### 1.6 **Further information**

- a) Information about specific adjustments that have been made for an individual under the Equality Act 2010;
- b) Short term variations to attendance hours to accommodate a domestic situation;
- c) Individuals that are members of the Reserves, or staff may have been granted special leave as a School Governor; and
- d) Information about any current or expected maternity or other statutory leave or other absence from work.

## **Part B**

1.6 Information to be provided 28 days prior to the Relevant Transfer Date:

- a) Employee's full name;
- b) Date of Birth
- c) Home address;
- d) Bank/building society account details for payroll purposes and tax code.

## PART 2 – STAFF TRANSFER ARRANGEMENTS ON EXIT

### 1. DEFINITIONS

1.1 In this Schedule 6 Part 2, save where otherwise provided, words and terms defined in Schedule 1 (Definitions) or Schedule 6 Part 1 of the Contract shall have the meaning ascribed to them in Schedule 1 (Definitions) or Schedule 6 Part 1 of the Contract.

1.2 Without prejudice to Schedule 1 (Definitions) of the Contract or Schedule 6, Part 1, in this Schedule 6 Part 2 unless the context otherwise requires:

**"Employee Liability Information"** has the same meaning as in Regulation 11(2) of the Transfer Regulations;

**"Employing Sub-Contractor"** means any sub-contractor of the Contractor providing all or any part of the Services who employs or engages any person in providing the Services;

**"Subsequent Relevant Transfer"** means a transfer of the employment of Subsequent Transferring Employees from the Contractor or any Employing Sub-Contractor to a New Provider or the Authority under the Transfer Regulations;

**"Subsequent Transfer Date"** means the date on which the transfer of a Subsequent Transferring Employee takes place under the Transfer Regulations;

**"Subsequent Transferring Employee"** means an employee wholly or mainly employed or otherwise assigned to the Services (or in respect of partial termination, the relevant part of the Services) whose employment transfers under the Transfer Regulations from the Contractor or any Employing Sub-Contractor to a New Provider;

**"Transfer Regulations"** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time and/or the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 (as amended from time to time), as appropriate.

### 2. EMPLOYMENT

#### 2.1 Information on Re-tender, Partial Termination, Termination or Expiry

2.1.1 No earlier than two (2) years preceding the termination, partial termination or expiry of this Contract or a potential Subsequent Transfer Date or at any time after the service of a notice to terminate this Contract or the provision of any of the Services (whether in whole or part) or on receipt of a written request by the Authority, the Contractor shall (and shall procure that any Employing Sub-Contractor shall):

(a) supply to the Authority such information as the Authority may reasonably require in order to consider the application of the Transfer Regulations on the termination, partial termination or expiry of this Contract;

(b) supply to the Authority such full and accurate and up-to-date information as may be requested by the Authority including the information listed in Appendix 1 to this Schedule 6 Part 2 relating to the employees who are wholly or mainly employed, assigned or



engaged in providing the Services or part of the Services under this Contract who may be subject to a Subsequent Relevant Transfer;

- (c) provide the information promptly and in any event not later than three (3) months from the date when a request for such information is made and at no cost to the Authority;
- (d) acknowledge that the Authority will use the information for informing any prospective New Provider for any services which are substantially the same as the Services or part of the Services provided pursuant to this Contract;
- (e) inform the Authority of any changes to the information provided under paragraph 2.1.1(a) or 2.1.1(b) up to the Subsequent Transfer Date as soon as reasonably practicable.

2.1.2 Three (3) months preceding the termination, partial termination or expiry of this Contract or on receipt of a written request from the Authority the Contractor shall:

- (a) ensure that Employee Liability Information and such information listed in Part A of Appendix 2 of Part 2 of this Schedule 6 (Personnel Information) relating to the Subsequent Transferring Employees is provided to the Authority and/or any New Provider;
- (b) inform the Authority and/or any New Provider of any changes to the information provided under this Paragraph 2.1.2 up to any Subsequent Transfer Date as soon as reasonably practicable;
- (c) enable and assist the Authority and/or any New Provider or any sub-contractor of a New Provider to communicate with and meet those employees and their trade union or other employee representatives.

2.1.3 No later than twenty eight (28) days prior to the Subsequent Transfer Date the Contractor shall provide the Authority and/or any New Provider with a final list of the Subsequent Transferring Employees together with the information listed in Part B of Appendix 2 of Part 2 of this Schedule 6 (Personnel Information) relating to the Subsequent Transferring Employees. The Contractor shall inform the Authority and/or New Provider of any changes to this list or information up to the Subsequent Transfer Date.

2.1.4 Within fourteen (14) days following the relevant Subsequent Transfer Date the Contractor shall provide to the Authority and/or any New Provider the information set out in Part C of Appendix 2 of this Schedule 6 in respect of Subsequent Transferring Employees.

2.1.5 Paragraphs 2.1.1 and 2.1.2 of this Appendix are subject to the Contractor's obligations in respect of the Data Protection Legislation and the Contractor shall use its best endeavours to obtain the consent of its employees (and shall procure that its Sub-contractors use their best endeavours to obtain the consent of their employees) to the extent necessary under the Data Protection Legislation or provide the data in an anonymous form in order to enable disclosure of the information required under paragraphs 2.1.1 and 2.1.2. Notwithstanding this paragraph 2.1.4, the Contractor acknowledges (and shall procure that its Sub-contractors acknowledge) that they are required to provide sufficient information to the Authority to enable the

Authority to determine the nature of the activities being undertaken by employees engaged in providing the Services, to assess whether there is an organised grouping for the purposes of the Transfer Regulations and to assess who is assigned to such organised grouping. To the extent that anonymous data has been provided by the Contractor pursuant to its obligations under Paragraph 2.1.1 or 2.1.2 above, the Contractor shall provide full data to the Authority no later than twenty-eight (28) days prior to the Subsequent Transfer Date.

2.1.6 On notification to the Contractor by the Authority of a New Provider or within the period of six (6) months prior to the Termination Date or after service of a notice to terminate this Contract (whether in whole or in part), whichever is earlier and in any event on receipt of a written request by the Authority, the Contractor shall not and shall procure that an Employing Sub-Contractor shall not:

- (a) materially amend or promise to amend the rates of remuneration or other terms and conditions of employment of any person wholly or mainly employed or engaged in providing the Services under this Contract; or
- (b) replace or re-deploy from the Services any person wholly or mainly employed or engaged in providing the Services, or materially increase or decrease the number of persons performing the Services under this Contract or the working time spent on the Services (or any part thereof); or
- (c) reorganise any working methods or assign to any person wholly or mainly employed or engaged in providing the Services (or any part thereof) any duties unconnected with the Services (or any part thereof) under this Contract; or
- (d) terminate or give notice to terminate the employment of any person wholly or mainly employed or engaged in providing the Services (or any part thereof) under this Contract other than in the case of serious misconduct or for poor performance,

save in the ordinary course of business and with the prior written consent of the Authority (not to be unreasonably withheld or delayed) and the Contractor shall indemnify and keep indemnified the Authority in respect of any reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any breach of paragraphs 2.1.1, 2.1.2, 2.1.3, 2.1.4 or 2.1.6 of this Schedule 6 Part 2.

2.1.7 The Authority may at any time prior to the period set out in paragraph 2.1.5 of this Schedule 6 Part 2 request from the Contractor any of the information in sections 1(a) to (d) of Appendix 1 and the Contractor shall and shall procure any Sub-contractor will provide the information requested within twenty eight (28) days of receipt of that request.

## **2.2 Obligations in Respect of Subsequent Transferring Employees**

2.2.1 To the extent that the Transfer Regulations apply on expiry, termination or partial termination of this Contract, the Contractor shall and shall procure any

Employing Sub-Contractor shall and the Authority shall and shall procure that a New Provider shall in such circumstances:

- (a) before and in relation to the Subsequent Transfer Date liaise with each other and shall co-operate with each other in order to implement effectively the smooth transfer of the Subsequent Transferring Employees to the Authority and/or a New Provider; and
- (b) comply with their respective obligations under the Transfer Regulations including their obligations to inform and consult under Regulation 13 of the Transfer Regulations.

## 2.3 Unexpected Subsequent Transferring Employees

2.3.1 If a claim or allegation is made by an employee or former employee of the Contractor or any Employing Sub-Contractor who is not named on the list of Subsequent Transferring Employees provided under paragraph 2.1.3 (an "**Unexpected Subsequent Transferring Employee**") that he has or should have transferred to the Authority and/or New Provider by virtue of the Transfer Regulations, the Party receiving the claim or allegation shall notify the other Party (or the Contractor shall notify the Authority on the Sub-contractor's behalf and the Authority shall notify the Contractor on the New Provider's behalf) in writing as soon as reasonably practicable and no later than ten (10) Business Days after receiving notification of the Unexpected Subsequent Transferring Employee's claim or allegation, whereupon:

- (a) the Contractor shall (or shall procure that the Employing Sub-Contractor shall), as soon as reasonably practicable, offer and/or confirm continued employment to the Unexpected Subsequent Transferring Employee or take such other steps so as to effect a written withdrawal of the claim or allegation; and
- (b) if the Unexpected Subsequent Transferring Employee's claim or allegation is not withdrawn or resolved the Contractor shall notify the Authority (who will notify any New Provider who is a party to such claim or allegation), and the Authority (insofar as it is permitted) and/or New Provider (as appropriate) shall employ the Unexpected Subsequent Transferring Employee or as soon as reasonably practicable, (subject to compliance with its obligations at paragraph 2.3.1(c)(iii)), serve notice to terminate the Unexpected Subsequent Transferring Employee's employment in accordance with his contract of employment; and
- (c) the Contractor shall indemnify the Authority against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any of the following liabilities incurred by the Authority or New Provider in dealing with or disposing of the Unexpected Subsequent Transferring Employee's claim or allegation:
  - (i) any additional costs of employing the Unexpected Subsequent Transferring Employee up to the date of dismissal where the Unexpected Subsequent Transferring Employee has been dismissed in accordance with paragraph 2.3.1(b);

- (ii) any liabilities acquired by virtue of the Transfer Regulations in relation to the Unexpected Subsequent Transferring Employee;
- (iii) any liabilities relating to the termination of the Unexpected Subsequent Transferring Employee's employment but excluding such proportion or amount of any liability for unfair dismissal, breach of contract or discrimination attributable:
  - (A) to a failure by the Authority or a New Provider to act reasonably to mitigate the costs of dismissing such person);
  - (B) to the acts/omissions of the Authority or a New Provider not wholly connected to the dismissal of that person;
- (iv) any liabilities incurred under a settlement of the Unexpected Subsequent Transferring Employee's claim which was reached with the express permission of the Contractor (not to be unreasonably withheld or delayed);
- (v) reasonable administrative costs incurred by the Authority or New Provider in dealing with the Unexpected Subsequent Transferring Employee's claim or allegation, subject to a cap per Unexpected Subsequent Transferring Employee of £5,000; and
- (vi) legal and other professional costs reasonably incurred;

2.3.2 the Authority shall be deemed to have waived its right to an indemnity under paragraph 2.3.1(c) if it fails without reasonable cause to take, or fails to procure any New Provider takes, any action in accordance with any of the timescales referred to in this paragraph 2.3.

## 2.4 **Indemnities on subsequent transfer under the Transfer Regulations on Partial Termination, Termination or Expiry of the Contract**

2.4.1 If on the expiry, termination or partial termination of the Contract there is a Subsequent Relevant Transfer, the Contractor shall indemnify the Authority and any New Provider against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any claim by any employee or trade union representative or employee representative arising whether before or after the Subsequent Transfer Date out of any failure by the Contractor or any Sub-contractor to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Subsequent Transferring Employee or any other employee of the Contractor or any Sub-contractor affected by the Subsequent Relevant Transfer (as defined by Regulation 13 of the Transfer Regulations), save to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities are a result of the act or omission of the Authority or the New Provider.

2.4.2 If there is a Subsequent Relevant Transfer, the Authority shall indemnify the Contractor against all reasonable costs (including reasonable legal costs)

losses and expenses and all damages, compensation, fines and liabilities arising out of, or in connection with:

- (a) any claim or claims by a Subsequent Transferring Employee at any time on or after the Subsequent Transfer Date which arise as a result of an act or omission of the Authority or a New Provider or a sub-contractor of a New Provider during the period from and including the Subsequent Transfer Date;
- (b) subject to paragraph 2.4.1 any claim by any employee or trade union representative or employee representative arising whether before or after the Subsequent Transfer Date out of any failure by the Authority or a New Provider or a sub-contractor of a New Provider to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Subsequent Transferring Employee or any other employee engaged wholly or mainly in connection with the Services by the New Provider or any other employee of the Authority or any New Provider affected by the Subsequent Relevant Transfer effected by this Contract (as defined by Regulation 13 of the Transfer Regulations),

save to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities are a result of the act or omission of the Contractor or any Employing Sub-Contractor.

- 2.4.3 In the event of a Subsequent Relevant Transfer, the Authority shall indemnify the Contractor in respect of all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and other liabilities arising out of or in connection with or as a result of a substantial change by the Authority [or a New Provider or any sub-contractor of a New Provider] on or after the Subsequent Transfer Date to the working conditions of any Subsequent Transferring Employee to the material detriment of any such Subsequent Transferring Employee. For the purposes of this paragraph 2.4.3, the expressions "substantial change" and "material detriment" shall have the meanings as are ascribed to them for the purposes of Regulation 4(9) of the Transfer Regulations.

## **2.5 Contracts (Rights of Third Parties) Act 1999**

- 2.5.1 Pursuant to the terms of DEFCON 537, a New Provider may enforce the terms of paragraph 2.3 and 2.4 against the Contractor in accordance with the Contracts (Rights of Third Parties) Act 1999.
- 2.5.2 The consent of a New Provider (save where the New Provider is the Authority) is not required to rescind, vary or terminate this Contract.
- 2.5.3 Nothing in this paragraph 2.5 shall affect the accrued rights of the New Provider prior to the rescission, variation, expiry or termination of this Contract.

## **2.6 General**

- 2.6.1 The Contractor shall not recover any costs and/or other losses under this Schedule where such costs and/or losses are recoverable by the Contractor

elsewhere in this Contract and/or are recoverable under the Transfer Regulations or otherwise.

**CONTRACTOR PERSONNEL-RELATED INFORMATION TO BE RELEASED UPON RE-TENDERING WHERE THE TRANSFER REGULATIONS APPLIES**

1. Pursuant to paragraph 2.1.1(b) of Part 2 of this Schedule 6, the following information will be provided:
  - a) The total number of individual employees (including any employees of Sub-contractors) that are currently engaged, assigned or employed in providing the Services and who may therefore be transferred. Alternatively, the Contractor should provide information why any of their employees or those of their Sub-contractors will not transfer;
  - b) The total number of posts or proportion of posts expressed as a full-time equivalent value that currently undertakes the work that is to transfer;
  - c) The preceding twelve (12) months total pay costs – (Pay, benefits employee/employer ERNIC and Overtime);
  - d) Total redundancy liability including any enhanced contractual payments;
2. In respect of those employees included in the total at 1(a), the following information:
  - a) Age (not date of Birth);
  - b) Employment Status (i.e. Fixed Term, Casual, Permanent);
  - c) Length of current period of continuous employment (in years, months) and notice entitlement;
  - d) Weekly conditioned hours of attendance (gross);
  - e) Standard Annual Holiday Entitlement (not "in year" holiday entitlement that may contain carry over or deficit from previous leave years);
  - f) Pension Scheme Membership;
  - g) Pension and redundancy liability information;
  - h) Annual Salary;
  - i) Details of any regular overtime commitments (these may be weekly, monthly or annual commitments for which staff may receive an overtime payment);
  - j) Details of attendance patterns that attract enhanced rates of pay or allowances;
  - k) Regular/recurring allowances;
  - l) Outstanding financial claims arising from employment (i.e. season ticket loans, transfer grants);
3. The information to be provided under this Appendix 1 should not identify an individual employee by name or other unique personal identifier unless such information is being provided twenty-eight (28) days prior to the Subsequent Transfer Date.
4. The Contractor will provide (and will procure that the Sub-contractors provide) the Authority/tenderers with access to the Contractor's and Sub-contractor's general

employment terms and conditions applicable to those employees identified at paragraph 1(a) of this Appendix 1.



## PERSONNEL INFORMATION TO BE RELEASED PURSUANT TO THIS CONTRACT

### Part A

1. Pursuant to paragraph 2.1.2 of this Schedule 6, part 2, the written statement of employment particulars as required by section 1 of the Employment Rights Act 1996 together with the following information (save where that information is included within that statement) which will be provided to the extent it is not included within the written statement of employment particulars:

#### 1.1 **Personal, Employment and Career**

- a) Age;
- b) Security Vetting Clearance;
- c) Job title;
- d) Work location;
- e) Conditioned hours of work;
- f) Employment Status;
- g) Details of training and operating licensing required for Statutory and Health and Safety reasons;
- h) Details of training or sponsorship commitments;
- i) Standard annual leave entitlement and current leave year entitlement and record;
- j) Annual leave reckonable service date;
- k) Details of disciplinary or grievance proceedings taken by or against transferring employees in the last two years;
- l) Information of any legal proceedings between employees and their employer within the previous two years or such proceedings that the transferor has reasonable grounds to believe that an employee may bring against the transferee arising out of their employment with the transferor;
- m) Issue of Uniform/Protective Clothing;
- n) Working Time Directive opt-out forms; and
- o) Date from which the latest period of continuous employment began.

#### 1.2 **Superannuation and Pay**

- a) Maternity leave or other long-term leave of absence (meaning more than 4 weeks) planned or taken during the last two years;
- b) Annual salary and rates of pay band/grade;
- c) Shifts, unsociable hours or other premium rates of pay;
- d) Overtime history for the preceding twelve-month period;
- e) Allowances and bonuses for the preceding twelve-month period;
- f) Details of outstanding loan, advances on salary or debts;
- g) Pension Scheme Membership;
- h) For pension purposes, the notional reckonable service date;

- i) Pensionable pay history for three years to date of transfer;
- j) Percentage of any pay currently contributed under additional voluntary contribution arrangements; and
- k) Percentage of pay currently contributed under any added years arrangements.

**1.3 Medical**

- a) Details of any period of sickness absence of 3 months or more in the preceding period of 12 months; and
- b) Details of any active restoring efficiency case for health purposes.

**1.4 Disciplinary**

- a) Details of any active restoring efficiency case for reasons of performance; and
- b) Details of any active disciplinary cases where corrective action is on going.

**1.5 Further information**

- a) Information about specific adjustments that have been made for an individual under the Equality Act 2010;
- b) Short term variations to attendance hours to accommodate a domestic situation;
- c) Individuals that are members of the Reserves, or staff that may have been granted special leave as a School Governor; and
- d) Information about any current or expected maternity or other statutory leave or other absence from work.

**Part B**

**1.6 Information to be provided 28 days prior to the Subsequent Transfer Date:**

- a) Employee's full name;
- b) Date of Birth
- c) Home address;
- d) Bank/building society account details for payroll purposes and tax code.

**PART C**

**1.7 Information to be provided within fourteen (14) days following a Subsequent Transfer Date:**

**1.7.1 Performance appraisal**

- a) The current year's performance appraisal;
- b) Current year's training plan (if it exists); and
- c) Performance Pay Recommendations (PPR) forms completed in the current reporting year, or where relevant, any bonus entitlements;

**1.7.2 Superannuation and Pay**

- a) Cumulative pay for tax and pension purposes;
- b) Cumulative tax paid;
- c) National Insurance Number;
- d) National Insurance contribution rate;
- e) Other payments or deductions being made for statutory reasons;
- f) Any other voluntary deductions from pay;

## **SCHEDULE 7**

### **CHANGE CONTROL PROCEDURE**

#### **1 GENERAL PRINCIPLES**

- 1.1 Subject always to the provisions contained in DEFCON 503 (Formal Amendments to Contract), the Authority shall be entitled, acting reasonably, to require changes to the Contractor Deliverables.
- 1.2 Where the Authority or the Contractor sees a need to change this Contract, the Authority may at any time request, and the Contractor may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this Schedule 7.
- 1.3 Until such time as a Change is made in accordance with the Change Control Procedure, the Authority and the Contractor shall, unless otherwise agreed in writing, continue to perform this Contract in compliance with its terms before such Change.
- 1.4 Any discussions which may take place between the Authority and the Contractor in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either Party.
- 1.5 Any work undertaken by the Contractor and the Contractor's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 7, shall be undertaken entirely at the expense and liability of the Contractor.
- 1.6 Any work undertaken by the Contractor in following this Change Control Procedure shall not be done so at the cost of the Authority. The management of the Change Control Procedure and cost of preparing Change Control Notes shall be borne by the Contractor and form part of the Fixed Annual Management Service Fee.

#### **2. PROCEDURE**

- 2.1 Discussion between the Authority and the Contractor concerning a Change shall result in any one of the following:
  - (a) no further action being taken; or
  - (b) a request to change this Contract by the Authority; or
  - (c) a recommendation to change this Contract by the Contractor.
- 2.2 If the Authority is proposing a Change, it shall do so by issuing a Change Notice to the Contractor who shall, unless otherwise agreed, submit two copies of a Change Control Note signed by an authorised Contractor Representative to the Authority within fifteen (15) Business Days of the date of the request.
- 2.3 The Change Notice shall set out the Change required to the Contractor Deliverables in sufficient detail to enable the Contractor to provide a written proposal (a Change Control Note) in accordance with Clause 2.5 below. A template Change Notice is included at Schedule 7, Appendix 1.
- 2.4 A recommendation to amend this Contract by the Contractor shall be submitted directly to the Authority in the form of two copies of a Change Control Note signed by an authorised Contractor Representative at the time of such recommendation. The Authority shall give its response to the Contractor recommendation Change Control Note within fifteen (15) Business Days.

2.5 Each Change Control Note shall contain:

- (a) the title of the Change;
- (b) the originator and date of the request or recommendation for the Change;
- (c) the reason for the Change;
- (d) full details of the Change, including any specifications;
- (e) a detailed breakdown of the price, if any, of the Change;
- (f) a timetable for implementation, together with any proposals for acceptance of the Change;
- (g) a schedule of payments if appropriate;
- (h) details of the likely impact, if any, of the Change on other aspects of this Contract including:
  - (i) the timetable for the provision of the change;
  - (ii) the personnel to be provided;
  - (iii) the Charges;
  - (iv) the documentation to be provided;
  - (v) the training to be provided;
  - (vi) working arrangements;
  - (vii) other contractual issues, including effect on Contractor Obligations;
- (i) any amendment required to the Contract documents or Booklets as a result of the change;
- (j) any such other information as the Authority may reasonably require;
- (k) the date of expiry of validity of the Change Control Note, which shall be a minimum of thirty (30) Calendar Days unless agreed otherwise; and
- (l) provision for signature by the Authority and the Contractor.

A template Change of Control Note is included at Schedule 7, Appendix 2.

2.6 The price for any Change shall be based on the prices (including all rates) already agreed for the Contract and shall include, without double recovery, only such charges that are fairly and properly attributable to the Change.

2.7 For each Change Control Note submitted by the Contractor the Authority shall, within the period of the validity of the Change Control Note:

- (a) allocate a sequential number to the Change Control Note; and
- (b) evaluate the Change Control Note and, as appropriate:
  - (i) request further information or reasonable additional time to respond;

- (ii) accept the Change Control Note by arranging for two copies of the Change Control Note to be signed by or on behalf of the Authority and return one of the copies to the Contractor; or
  - (iii) notify the Contractor of the rejection of the Change Control Note and withdrawing (where issued) the Change Notice, where applicable.
- 2.8 A Change Control Note signed by the Authority and by the Contractor shall constitute an amendment to this Contract. The Authority shall issue a serially numbered amendment letter in accordance with DEFCON 503 (Formal Amendments to Contract).
- 2.9 If the Authority rejects the Change proposal it shall not be obliged to give its reasons for such rejection.

# CHANGE NOTICE

To be completed in accordance with Schedule 7, Change Control Procedure

<b>PART 1: IDENTIFICATION OF POTENTIAL CHANGE</b> (To Be Completed By The Authority Originator)		Change Notice No:
Originator's Name:		Title / Role:
Type of Change:	Authority / Contractor*	Date raised:
<b>TITLE OF CHANGE:</b> <b>SHORT DESCRIPTION:</b> <b>REQUIRED BY DATE:</b>		
<b>Full description of proposed change and reason for change</b> (attach supporting information, as required)		
		<b>Category (tick)</b>
		<input type="checkbox"/> DIO Proposal
		<input type="checkbox"/> Statutory Authority Req't
		<input type="checkbox"/> Other (specify)
<b>PART 2: ISSUE CHANGE NOTICE</b> (To Be Issued By The Authority Representative)		
Issued By:		Role:
Signature:		Date:

\*Delete as appropriate

# CHANGE CONTROL NOTE

To be completed in accordance with Schedule 7, Change Control Procedure

<b>PART 1: CHANGE SUMMARY</b> (To Be Completed By The Contractor Representative)		Change Notice No: (If applicable)
Change Notice Originator's Name: (If applicable)		Change Notice Originator's Title / Role: (If applicable)
Date of Change Notice issue: (If applicable)		
Type of Change:                      Authority / Contractor*		
<b>TITLE OF CHANGE:</b>		
<b>SHORT DESCRIPTION:</b>		
<b>REQUIRED BY DATE:</b>		

\*Delete as appropriate

<b>Full description of proposed change and reason for change</b> (attach supporting information, as required)	
	<b>Category (tick)</b>
	<input type="checkbox"/> Contractor Proposal
	<input type="checkbox"/> DIO Proposal
	<input type="checkbox"/> Statutory Authority Req't
<input type="checkbox"/> Other (specify)	
<b>PART 2: CHANGE DETAILS</b> (To Be Completed By The Contractor Representative)	
<b>Full details of change, including any specifications</b> (attach supporting information, as required)	
<b>Detailed breakdown of the cost, if any, of the change</b> (attach supporting information, as required)	
<b>Timetable for implementation, together with any proposals for acceptance of the Change</b> (attach supporting information, as required)	





Signature:

Date:

Commercial approval:

I confirm this change represents value for money and give commercial approval for this change.

Name:

Title / Role:

Signature:

Date:

9

**SCHEDULE 8**  
**REQUIRED INSURANCES**

**1. Third Party Public Liability Insurance**

**1.1 Insured**  
Contractor

**1.2 Interest**  
To indemnify the insured in respect of all sums which the insured shall become legally liable to pay, whether contractually or otherwise (including claimant's costs and expenses), as damages in respect of accidental:

- (a) death or bodily injury to or sickness, illness or disease contracted by any person;
- (b) loss of or damage to property;

Happening during the period of insurance (in paragraph 1.5 below) and arising out of or in connection with this Contract.

**1.3 Limit of indemnity**  
Not less than ten million pounds (£10,000,000) in respect of any one occurrence, the number of occurrences being unlimited, but ten million pounds (£10,000,000) any one occurrence and in the aggregate per annum.

**1.4 Territorial limits**

United Kingdom.

**1.5 Period of insurance**

From the Effective Date of this Contract for the duration of the Contract and renewable on an annual basis unless agreed otherwise.

**1.6 Cover features and extensions**

- (a) Indemnity to principals clause.
- (b) Legal defence costs.
- (c) Contingent motor liability.
- (d) Health & Safety at Work Act(s) clause
- (e) Data Protection legislation clause
- (f) Consumer Protection Act 1987
- (g) Defence appeal and prosecution costs relating to the Corporate Manslaughter and Corporate Homicide Act 2007

**1.7 Principal exclusions**

- (a) War and related perils.

- (b) Nuclear and radioactive risks.
- (c) Liability for death, illness, disease or bodily injury sustained by employees of the insured arising out of the course of their employment.
- (d) Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles.
- (e) Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the insured.
- (f) Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.
- (g) Liability arising from contamination and pollution unless caused by an accidental, sudden, unintended and unexpected occurrence.

## **2. Professional Indemnity Insurance**

### **2.1 Insured**

Contractor

### **2.2 Interest**

To indemnify the insured for all sums which the insured shall become legally liable to pay (including claimants' costs and expenses) as a result of claims first made against the insured during the period of insurance (in paragraph 2.5 below) by reason of any negligent act, error and/or omission arising from or in connection with the advice, design, specification or professional services in connection with this Contract.

### **2.3 Limit of indemnity**

Not less than five million pounds (£5,000,000) in respect of any one and in the aggregate per annum.

### **2.4 Territorial limits**

United Kingdom.

### **2.5 Period of insurance**

From the Effective Date of this Contract and renewable on an annual basis unless agreed otherwise

- (a) throughout the duration of the Contract or until earlier termination of this Contract and
- (b) for a period of six (6) years thereafter.

### **2.6 Cover features and extensions**

- (a) Retroactive cover to apply to any claims made policy wording in respect of this Contract or retroactive date to be no later than the date of this Contract.
- (b) Documents, plans and computer records extension.

- (c) Legal defence costs in addition to policy limit.

## 2.7 **Principal exclusions**

- (a) War and related perils.
- (b) Nuclear and radioactive risks.

## 3. **Compulsory insurances (Employers Liability Insurance and Motor Vehicle Insurance)**

- 3.1 The Contractor is required to meet its United Kingdom and all other statutory or insurances required by law worldwide in full. Insurances are required to comply with all statutory requirements including, but not limited to, United Kingdom Employers' Liability Insurance and Motor Third Party Liability Insurance.

**SCHEDULE 9**

**DEFFORM 539A**

**Commercially Sensitive Information**