

DATED

2018

(1) THE SECRETARY OF STATE FOR DEFENCE
(Authority)

- and -

(2) []
(Contractor)

SHIPBUILDING CONTRACT

CSS/0113

for Fleet Solid Support Vessels

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SHIPBUILDING CONTRACT FOR FLEET SOLID SUPPORT VESSELS

THIS CONTRACT (CSS/0113) IS MADE THE XX DAY OF XX TWO THOUSAND AND XX

Between

(1) **THE SECRETARY OF STATE FOR DEFENCE** (The "**Authority**"), for and on behalf of the Crown and in exercise of all and any powers attaching to his office as Secretary of State for Defence, Defence Equipment and Support, Ministry of Defence, Abbeywood, Bristol BS34 8JH;

and

(2) **TBI AT CONTRACT AWARD** a [company] incorporated in [◆] [(company number [◆]) whose [registered office] [place of business] is at [◆]] (The "**Contractor**")

WHEREAS:

1. The Authority requires the Contractor to take responsibility for the design, build and supply of up to 3 Fleet Solid Support ("**FSS**") Vessels for the Royal Fleet Auxiliary ("**RFA**") in accordance with the terms set out in the Contract.
2. The Authority has undertaken a competitive tendering exercise in order to select the Contractor.
3. In consideration of the mutual covenants contained in the Contract, the Contractor agrees to design, construct, equip, launch and complete the Fleet Solid Support Vessels (herein each described as a "**Ship**") and the related ILS Deliverables as may be required by the Authority and the Authority agrees to purchase and pay for such Ships, in each case in accordance with the terms set out in the Contract.

IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1. In the Contract, defined terms shall have the meaning given to such terms in Schedule 0 (Definitions) (except where otherwise defined in the Contract).
- 1.2. In the Contract, except where the context otherwise requires:
 - 1.2.1. the masculine includes the feminine and vice versa and words importing the neuter includes the masculine and the feminine;
 - 1.2.2. the singular includes the plural and vice versa;
 - 1.2.3. references to any enactment, order, regulation, or other similar instrument shall be construed as a reference to the enactment, order, regulation, or instrument as amended or consolidated by any subsequent enactment, order, regulation, or instrument;
 - 1.2.4. the heading to any Clause, Paragraph, Schedule, Annex or Volume shall not affect the interpretation of that Clause, Paragraph, Schedule, Annex or Volume of the Contract;
 - 1.2.5. any decision, act, or thing which the Authority is required or authorised to take or do under the Contract may be taken or done only by any person authorised, either generally or specifically, by the Authority to take or do that decision, act, or thing on behalf of the Authority;
 - 1.2.6. a reference in the Contract to any Clause, Paragraph, Schedule or Annex is, except where expressly stated to the contrary, a reference to such Clause, Paragraph, Schedule or Annex of the Contract;
 - 1.2.7. any reference in the Contract to a range of Clauses, Paragraphs, Schedules or Annexes shall, except where expressly stated to the contrary, be inclusive of those Clauses, Paragraphs, Schedules or Annexes used to define the range;
 - 1.2.8. any reference to the Contract or to any other document shall include any permitted variation, amendment, supplement, novation or restatement to such document;
 - 1.2.9. any reference to any documents being "*in the agreed form*" means such documents have been initialled by or on behalf of each of the Parties for the purpose of identification;
 - 1.2.10. a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;
 - 1.2.11. all covenants, agreements, undertakings, indemnities, representations and warranties by more than one person are entered into, given or made by such persons jointly and severally;
 - 1.2.12. subject to Clause 81 (Assignment) any reference to a public organisation (other than the Authority) shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both the functions and responsibilities of such public organisation;
 - 1.2.13. any reference to the phrase "*agreed or determined*" means agreed between the Parties or otherwise determined pursuant to the resolution of any dispute under Clause 86 (Disputes);

- 1.2.14. the words and phrases “*other*”, “*including*” and “*in particular*” shall not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible;
- 1.2.15. any reference to any ISN website link is provided for information purposes only and such link does not form part of the Contract;
- 1.2.16. any reference to "Ship" means each Ship purchased in accordance with this Contract, all Ships or any number of Ships as the context may permit; and
- 1.2.17. any reference to "final Ship" shall be a reference to completion of the last Ship to be built under the Contract, being FSS.02 (as set out in the Schedule of Requirements) or in circumstances where the Authority has exercised its option under Clause 10 (Option), FSS.03 (as set out in the Schedule of Requirements).

2. SPECIFICATION AND PRECEDENCE OF DOCUMENTS

- 2.1. The design, construction, materials and workmanship of each Ship and other Contractor Deliverables shall be in accordance with the Specification and the provisions of the Contract and otherwise in accordance with European standards of shipbuilding practice. Each Ship shall be built at the Shipyards.
- 2.2. Any Contractor Proposals (including any plans) provided by the Contractor shall be provided for explanatory purposes to support the Specifications. The Contractor Proposals shall not form part of the Contract and should there be any inconsistencies or contradictions between the Contractor Proposals, the Specifications shall prevail.
- 2.3. Subject to Clause 2.2, the documents constituting the Contract are intended to be consistent. In the event of any ambiguity, conflict or inconsistency between the Contract and any document referred to or cross-referenced in the Contract, or between documents referred to or cross-referenced in the Contract, the conflict shall be resolved according to the following descending order of priority:
 - 2.3.1. Clauses 1 (Definitions and Interpretation) to 90 (Counterparts) and Schedule 0 (Definitions);
 - 2.3.2. Schedule 3 (Technical Specification);
 - 2.3.3. Schedule 2 (Project Management Specification) and Schedule 4 (ILS Specification); and
 - 2.3.4. Other Schedules of the Contract.

3. CONTRACT PERIOD

- 3.1. The Contract and the rights and obligations of the Parties to the Contract shall take effect on the date set out above and, except as set out in Clause 78 (Continuing Obligations), shall terminate on the earlier of:
 - 3.1.1. the date on which the Contractor has discharged all of its obligations in respect of the Contractor Deliverables and has been duly paid the Final Instalment Payment in respect of the same; or
 - 3.1.2. where the Contract is terminated in accordance with the terms of the Contract (other than a partial termination), the Termination Date.

4. CONTRACTOR WARRANTIES AND REPRESENTATIONS

Contractor Warranties

- 4.1. The Contractor warrants, undertakes and represents to the Authority in respect of itself, the Guarantor, Shareholders and each other Associated Company of the Contractor (together the "**Related Entities**") on the date of the Contract, and as regard warranties, undertakings and representations in this Clause 4.1 that relate to future occurrences at the time of such future occurrences, that:
- 4.1.1. each is properly constituted and incorporated and has the corporate power to own its assets and to carry on its business as it is now being conducted;
 - 4.1.2. each has the power to enter into and to exercise its rights and perform its obligations under the Contract;
 - 4.1.3. all action necessary on the part of the Contractor to authorise the execution of and the performance of its obligations under the Contract has been taken or, in the case of any such document executed after the date of the Contract, shall be taken before such execution;
 - 4.1.4. the obligations expressed to be assumed by the Contractor under the Contract are, or in the case of any such document executed after the date of the Contract shall be, legal, valid, binding and enforceable to the extent permitted by law and the Contract is or shall be in the proper form for enforcement in England;
 - 4.1.5. the execution, delivery and performance by it of the Contract does not contravene any provision of:
 - 4.1.5.1. any existing Legislation binding on the Contractor, including Legislation which has been enacted but is not yet in force;
 - 4.1.5.2. the memorandum and articles of association of the Contractor;
 - 4.1.5.3. any order or decree of any court or arbitrator which is binding on the Contractor;
 - 4.1.5.4. any obligation which is binding upon the Contractor or upon any of its assets or revenues;
 - 4.1.6. no claim is presently being assessed and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of each of them (having made all due enquiry), pending or threatened against the Contractor or any of the Related Entities assets which shall or might have a material adverse effect on the ability of the Contractor to perform its obligations under the Contract;
 - 4.1.7. each of the Related Entities is not the subject of any other obligation, compliance with which shall or is likely to have a material adverse effect on the ability of the Contractor to perform its obligations under the Contract;
 - 4.1.8. no Insolvency Event has occurred and no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, having made all due enquiry, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of the Contractor or the Related Entities assets or revenues (or any equivalent procedure);

- 4.1.9. it shall not, and in entering into the Contract it and the Related Entities has not, committed any Prohibited Act;
- 4.1.10. there is not and nor has there been any infringement or alleged infringement of any third party's IPR in connection with the Contract (excluding any Government Furnished Information);
- 4.1.11. it is subject to civil commercial law with respect to its obligations under the Contract and may be sued in its own name, and neither it nor any of its assets is entitled to any right of immunity, and the entry into and performance of the Contract by the Contractor constitute private and commercial acts; and
- 4.1.12. the legal and beneficial ownership as at the date of the Contract of the Contractor, the Guarantor and each Shareholder and each other Associated Company of the Contractor that is, or that the Contractor proposes to appoint as an Associated Sub-Contractor is as set out in Schedule 19 (Details of Contractor, Guarantor and Sub-Contractor) and that no arrangements are in place that have or may have or result in any sale, transfer or disposal of any legal, beneficial, equitable or other interest in any or all of the shares in the Contractor, the Guarantor, any Shareholder or any other Associated Company of the Contractor that is, or that the Contractor proposes to appoint as an Associated Sub-Contractor,

and the Authority relies upon such warranties and representations

Contractor Undertakings

- 4.2. The Contractor undertakes that it shall at all times throughout the duration of the Contract:
 - 4.2.1. provide notice to the Authority of any event or circumstance that is likely to affect the Contractor's ability to perform its obligations under the Contract or has the potential to cause reputational damage to the Authority, unless such notice is precluded by the rules of the court, arbitrator, administrator, adjudicator, mediator or any other relevant authority with jurisdiction over the event or circumstance:
 - 4.2.1.1. within ten (10) Business Days of the Contractor becoming aware that any event or circumstance as detailed in Clause 4.2.1 may be threatened or pending; and
 - 4.2.1.2. immediately after the commencement of any such event or circumstance;
 - 4.2.2. not undertake the performance of its obligations under the Contract otherwise than:
 - 4.2.2.1. at the Shipyards; and
 - 4.2.2.2. through itself or a Sub-Contractor.
 - 4.2.3. not create or permit to subsist any Security Interest over any Contractor Deliverable and procure that any Security Interest over any Contractor Deliverable is immediately discharged;
 - 4.2.4. not grant in favour of any other person any interest or any option or other right in relation to the Contractor Deliverables;

- 4.2.5. not to sell or agree to sell, abandon, transfer or assign any part of the Contractor Deliverables or deal with or dispose of any of the Contractor Deliverables (other than in accordance with the terms of the Contract);
- 4.2.6. prevent the arrest, seizure, capture, execution or detention of each Ship or any other Contractor Deliverables (or any part thereof);
- 4.2.7. provide a list of all materials allocated to any Ship or the Contractor Deliverables on request;
- 4.2.8. in relation to each Ship and other Contractor Deliverables, comply with all undertakings and covenants specified in Schedule 2 (Project Management Specification), Schedule 3 (Technical Specification) and Schedule 4 (Integrated Logistic Support (ILS) Specification);
- 4.2.9. not affix any Ship, any other Contractor Deliverables or any materials relating thereto to any land or buildings;
- 4.2.10. provide all documents as may be required by the Authority in order to comply with any anti-money laundering and identity requirements;
- 4.2.11. comply with all Legislation to which it or the Contractor Deliverables may be subject; and
- 4.2.12. procure that there is no Change of Control (save as permitted pursuant to Clause 5.1 (Change of Control of the Contractors)).

Status of Contractor Warranties and Undertakings

- 4.3. All warranties, representations, undertakings, indemnities and other obligations made, given or undertaken by the Contractor for itself and/or on behalf of the Related Entities in the Contract are cumulative and none shall be given a limited construction by reference to any other.

5. CHANGE OF CONTROL OF THE CONTRACTOR

- 5.1. No Change of Control may occur during the performance of the Contract other than any Change of Control arising as a consequence of:
 - 5.1.1. the grant or enforcement of security in favour of any financial institutions over or in relation to any of the shares of the Contractor or any of the Related Entities, provided that any document conferring security over any shares has been approved by the Authority in writing (such approval not to be unreasonably withheld or delayed); or
 - 5.1.2. any change in legal or beneficial ownership of any shares that are listed on a recognised investment exchange (as defined in Section 285 of the Financial Services and Markets Act 2000); or
 - 5.1.3. with the prior written consent of the Authority.
- 5.2. For the purposes of this Clause 5 'Change of Control' means:
 - 5.2.1. any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares in the Contractor and/or the Related Entities as the case may be including the control over exercise of voting rights conferred on those shares, control over the right to appoint or remove directors and/or rights to dividends; and/or

- 5.2.2. the entering into of any other arrangements that have or may have or which result in the same effect as the arrangements referred to in Clause 5.2.1.
- 5.3. The Contractor shall inform the Authority of any proposed Change of Control and request the Authority's prior written consent to such Change of Control. Each advice shall be taken to be in respect of all contracts with the Authority. The request should be submitted to:
- The Commercial Manager detailed in Schedule 18
(Addresses and Other Information)
Mergers & Acquisitions
Strategic Supplier Management
Poplar 1, #2119
Ministry of Defence
Abbey Wood
Bristol BS34 8JH
- 5.4. Any request by the Contractor of any Change of Control shall not prejudice the existing rights of the Authority or the Contractor under the Contract nor create or imply any rights of either the Contractor or the Authority additional to the Authority's right to receive that information.
- 6. PARENT COMPANY GUARANTEE**
- 6.1. The Contractor shall procure the execution and delivery to the Authority on or before the date of the Contract and as a condition of the Contract, a Parent Company Guarantee by the Guarantor in favour of the Authority in the form set out in Part A (Form of Parent Company Guarantee) of Schedule 16 (Parent Company Guarantee) to secure the due performance by the Contractor of its obligations to the Authority.
- 6.2. Unless and until otherwise agreed by the Parties, the form of guarantee set out in Part A (Form of Parent Company Guarantee) of Schedule 16 (Parent Company Guarantee) and the form of confirmation of parent company guarantee set out in Part B (Form of Confirmation of Parent Company Guarantee) of Schedule 16 (Parent Company Guarantee) shall, respectively, be the relevant specified form for the Parent Company Guarantee and the relevant specified form for the Confirmation of Parent Company Guarantee for the purposes of the Contract unless and until otherwise agreed by the parties to such guarantee.
- 6.3. If during the duration of the Contract the Guarantor shall cease to meet any of the Guarantee Criteria the Contractor shall immediately notify the Authority in writing and procure that an Associated Company of the Contractor, which at the relevant time and thereafter shall meet all of the Guarantee Criteria, shall become the Guarantor and shall immediately provide a Parent Company Guarantee substantially in the form of Part A (Form of Parent Company Guarantee) of Schedule 16 (Parent Company Guarantee) (any amendment to such form must be agreed in writing by the Authority beforehand) to secure due performance by the Contractor of its obligations to the Authority.
- 6.4. The Guarantee Criteria for the purposes of Clause 6.3 shall be that the Guarantor has an investment grade credit rating of at least BBB from Standard & Poor's, Baa2 from Moody's or BBB from Fitch, if such a rating is available to the Guarantor, or the equivalent thereof from another internationally recognised credit rating agency acceptable to the Authority.

- 6.5. In the event that the Guarantor is downgraded to an investment grade rating of BBB- from Standard & Poor's, Baa3 from Moody's or BBB- from Fitch with a "negative outlook" forecast from Standard and Poor's, if such a rating and projection is available to the Guarantor, or the equivalent thereof from another internationally recognised credit rating agency acceptable to the Authority, the Contractor shall meet with the Authority as soon as reasonably practicable after such downgrading, or such other period as the Authority may permit, in order to reasonably agree a financial stability plan in a form acceptable to the Authority.
- 6.6. In the event that the Contractor is downgraded to an investment grade rating below BBB- from Standard & Poor's, Baa3 from Moody's or BBB- from Fitch, if such a rating is available to the Guarantor, or the equivalent thereof from another internationally recognised credit rating agency acceptable to the Authority, the Contractor shall provide to the Authority within five (5) Business Days such alternative form of security as agreed between the Parties pursuant to the financial stability plan agreed pursuant to Clause 6.5 (which may take the form (without limitation) of an alternative guarantee, the provision of funds or reserves by a third party (under guarantee, performance bond, cash deposit or escrow account)) as the Authority may approve in writing in its absolute discretion.
- 6.7. If the Contractor shall provide alternative security under Clause 6.6 and at any time thereafter the Contractor can demonstrate that the Guarantor or an Associated Company of the Guarantor meets the Guarantee Criteria the Contractor shall have the right by notice to the Authority to provide a Parent Company Guarantee in the form set out in Part A (Form of Parent Company Guarantee) of Schedule 16 (Parent Company Guarantee) by such company as aforesaid and if the Contractor shall provide such Parent Company Guarantee within ten (10) Business Days of such notice the Authority shall:
- 6.7.1. accept such Parent Company Guarantee in place of any then existing alternative security provided under Clause 6.6; and
 - 6.7.2. take all action which is reasonably necessary to be taken by it in order to release or facilitate the release of any alternative security which has previously been provided by or on behalf of the relevant provider under Clause 6.6.
- 6.8. Any dispute in relation to this Clause 6 may be referred by either Party to determination under Clause 86 (Disputes).

7. SUB-CONTRACTS

- 7.1. No sub-contracting by the Contractor shall in any way extinguish, diminish or reduce the Contractor's obligations under the Contract and the Contractor shall be fully responsible for acts, errors, defaults, breaches, omissions or negligence of any Sub-Contractor.
- 7.2. The Contractor shall perform its obligations under and observe all the terms of any Sub-Contracts.
- 7.3. Nothing in the Contract shall prohibit or prevent any Sub-Contractor employed by the Contractor from being employed by the Authority at any establishments of the Authority.
- 7.4. Where the Contractor enters into a Sub-Contract with a supplier or contractor for the purpose of performing the Contract, the Contractor shall cause a term to be

included in such Sub-Contract which requires payment to be made by the Contractor to the supplier or contractor within a specified period not exceeding twenty (20) Business Days from receipt of a valid invoice and the requirements for a valid invoice shall be defined by the Sub-Contract.

- 7.5. Prior to entering into any Sub-Contract which includes provisions relating to Intellectual Property Rights, the Contractor shall notify the proposed Sub-Contractor that the Contractor is not, by virtue of prior agreement with the Authority, entitled to place a contract with a Sub-Contractor which does not comply with Clause 73 (Intellectual Property Rights).
- 7.6. The Contractor shall retain, for a period of at least ten (10) Years after Acceptance Off Contract or Termination Date, a copy of the Sub-Contracts (or the relevant parts thereof) sufficient to demonstrate the Authority's rights with respect to Clause 73 (Intellectual Property Rights) below and shall provide certified copies of such records to the Authority upon request.
- 7.7. The Authority shall have a right of direct access to any Sub Contractor for the purpose of monitoring the progress of work under the Contract, technical liaison and discussion with the Sub-Contractor provided that his presence at the site shall not hinder progress of the work. The Authority shall give prior notification to the Contractor of any proposed visits and the Contractor shall have a right to be present at any site visit by the Authority to a Sub-Contractor. This right of direct access under this Clause 7 shall also include the Authority's right to discuss, at any time, with Classification Society or any relevant maritime and coastguard agency, or agency having similar jurisdiction, any aspects relating to the Contract.
- 7.8. The Authority reserves the right to audit any Sub-Contract(s) and records of payments made on request.
- 7.9. The Contractor shall inform the Authority immediately it becomes aware of any breach by any Sub-Contractor of any of the requirements set out or referred to in any security aspects letter referred to in Clause 71 (Protection of UK Material) relating to the protection of UK Sensitive material and, if requested to do so by the Authority, shall terminate the relevant Sub-Contract.

Change of Sub-Contractors

- 7.10. The Contractor shall ensure that it has the right to assign any guarantees or warranties provided by its Sub-Contractors to the Authority which exceed the Warranty Period and on or prior to the appointment of each Sub-Contractor provide to the Authority's Representative a Collateral Warranty as set out at Schedule 17 (or equivalent) in favour of the Authority from each such person and in each case such Collateral Warranty must be delivered to the Authority's Representative before such entity commences any works and/or services for the Contractor in connection with the Contract.
- 7.11. The Contractor shall employ the Sub-Contractors as set out in Schedule 7 (Maker's List) and shall not, in respect of any equipment, machinery and services included in the Maker's List:
 - 7.11.1. terminate the employment of any Sub-Contractor; or
 - 7.11.2. employ any other Sub-Contractor,without the Authority's prior written approval (such approval shall not be unreasonably withheld).

8. MATTERS TO BE INCLUDED IN SUB-CONTRACTS

- 8.1. The Contractor shall ensure that all Sub-Contracts shall at all times include:
- 8.1.1. provisions such that the Sub-Contract shall not be rescinded, or varied in such a way as to alter or extinguish any rights granted to the Authority without the prior written consent of the Authority;
 - 8.1.2. provisions that the Authority's rights referred to in this Clause 8, which are otherwise enforceable under the Contracts (Rights of Third Parties) Act 1999, are not rendered unenforceable;
 - 8.1.3. a requirement that either party to the Sub-Contract may release to the Authority any of those parts of the Sub-Contract as are necessary to be sufficient to demonstrate compliance with the provisions of this Clause 8 and that any such release shall not amount to a breach of any provision of confidentiality contained within the Sub-Contract;
 - 8.1.4. provisions enabling the Contractor to terminate the Sub-Contract (on similar terms to those which apply to any termination by the Authority of the Contract due to a Prohibited Act), so as to enable implementation of any Authority requirement of the Contractor to secure such termination due to a Prohibited Act being undertaken by or on behalf of a Sub-Contractor, as set out in Clause 66 (Termination for Contractor Default);
 - 8.1.5. provisions enabling the Contractor to secure the dismissal of an employee of the Sub-Contractor, so as to enable implementation of any Authority requirement of the Contractor to secure such dismissal, due to a Prohibited Act being undertaken by that employee, as set out in Clause 66 (Termination for Contractor Default);
 - 8.1.6. include a provision enabling the Contractor to determine such Sub-Contracts in the event that the Authority exercises any right of termination under the Contract;
 - 8.1.7. include the power to determine the Sub-Contract on substantially the same terms as those which apply to any termination of the Contract pursuant to Clause 68 (Termination for Convenience), provided that references in the provisions of Clause 68 (Termination for Convenience) to "*Authority*", "*Contractor*" and "*Contract*" shall be construed (as appropriate) as references to "*Contractor*", "*Sub-Contractor*" and "*Sub-Contract*" (respectively) for the purposes of the corresponding Sub-Contract provisions;
 - 8.1.8. a requirement for any further Sub-Contracts of lower tiers to contain provisions capable of giving effect to all of the provisions of Clauses 7 (Sub-Contracts) and 8 (Matters to be Included in Sub-Contracts), to the extent reasonably required by the Authority;
 - 8.1.9. include a provision requiring the Sub-Contractor to acknowledge that title to each Ship, all Contractor Deliverables and any materials forming any of the Contractor Deliverables shall remain with the Authority at all times and the Sub-Contractor shall not have any right, title or interest in or to any Ship, any Contractor Deliverables or any materials forming part of the Contractor Deliverables; and
 - 8.1.10. include a requirement for the Sub-Contractor to confirm that it will not create or purport to create any Security Interest of any kind whatsoever

over any Ship, any Contractor Deliverables or any materials marked for any Ship.

9. CONTRACTOR'S OBLIGATIONS

- 9.1. The Contractor shall provide the Contractor Deliverables to the Authority, all in accordance with the Contract and associated Specifications, good international shipbuilding and marine engineering practice and shall, inter alia, offer each Ship to the Authority fully in compliance with the Contract (including the Specifications) at the Shipyards on the Delivery Date.
- 9.2. Without prejudice to the overriding obligation contained in Clause 9.1, the Contractor's responsibilities shall, unless provided otherwise in the terms of the Contract, include in relation to each Ship and each related Contractor Deliverables:
- 9.2.1. design, construction, launch (or float up), equipping, completing and delivering of the Ship to the Authority;
 - 9.2.2. providing ILS Deliverables for the Ship and ensuring that the requirements of Schedule 4 (ILS Specification) are met;
 - 9.2.3. successful completion of all Tests, Trials and Inspections required to prove the quality of the Contractor Deliverables in accordance with Schedule 2 (Project Management Specification);
 - 9.2.4. providing support during the Authority's Capability Assessment Trials up to Acceptance Into Service in accordance with the Contract;
 - 9.2.5. collaboration with the Authority's United Kingdom Customisation, Capability Assessment Trials provider throughout the Contract period;
 - 9.2.6. the provision and proper fitting in place of all material, equipment, fittings and deliverables necessary for the completion of the Ship as required by the Contract unless otherwise specified;
 - 9.2.7. the provision of all labour, plant, machinery, freight and port services necessary for the proper performance of the Contract;
 - 9.2.8. the provision of all necessary services, facilities for and assistance to the Authority's Representatives and the Authority's Contractors in accordance with the Contract;
 - 9.2.9. provision and testing, at a recognised testing establishment, of material samples in order to satisfy the requirements of Schedule 3 (Technical Specification), ESWBS 78;
 - 9.2.10. the provision of all necessary access, facilities and drawings for any registration, classification, certification, surveys or trials to the Classification Society or Regulatory Authorities in accordance with the Contract;
 - 9.2.11. examination, testing, and if necessary retesting of Lifting Equipment; ensuring that, at Acceptance Off Contract, there remains available for testing and/or surveying at least 80% of the original total period

between tests or surveys being completed and the next test or survey falling due;

- 9.2.12. provision of all fuels, lubricating oils, greases and hydraulic fluids required for Setting to Work and Tests, Trials and Inspections, in accordance with the Specifications;
- 9.2.13. compliance with local statutory duties and obligations up to Acceptance Off Contract and shall ensure that the Contractor Deliverables and any activities of the Contractor within the UK shall comply with UK statutory duties and obligations;
- 9.2.14. supply of documentation and data for NATO Codification purposes in accordance with Clause 30 (Supply of Documentation for NATO Codification Purposes);
- 9.2.15. not, by any act or omission at any time, place the Authority in breach of its obligations as an employer; and
- 9.2.16. the Ship and its equipment being designed and built in metric units.

- 9.3. The Contractor shall not deviate from the Contract nor introduce any contrivance unusual in the kind of work covered by the Contract save as provided for in Clauses 53 (Formal Amendments to Contract), 54 (Authority Change Procedure) and 55 (Contractor Change Procedure).
- 9.4. Save in respect of the Contractor Sea Trials or as expressly agreed in writing by the Authority, all work involved in providing each Ship and the relevant Contractor Deliverables shall be carried out at the Shipyard.
- 9.5. The Contractor is responsible for producing a design for each Ship that is safe to operate and fit for purpose by demonstrating to the Authority's satisfaction (in its sole and absolute discretion) that the design developed by the Contractor meets the requirements of the Contract.
- 9.6. The Contractor acknowledges that any risk assessment, questionnaire or risk register which has, or may be undertaken or maintained in connection with the Contract is done so in a management capacity only. Such risk assessment activity does not affect the legal relationship between the Parties or in any way limit or exclude the Contractor's obligations under the Contract.
- 9.7. No advice, comment or information proffered, given or omitted by, or on behalf of, the Authority on or in relation to the Contractor's work in accordance with the Contract shall, in any way, extinguish, diminish or reduce the Contractor's obligations and responsibilities under the Contract to provide the Contractor Deliverables.
- 9.8. Neither shall the activities of the Authority or its representatives including that of:
 - 9.8.1. scrutiny of the design produced by the Contractor; and/or
 - 9.8.2. any activities associated with progressive assurance in accordance with Schedule 3 (Technical Specification),

derogate from the Contractor's obligations and responsibilities under the Contract.

10. OPTIONS

- 10.1. The option prices detailed in the Schedule to Requirements are FIXED prices and are not subject to variation except as provided for in Clause 38 (Price).
- 10.2. In addition to the quantity detailed at Items 1 to 5 of the Schedule of Requirements, the Contractor hereby grants to the Authority the following irrevocable option to purchase an additional Fleet Solid Support Ship and associated ILS Deliverables (Items 6 and 7 of the Schedule of Requirements) in accordance with the terms and conditions set out in the Contract (the "**Additional Ship**"). The Parties agree that the Authority has the right (but is not under any obligation) to exercise this option.
 - 10.2.1. Option: Quantity 1 Fleet Solid Support Ship and related ILS Deliverable, in addition to the Ships already ordered under Items 1 to 5 of Schedule 1 (Schedule of Requirements), at a FIXED price of [**£ Insert at Contract Award**] in accordance with the Delivery Dates at Schedule 1 provided that the Authority exercises such an option in writing by no later than 12 Months after Contract Award.
- 10.3. The Authority shall have the right to exercise the option by the specified date or within such further period as corresponds to the aggregate of any period(s):
 - 10.3.1. of delay in the delivery programme whether constituting any breach of the Contract or resulting from any Force Majeure Event within Clause 58 (Permissible Delays); or
 - 10.3.2. for the duration of which the Authority is prevented from exercising any such option due to any other breach of the Contract by the Contractor.
- 10.4. Where the Authority has exercised its option to purchase the Additional Ship, all references to "Ship" and "Contractor Deliverables" in the Contract shall be construed so as to include such Additional Ship and associated ILS Deliverables.
- 11. DELIVERABLE DRAWINGS AND DOCUMENTS**
- 11.1. All Deliverable Drawings and Documents shall become the property of the Authority immediately they come into existence to make such use of as the Authority may require subject to Clause 73 (Intellectual Property Rights).

Supply of drawings and other documents by the Contractor

- 11.2. For each Ship and associated Contractor Deliverables, the Contractor shall complete and deliver all Deliverable Drawings and Documents to the Authority in accordance with the Specifications.
- 11.3. Authority comments on any Deliverable Drawing and Document shall not relieve the Contractor of its responsibilities under the Contract.

Modification of Deliverable Drawings and Documents

- 11.4. Following any changes made in accordance with Clauses 53 (Formal Amendment to Contract), 54 (Authority Change Procedure) or 55 (Contractor Change Procedure) which impact upon Deliverable Drawings and Documents the Contractor shall, if so requested by the Authority:
 - 11.4.1. prepare new or modify existing Deliverable Drawings and Documents as necessary, including those of adjacent compartments or associated installations (e.g. pipe-work, ventilation, cable runs, minor bulkheads); and/or

- 11.4.2. submit the new or modified Deliverable Drawings and Documents for Plan Approval where required by the Specifications; and/or
- 11.4.3. provide, in electronic format in accordance with the requirements of the Specifications, copies of the new or modified Deliverable Drawings and Documents; and/or
- 11.4.4. recall, for destruction, copies of obsolete Deliverable Drawings and Documents.

Technical Handbooks

- 11.5. Until a period of six (6) Months after Acceptance Off Contract of the final Ship to be built in accordance with the Schedule of Requirements, the Contractor shall provide such information as the Authority may request from time to time for the preparation of additional technical handbooks.

12. COMMONALITY OF EQUIPMENT AND SYSTEMS

- 12.1. The Contractor shall ensure that all Ships are fitted with the same equipment and systems, unless such equipment and/or systems are no longer available. In the event that commonality of equipment and/or systems is not possible the Contractor shall immediately notify and seek approval from the Authority, providing details of the proposed replacement equipment and/or systems. Notwithstanding approval by the Authority, the Contractor shall ensure that any such replacement equipment and/or system is of the same (or better) quality and performance levels as required under the Contract.

13. PROVISION OF A SHARED DATA ENVIRONMENT (SDE)

Scope

- 13.1. The Contractor shall provide a Shared Data Environment (SDE) Service for the Contract described at Schedule 1 (Schedule of Requirements), in accordance with the requirements of this Clause 13, Schedule 22 (Electronic Information Sharing Agreement) and as specified in the relevant part of Schedule 1 (Schedule of Requirements) (hereinafter called '**the SDE SOR**'), which shall, amongst other things:
 - 13.1.1. the SDE shall be developed to enable access to it through the Authority MODNET information technology system;
 - 13.1.2. enable Access exclusively for the organisations and companies who are from time to time parties to the Electronic Information Sharing Agreement ("**EISA**");
 - 13.1.3. provide the level of Fidelity and Integrity as set out in this Clause 13; and
 - 13.1.4. provide service support facilities to all Users including manuals, training, help desk and maintenance services.

Duration

- 13.2. The Contractor shall provide the SDE Service in accordance with Clause 13.1 for the period specified in the SDE SOR.

Participation in the Electronic Information Sharing Agreement (EISA)

- 13.3. The Contractor shall, when so requested by the Authority, enter into an EISA with one or more Users, including the Authority, who may from time to time participate in the SDE. The EISA, shall be in the form set out in Schedule 22 (Electronic Information Sharing Agreement).

Security and Confidentiality

- 13.4. The Contractor shall ensure that:
- 13.4.1. the SDE System operates and is operated in accordance with the security and confidentiality requirements applicable to the Contract and the EISA;
 - 13.4.2. the SDE System shall be capable of handling Information up to the classification defined in the SDE SOR; and
 - 13.4.3. the security accreditation for the SDE System is obtained and maintained in accordance with the SDE SOR.

Information Management

- 13.5. The Contractor shall make provision for different categories of Information as specified in the EISA to be managed by the SDE System in accordance with the SDE SOR.
- 13.6. The Contractor shall use all reasonable endeavours to ensure that the Information processing systems deployed to support the SDE System:
- 13.6.1. maintain Loaded Information without corruption to its content as it is processed; and
 - 13.6.2. properly process the Information.

Intellectual Property

- 13.7. Subject to the rights of third parties and the pre-existing rights of the Authority, and to the terms and conditions of the Contract, all Intellectual Property Rights in the SDE System provided under the Contract shall vest in the Contractor.
- 13.8. If the Contractor intends to place a subcontract for the provision of any part of the SDE Service, the Contractor must either secure rights for the Authority in respect of that part, equivalent to those provided in Clause 13.9, or require the subcontractors to enter into a direct agreement with the Authority in accordance with the relevant Design Rights and Patents (Subcontractor's Agreement) included in the Contract.
- 13.9. The Authority, together with the other Users, shall have the right to utilise the SDE System for Project Implementation in accordance with the SDE SOR and the EISA, for the duration of the Contract.
- 13.10. The price (and pricing arrangements) for the grant to the Authority of the right contained in Clause 13.9, shall be within the Contract Price or as otherwise provided in the Contract.
- 13.11. No rights to use Information which may be Accessed via the SDE are granted by this Clause 13. This Clause 13 shall not prejudice any pre-existing or separately acquired rights of the Contractor, the Authority or any other User.
- 13.12. The Contractor shall be entitled to include a user notice on the SDE which indicates its ownership of copyright or other Intellectual Property Rights in the SDE System provided that this is written in terms consistent with the Authority's rights under this Clause 13.

Operation of the SDE System

- 13.13. The SDE System shall be located at the addresses listed at Schedule 2 (Project Management Specification).
- 13.14. The Contractor shall appoint a Service Administrator. This appointment must first be agreed with the Authority, who may, at its discretion, consult some or all of the Users. If, during the course of the Contract, the Contractor wishes to replace the Service Administrator with another individual, the Contractor shall first seek the written approval of the Authority.
- 13.15. The Service Administrator shall be the principal point of contact for all Users for any matter relating to the operation of the SDE System and shall oversee the operation of the SDE Service to ensure that it meets the requirements of the Contract.
- 13.16. The Authority shall have the right to require the Contractor to replace the Service Administrator, provided that the Authority demonstrates that the Service Administrator is jeopardising the effective operation of the SDE Service.
- 13.17. The Contractor shall provide:
- 13.17.1. a User Protocol document;
 - 13.17.2. full instructions for use of the SDE System;
 - 13.17.3. a secure User authentication method (e.g. log-on);
 - 13.17.4. the means for Users to establish Access permissions for their Information;
 - 13.17.5. simultaneous Access to the specified number of work stations;
 - 13.17.6. a simultaneous Service to the specified maximum number of work stations with a corresponding reduction in performance, but without suffering a complete failure in the Service; and
 - 13.17.7. in addition to Clauses 13.17.1 to 13.17.6, the other facilities, functionality and services, if any, specified in the SDE SOR.
- 13.18. Except for the purposes of operating the SDE System in accordance with Clause 13.19 or pursuant to Clause 13.35, neither the Authority nor the Contractor shall permit Access to the SDE System or any Loaded Information by any third party other than a User. In addition, the Contractor shall ensure that Loaded Information is Accessed solely by Users who have secured such rights under the EISA and to the extent permitted by the EISA.
- 13.19. The Contractor may appoint a third party to undertake his duties in respect of the provision of the SDE Service. This appointment shall not relieve the Contractor of its obligations under the Contract. Prior to the appointment of any third party under this Clause 13.19, the third party must become a signatory to the EISA.

Management of the SDE System

- 13.20. In maintaining records relating to or connected with the SDE the Contractor shall pay due regard to the provisions of BS 7799 Code of Practice for Information Security Management and BSI-DISC-PD 0008 Code of Practice on the Legal Admissibility and Evidential Weight of Information Stored Electronically.
- 13.21. The Contractor shall, in accordance with the SDE SOR and with due regard to its obligations under the EISA:
- 13.21.1. provide Users with controlled Access;

- 13.21.2. ensure, as far as is reasonably practical, that all Loaded Information, including associated marks and legends, is Accessible only by Users authorised to have Access and is not altered, lost or destroyed;
- 13.21.3. monitor the Access and usage of the SDE to detect any instances of misuse, malicious attack, unauthorised Access and any other threat to its Integrity;
- 13.21.4. implement and maintain a virus control policy and make details thereof available to all Users, in accordance with the SDE SOR and the EISA;
- 13.21.5. operate a Data configuration management control system in accordance with the SDE SOR and the EISA;
- 13.21.6. obtain the Authority's agreement to Information naming and reference schemes before implementation;
- 13.21.7. implement and maintain an agreed Data back-up policy; and
- 13.21.8. ensure that, if any part of the SDE Service or SDE System is changed, the Users' ability to Access Information is not adversely affected.

Storage and Archiving

13.22. For the duration of the Contract the Contractor shall arrange that:

- 13.22.1. all Data is maintained in the format required by the SDE SOR;
- 13.22.2. all Data when stored in the SDE System is maintained from the date of being loaded into the SDE for the period specified in the SDE SOR, after which time (following reasonable notice to Users) it shall be Expunged unless:
 - 13.22.2.1. a specific request for its retention in the SDE is made by any current User; or
 - 13.22.2.2. it is withdrawn by a User in accordance with the EISA; or
 - 13.22.2.3. it is Archived.
- 13.22.3. Data on the SDE System can be Archived when it is no longer required by any of the current Users; and
- 13.22.4. when requested by any current User, Archived Data is reinstated on the SDE.

13.23. At the end of the Contract the Contractor shall arrange that:

- 13.23.1. all Information in the SDE is Archived and retained in a useable format for a period of not less than 2 Years, or such other period as may be specified in the SDE SOR; and
- 13.23.2. during the period to which Clause 13.23.1 applies, and within ten (10) Business Days of being requested, or such other period as may be specified in the SDE SOR, retained Data is made available to the Authority on a medium to be agreed between the Authority and the Contractor. A fair and reasonable price shall be agreed by the Parties for satisfying each request.

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

The Log

- 13.25. The Contractor shall establish a Log and ensure that all instances of Access to the SDE (except where the User Protocol provides otherwise) are automatically Logged, recording as a minimum:
- 13.25.1. details of any Information Accessed;
 - 13.25.2. identity of the User; and
 - 13.25.3. date and time of the Access.
- 13.26. The Contractor shall also record the details of any unauthorised or denied Access attempts, including the identity of the User or, insofar as it can be ascertained, any other third party making the attempt, the information system into which the attempt was made and the date and time of the attempt.
- 13.27. The Contractor shall maintain the Log during the term of the Contract and thereafter for a period of no less than 2 Years, or other such period as may be specified in the Contract, and shall make available relevant certified extracts to any User on request, in accordance with the EISA. The Contractor shall fulfil any request for visibility of an extract of the Log under this Clause 13.27 within 48 hours, or such other period as may be specified in the Contract.

Disaster Recovery

- 13.28. The Disaster Recovery Plan shall be Accessible to all Users via the SDE.
- 13.29. In the event of a Disaster occurring, the Contractor shall carry out the procedures detailed in the Disaster Recovery Plan.

Availability of Service

- 13.30. Overall availability of the SDE Service shall be within the parameters defined in the SDE SOR.
- 13.31. The Contractor shall carry out scheduled maintenance requiring system down time or degradation of the SDE Service in accordance with the SDE SOR, at a time agreed with the Authority. At least 48 hours before the commencement of any scheduled maintenance requiring system down time or degradation, or other such period as may be specified in the Contract all Users shall be notified by the Contractor of the time of commencement of such down time or degradation and its expected duration. Periods of scheduled maintenance shall not exceed the timescales specified in the SDE SOR. Any inability to Access the SDE of which the Contractor has knowledge or is made aware shall be recorded in the Log, so that a complete record of down time is kept.
- 13.32. The Contractor shall give warning without delay to all Users of periods where the SDE Service is required to be interrupted for unscheduled maintenance. The periods of inaccessibility shall not exceed those specified in the SDE SOR.
- 13.33. Following any interruption, the Contractor shall ensure that the SDE Service is restored in a timely manner.

Changes to the SDE System

- 13.34. The Contractor shall obtain the Authority's prior written approval for any material change of location or architecture of any element of the SDE System. The Authority shall inform the Contractor of its decision with twenty (20) Business Days of receipt of any such request for approval, or any other such period as may be specified in the Contract, and shall not unreasonably refuse or delay permission.

Audit

- 13.35. If a User can demonstrate good cause, the Authority may, after giving reasonable notice, audit the Integrity, Fidelity, infrastructure and organisation of the SDE System having due regard to the requirements of the SDE SOR. The audit shall be performed by the Authority, or by a third party nominated by the Authority and acceptable to the Contractor, who will be placed under an obligation of confidentiality prior to any Access to the SDE. The Authority shall, subject to security considerations, provide a copy of the audit report to the Contractor.
- 13.36. The Authority may pass the results of an audit to any User having a reasonable need to be aware of them.

Transfer of the Service

- 13.37. If, following consultation, the Contractor fails to take steps to rectify any significant deficiency in the performance of the SDE Service which is jeopardising the effectiveness of the SDE Service then, without prejudice to any other remedies, the Authority may instruct the Contractor to appoint another party to undertake the SDE Service. That other party shall become a party to the EISA prior to undertaking performance of the SDE Service.

14. TESTS, TRIALS, AND INSPECTIONS

Tests, Trials and Inspection Programme

- 14.1. Tests, Trials and Inspections for each Ship and any associated Contractor Deliverables shall be carried out in accordance with Schedule 2 (Project Management Specification).
- 14.2. The Authority will have the right to delay or postpone any or all Tests, Trials and Inspections and where sufficient notice is given, the Contractor shall accommodate/mitigate such delay without any additional cost.
- 14.3. The Authority's Representatives shall during all working hours be given free access to the Ships and to any other place where work is being done or materials are being processed or stored in connection with the construction of the Ships or any other Contractor Deliverables, including the Shipyards, any other yards, workshops, premises and offices of the Contractor and any Sub-Contractor.

Notice of Tests, Trials and Inspections

- 14.4. In relation to each Ship, the Contractor shall give:
- 14.4.1. five (5) Business Days' prior notice in writing to the Authority of the date when any Minor Test, Trial and/or Inspection is due to take place; and
 - 14.4.2. twenty (20) Business Days' prior notice of the date when any Major Test, Trial and Inspection is due to take place.

- 14.5. In relation to each Ship, if the Authority considers that the necessary Contractor controlled prerequisites for Tests, Trials and Inspections have not been satisfied, or that the necessary Contractor support or provision for the conduct of the Tests, Trials and Inspections is delinquent, the Authority may defer the Tests, Trials and Inspections and the Contractor shall reimburse the Authority's reasonable costs incurred by reason of the deferment.

Operation of Machinery and Equipment for Tests, Trials and Inspections

- 14.6. The Contractor shall operate all machinery, equipment and electrical installations and provide services as required for the proper performance of all Tests, Trials and Inspections on board each Ship, save as provided for in Clause 16 (Passages At Sea) or as otherwise agreed between the Parties.

Status of Authority's Representatives at Tests, Trials and Inspections

- 14.7. Except as provided for by Clause 16 (Passages At Sea), the Authority's Representatives shall act as observers and recorders only during Tests, Trials and Inspections. The Contractor shall allow them access to any part of the relevant Ship as may be necessary for the proper performance of their duties.
- 14.8. The Authority's Representatives will report to the appropriate representative of the Contractor if anything is done or omitted which would, in their opinion:
- 14.8.1. endanger the safety of the Ship or the life, person or property of anyone on board or elsewhere;
 - 14.8.2. result in loss of or damage to material, equipment or machinery; or
 - 14.8.3. invalidate the trial in progress.

Contractor Sea Trials

- 14.9. For each Ship, the Parties shall each nominate a Sea Trials Manager for the purpose of the Contractor Sea Trials who will be present during all Sea Trials.
- 14.10. Acting through the Master of the Ship, the Contractor's Sea Trials Manager shall be responsible for the successful conduct of the Contractor Sea Trials and for co-ordinating the requirements of the Contractor and of his Sub-Contractors.
- 14.11. The Authority's Sea Trials Manager is responsible for co-ordinating the Authority's personnel appointed to attend the trials and the Authority's contractors.
- 14.12. The Authority shall be entitled to exercise any of its powers in accordance with Clauses 14.2 and 14.4 if the Authority's Sea Trials Manager believes that the parameters of the Tests, Trials and Inspections set out in, or agreed in accordance with, Schedule 2 (Project Management Specification) will not be met. The Contractor shall be liable for all costs or expenses incurred by them as a result of the operation of this Clause 14.12.
- 14.13. The Contractor Sea Trials shall be carried out at the sole risk of the Contractor. All expenses in connection with the Contractor Sea Trials, including the provision of bunkers, lubricating oil, grease, fresh water and stores needed to undertake the Contractor's Sea Trials shall be at the Contractor's cost and expense. Together with the Instalment Payment due at Acceptance Off Contract for the relevant Ship, the Authority shall reimburse the Contractor at cost price for any unbrought lubricating oil, grease, fresh water, fuel oil and stores remaining on board the Ship at Acceptance Off Contract provided that such items have been properly evidenced to the Authority's satisfaction prior to Acceptance Off Contract.

15. LAUNCHING AND DOCKING

- 15.1. This Clause 15 shall apply to launch, docking and un-docking made by each Ship prior to Acceptance Off Contract or until possession of the Ship has been taken by the Authority in accordance with Clause 69 (Take Over/Tow-Out Option).

Launch or First Float Off

- 15.2. One Month prior to date of launch or first float off of any Ship, the Contractor shall provide in writing to the Authority:
- 15.2.1. the calculations and data to verify that adequate strength and stability provisions have been made;
 - 15.2.2. details of the required ship condition (ballast and weight distribution) to allow launch;
 - 15.2.3. details of the required launch conditions, including but not limited to the facilities to be used for the launch, tide and weather limitations; and
 - 15.2.4. the Contractor's launch management procedures.

Docking and undocking

- 15.3. Ten (10) Business Days prior to each docking or undocking of any Ship, the Contractor shall provide in writing to the Authority:
- 15.3.1. the calculations and data to verify that adequate strength and stability provisions have been made;
 - 15.3.2. details of the required ship condition (ballast and weight distribution) to allow docking or undocking;
 - 15.3.3. details of the required docking or undocking conditions, including but not limited to the facilities to be used for the docking or undocking, tide and weather limitations; and
 - 15.3.4. the Contractor's docking or undocking management procedures.
- 15.4. The Authority reserves the right to delay or cancel the docking/undocking for any Ship should the documentation detailed in Clauses 15.2 and 15.3 not be provided or is rejected by the Authority as inadequate to prove the docking/undocking can be carried out in a safe manner.

16. PASSAGES AT SEA

- 16.1. This Clause 16 shall apply to all passages made by any Ship under its own power or on tow prior to Acceptance Off Contract for the relevant Ship.

Charge of the Ship

- 16.2. The Contractor shall be in charge of the Ship and shall be responsible for the safety of the Ship and its crew, and for appointing and tasking the Master of the Ship.

Command of the Ship

- 16.3. The Ship shall be commanded by the Master of the Ship, as appointed and tasked by the Contractor. An RFA Captain nominated by the Authority shall be permitted to shadow the Master of the Ship during passages at sea.

Authority to move the Ship

- 16.4. The Contractor shall complete and sign a Certificate of Seaworthiness (in the format at Schedule 11 (Certificate of Seaworthiness)) and provide it to the On Site Representative on all occasions before the Ship is moved from its berth, except:
- 16.4.1. in emergency for the Ship's safe preservation; or
 - 16.4.2. when the movement is undertaken with a dead Ship where:
 - 16.4.2.1. the movement is entirely within sheltered waters (as defined by local Legislation); and
 - 16.4.2.2. the movement is under the control of an authorised pilot who is controlling tugs in attendance; and
 - 16.4.2.3. the necessary precautions and manning have been presented to the On Site Representative not less than two weeks prior to the proposed movement and have been approved by him.
- 16.5. The Certificate of Seaworthiness shall be provided to the On Site Representative at least twenty four (24) hours before the movement of the Ship is due to take place.

Navigation Precautions

- 16.6. The Contractor shall ensure that:
- 16.6.1. all local orders regarding pilotage and use of tugs shall be observed; and
 - 16.6.2. a deck log shall be kept whenever the Ship is away from the Shipyard; and
 - 16.6.3. the largest published scale chart available shall always be used when at sea and the Ship's position shall be fixed by recognised navigational methods and plotted with such frequency as to indicate the Ship's track clearly and accurately; and
 - 16.6.4. Admiralty charts shall be used if available; and
 - 16.6.5. the Ship shall comply at all times with the International Regulations for Prevention of Collisions at Sea; and
 - 16.6.6. a record of all persons on board together with details of next of kin shall be maintained both on board and ashore; and
 - 16.6.7. before the Ship proceeds to sea, the Contractor shall make available adequate communications and navigation equipment at Harbour Acceptance Trial standard.
- 16.7. The Contractor shall be responsible for providing a set of the necessary charts, Notices to Mariners and navigational instruments for use by the Master of the Ship prior to the Passage At Sea.
- 16.8. The Contractor shall provide to the On Site Representative detailed navigation plans not less than two weeks before the planned Passage At Sea including, but not limited to:
- 16.8.1. sailing and arrival times;
 - 16.8.2. tide height and times;
 - 16.8.3. instructions to cover local navigational requirements; and

- 16.8.4. contingency plans for all foreseeable eventualities including alternative berths, supporting Ships and shore support.
- 16.9. For Contractor Sea Trials, all portable firefighting equipment and damage control equipment shall be embarked onboard the Ship and distributed in accordance with the fire control plan agreed with the Authority.

Crewing the Ship for Passages At Sea

- 16.10. The Contractor shall provide suitably qualified staff to navigate the Ship and to operate all of the machinery, systems, electrical installations and equipment required for the operation and running of the Ship and for presenting tests, trials and serials to the Authority.
- 16.11. Not less than forty eight (48) hours prior to the Passage At Sea, the Contractor shall provide to the On Site Representative:
 - 16.11.1. the names and intended duties of the staff provided in accordance with Clause 16.10; and
 - 16.11.2. written assurance from the Master of the Ship that he is satisfied with the numbers and qualifications of the bridge and navigation staff provided in accordance with Clause 16.10.

Authority Personnel/Passages At Sea

- 16.12. Authority Representatives shall be entitled to attend any Passages At Sea and in an emergency or when grave danger or serious damage is imminent, may take or order to be taken such action as he may reasonably believe necessary to avert or minimise the threatened danger and, as soon as possible thereafter, report the incident to the Master of the Ship.

Accommodation and Facilities

- 16.13. The Contractor shall be responsible for:
 - 16.13.1. providing transport, on board accommodation, messing, bedding (clean and fit for immediate use) and such boat service between the Ship and the shore as may be required for:
 - 16.13.1.1. its own employees and those of Sub-Contractors; and
 - 16.13.1.2. Ship Staff and other representatives of the Authority;
 - 16.13.2. the provision of adequate first aid facilities and staff;
 - 16.13.3. supply and placement on board of all necessary consumable stores; and

ensuring that the safety critical systems relating to the Certificate of Seaworthiness for the Ship are fully functional prior to Passage At Sea, including but not limited to firefighting, recovery, evacuation and rescue.

17. ACCEPTANCE OFF CONTRACT AND ASSOCIATED ACTIVITIES

- 17.1. Upon successful completion of Contractor Sea Trials for any Ship, the Ship shall return to the Shipyard for the Contractor to complete any outstanding inspection of machinery, rectification of defects, final fitting out, cleaning, painting and storing and any outstanding Tests, Trials and Inspections.
- 17.2. Within twenty-eight (28) Days of Contractor Sea Trials, and when the Ship is complete and the Contractor has obtained all consents, registrations and

certificates required in accordance with the Contract then the Contractor shall offer up the Ship to the Authority for Acceptance Off Contract in accordance with Schedule 2 (Project Management Specification).

- 17.3. Notwithstanding Clause 17.2, if more than twenty-eight (28) Days has elapsed since the completion of Contractor Sea Trials, the Contractor shall, at its own expense, complete a confirmatory Contractor Sea Trial, of duration not more than 48 hours, to repeat specific Sea Trials selected by the Authority.
- 17.4. At Acceptance Off Contract, any defects in the Ship or non-compliance of the Ship with the Specifications and the Contract shall be agreed between the Parties and set out in the Defect and Deficiency Database.
- 17.5. Acceptance Off Contract in relation to each Ship shall take place upon completion of Schedule 20 (Acceptance off Contract Certificates) and incorporation of the following evidence:
 - 17.5.1. Builders Certificate;
 - 17.5.2. UK Flag registration of the Ship;
 - 17.5.3. Classification Society certificates;
 - 17.5.4. Test Form status summary;
 - 17.5.5. Completed VCRM;
 - 17.5.6. D3B status report;
 - 17.5.7. Paint Inspection report;
 - 17.5.8. completion of the Final Inspection; and
 - 17.5.9. reading of the Defect Deficiency Database
 - 17.5.10. any Part 1 items in the Defect and Deficiency Database which remain outstanding at Acceptance Off Contract and that the Contractor shall rectify and/or supply prior to the commencement of the Delivery Voyage;
 - 17.5.11. any Part 1 items in the Defect and Deficiency Database including ILS Deliverables which remain outstanding at Acceptance Off Contract and that the Contractor shall rectify and/or supply prior to the commencement of the UK Customisation Phase;
 - 17.5.12. any Part 1 items in the Defect and Deficiency Database including ILS Deliverables which remain outstanding at Acceptance Off Contract and that the Contractor shall rectify and/or supply prior to Acceptance into Service; and
 - 17.5.13. any Part 1 items in the Defect and Deficiency Database including ILS Deliverables which remain outstanding at Acceptance Off Contract and that the Contractor has stated it does not intend to rectify and the Authority has advised the Contractor that these defects and/or ILS Deliverables must be completed prior to UK Customisation Phase.
- 17.6. The Authority may withhold up to 50% of the Instalment Payment due at Acceptance Off Contract for such Ship until:
 - 17.6.1. the work required by Part 1 of the Defect and Deficiency Database has been completed in accordance with the Contract; and

- 17.6.2. any outstanding ILS Deliverables have been completed in accordance with the Contract (and for the avoidance of doubt the Authority shall not be obliged to complete the Acceptance Off Contract process where the ILS Deliverables have not been provided in full in accordance with the Contract).
- 17.7. Following Acceptance Off Contract of each Ship, the Contractor shall:
 - 17.7.1. complete all work outstanding listed in Part 1 of the Defect and Deficiency Database; and
 - 17.7.2. allow the Authority a period of not more than twenty-eight (28) Days for Alongside Training.
- 17.8. In the event that the Contractor does not complete all work outstanding in accordance with Clause 17.7.1, the Authority shall have the right to undertake the outstanding work itself and to recover the costs of performing the work from the sums withheld in accordance with Clause 17.5.10 and, to the extent that such sums are insufficient, from the Contractor by deducting the sums from the Final Instalment Payment.
- 17.9. During the Alongside Training period, the Contractor shall, without charge, allow the Ship to remain in the Shipyard and provide the Authority with all services and all associated berthing until the Alongside Training is complete. On completion of the Alongside Training the Contractor shall provide, without charge, all tugs and pilotage to enable the relevant Ship to leave the Shipyard and reach the open sea on the Delivery Voyage.
- 17.10. The Contractor shall provide an appropriate number of key Contractor and Sub-Contractor personnel to include, but not be limited to, the Contractor's Mechanical, Electrical and IPMS Suitably Qualified and Experienced Personnel (SQEP) to support the Ship Staff during the Delivery Voyage at its own expense, which shall include the costs of the return journey of Contractor and Sub-Contractor staff, stores and equipment.

18. CERTIFICATION AND CLASSIFICATION

- 18.1. Each Ship shall be designed, constructed, surveyed, tested and delivered in compliance with Legislation and the applicable laws, rules, regulations and requirements of the Classification Society, and the Regulatory Authorities (including the Authority whose requirements are specified in the Contract):
 - 18.1.1. in force as of the date of the Contract; or
 - 18.1.2. if not in force as of the date of the Contract, which are ratified and promulgated on or before the date of the Contract and which will be compulsory for the Ship on or before the delivery of the Ship.
- 18.2. All such Legislation and laws, rules, regulations and requirements of the Classification Society and the Regulatory Authorities shall be complied with without qualification.
- 18.3. Any subsequent Change in Certification and Classification shall be dealt with in accordance with Clause 20 (Changes in Certification, Classification and Law).
- 18.4. The final decisions of the Classification Society or Regulatory Authorities shall be binding on the Parties as to any Ship's compliance with their respective applicable laws, rules, regulations and requirements.

- 18.5. Subject to Clause 18.3, all costs, fees and charges in respect of compliance with the applicable laws, rules, regulations and requirements of the Classification Society or Regulatory Authorities referred to above (as well as the fees and costs payable to the Classification Society or Regulatory Authorities) shall be for the Contractor's sole cost and expense.
- 18.6. The Authority's Representative shall have the right to attend all meetings between the Contractor and the Classification Society or Regulatory Authorities and to request copies of significant correspondence passing between those parties. The Contractor shall give notice to the Authority's Representative sufficiently in advance of any such meeting to enable him or his assistant(s) to attend.

19. TRANSITION INTO SERVICE

- 19.1. Subject to the Contractor's obligation to rectify or to complete work appearing on Part 1 of the Defect and Deficiency Database in accordance with Clause 17.7.1 and Clause 19.2, maintenance and operation of the Ship shall become the responsibility of the Authority upon Acceptance Off Contract.
- 19.2. Maintenance of items which appear at Part 1 of the Defect and Deficiency Database shall continue to be the responsibility of the Contractor until completed in accordance with Clause 17.7.1.

Capability Assessment Trials

- 19.3. Capability Assessment Trials for each Ship shall be carried out in accordance with Schedule 2 (Project Management Specification).
- 19.4. The Parties shall each nominate a suitably empowered Sea Trials Manager for the purpose of the management of the Capability Assessment Trials.
- 19.5. The Authority's Sea Trials Manager shall be responsible for conducting the Capability Assessment Trials and for coordinating the requirements of the Contractor through the Contractor's Sea Trials Manager.
- 19.6. The Contractor's Sea Trials Manager shall be responsible for coordinating the Contractor's Representatives appointed to attend the trials.
- 19.7. Prior to Acceptance Into Service:
- 19.7.1. the Contractor shall undertake a reading of the Defect and Deficiency Database and provide to the Authority:
 - 19.7.1.1. statements of any Tests, Trials or Inspections outstanding, each statement being signed by the Contractor and the Authority; and
 - 19.7.1.2. a written proposal for discharging the outstanding work in respect of Clause 19.7.1.1 to be agreed between the Parties;
 - 19.7.2. the Contractor shall provide in full the ILS Deliverables in accordance with the Contract.
- 19.8. The Contractor shall, without delay and no later than thirty (30) Days from the reading of the Defect and Deficiency Database required by Clause 19.7.1, complete the outstanding work as agreed in accordance with Clause 19.7.1.2. The Authority shall afford the Contractor and Sub-Contractors all reasonable facilities to enable them to complete such outstanding trials and work.
- 19.9. In the event that the Contractor fails to complete the outstanding work in accordance with Clause 19.8 the Authority may make alternative arrangements for

its completion and the costs incurred by the Authority in doing so shall be deducted from the Final Instalment Payment.

- 19.10. Notwithstanding Clause 19.8, Acceptance Into Service for the relevant Ship shall occur when the Authority confirms in writing to the Contractor that the Acceptance Activities have been completed in accordance with the Contract.

20. CHANGES IN CERTIFICATION, CLASSIFICATION AND LAW

- 20.1. Subject to Clause 19 (Transition into Service), Clauses 20.2 to 20.7 shall apply to any Change in Certification and Classification.
- 20.2. The Parties shall promptly notify the other Party of the change as soon as possible after becoming aware of the Change in Certification and Classification.
- 20.3. The Contractor shall at his own expense provide to the Authority a written statement detailing the consequences of implementing the Change in Certification and Classification, including but not limited to, any changes to:
- 20.3.1. Contract Price in accordance with Clause 56 (Price Fixing of Changes);
 - 20.3.2. Delivery Date;
 - 20.3.3. speed of the relevant Ship(s);
 - 20.3.4. fuel consumption of the relevant Ship(s);
 - 20.3.5. capacity of the relevant Ship(s);
 - 20.3.6. deadweight of the relevant Ship(s); and
 - 20.3.7. any other information that is considered relevant by the Contractor.
- 20.4. If the Authority obtains an exemption from the Change in Certification and Classification the Authority shall notify the Contractor of such and the Contractor shall take no further action in relation to the Change in Certification and Classification.
- 20.5. If the Authority has not sought or obtained an exemption from the Change in Certification and Classification in accordance with Clause 20.4, the Contractor shall incorporate such Change in Certification and Classification into the construction of the Ship.
- 20.6. The Parties shall agree any adjustments to the Contract in accordance with Clause 56 (Price Fixing of Changes) and Clause 53 (Formal Amendments to Contract) resulting from the incorporation into the construction of the relevant Ship(s) of any Change in Certification and Classification.
- 20.7. If the Parties fail to agree the adjustments, the Contractor shall proceed with required changes and the consequences of its implementation shall be decided in accordance with Clause 86 (Disputes).
- 20.8. The Contractor shall ensure that the Contractor Deliverables comply with all Legislation applicable to the Authority, the Contractor and the Contractor Deliverables at the date of the relevant Acceptance Off Contract.
- 20.9. The Contractor shall comply with all Changes in Law.

21. VESTING AND TITLE

- 21.1. Subject to the following provisions of this Clause 21:

- 21.1.1. each Contractor Deliverable as it is constructed together with its component parts and equipment incorporated in the Contractor Deliverables; and
- 21.1.2. all material which the Contractor acquires or allocates for incorporation in any of the Contractor Deliverables,

shall vest in and become the absolute property of the Authority, as from the time the construction of the Contractor Deliverable begins or the material is acquired specifically for or is allocated for incorporation in any of the Contractor Deliverables. From such time, title to all such Contractor Deliverables and materials shall remain solely with the Authority (unless expressly stated in the Contract) and such Contractor Deliverables and materials shall be in the possession of the Contractor for the sole purpose of completing the Contractor Deliverables and delivering them when completed to the Authority, and shall not be within the control or disposition of the Contractor other than for that purpose.

- 21.2. The Contractor shall not, and shall procure that no Sub-Contractor nor any other person shall, create or permit to subsist any Security Interest on any Contractor Deliverable or material which has vested in the Authority under Clause 21.1.
- 21.3. Notwithstanding that title to any Contractor Deliverable or any material may have passed to the Authority under Clause 21.1, all risk of loss or damage to the Contractor Deliverables or any materials comprising thereof shall remain solely with the Contractor until the Contractor Deliverables have been accepted by the Authority at Acceptance Off Contract.
- 21.4. The Contractor shall take all reasonable steps necessary to ensure that the provisions of this Clause 21 are brought to the notice of all Sub-Contractors and other persons dealing with any such Contractor Deliverables or material.
- 21.5. Without prejudice to Clause 21.1, the Contractor shall ensure that from the time when the construction of any Contractor Deliverable begins, or as soon as practicable thereafter, or when any material is acquired specifically for or is allocated for incorporation in any of the Contractor Deliverables, they are marked or recorded so that they are readily identifiable as the property of the Authority. The Contractor shall comply with any direction given by the Authority in this respect. Upon request by the Authority, the Contractor shall demonstrate to the Authority's satisfaction that the Contractor Deliverables and materials are being marked in accordance with this Clause 21.5 and shall permit the Authority to inspect the Contractor Deliverables and materials for such purpose.
- 21.6. If the Authority rejects any Contractor Deliverables or materials forming part thereof and notifies the Contractor in writing that any Contractor Deliverables or materials are required to be re-vested in the Contractor, the Contractor shall indemnify the Authority with respect of any Losses suffered, paid or incurred by the Authority in connection with any such Contractor Deliverable or materials re-vesting in the Contractor.
- 21.7. Where any Contractor Deliverable or materials in the Authority's possession or control has re-vested in the Contractor in accordance with Clause 21.6, the Contractor shall bear the cost of resuming possession and control of them from the place of delivery in the UK as specified in the Contract. If the Contractor Deliverable or material is on the premises of the Authority or the premises of any government department (including any agencies thereof), the Contractor shall remove them within fourteen (14) Days of their re-vesting.

22. CERTIFICATES AND SHIP REGISTRATION

- 22.1. The Contractor shall provide, pay for and deliver all certificates and other documents necessary for the approval of each Ship by the Classification Society and/or the Regulatory Bodies and/or required by the Authority for the registration of the Ship at the UK Ship Register. The Authority shall register the Ships at the UK Ship Register.

23. INTEGRATED LOGISTIC SUPPORT

- 23.1. The Contractor shall supply ILS Deliverables to the Authority in accordance with Schedule 4 (ILS Specification).

Price of Integrated Logistic Support

- 23.2. The Contract Price for each Ship is inclusive of all ILS Deliverables for the relevant Ship.

Marking of Spares

- 23.3. The Contractor shall arrange for all Spares to be marked in accordance with Schedule 4 (ILS Specification) and mark all Spares clearly and indelibly with the relevant NATO Stock Number. Any marking method used shall not have a deleterious effect upon the strength, serviceability or corrosion resistance of the Spares.
- 23.4. The marking shall include any serial numbers allocated to the Spares and, if the Spares have a limited shelf life, the cure date/date of manufacture expressed as required by the specification, or, in the absence of such requirement, as month (letters) and year (last two figures).
- 23.5. Where, because of its size or nature it is not possible to mark an item with the required particulars, these should be included on the package or carton in which the item is packed.
- 23.6. General guidance on the marking of Spares will be provided by the Authority to the Contractor on request.

Packaging

- 23.7. Wood, other than processed wood, used in packaging shall be obtained from sources supplying wood treated and marked so as to conform to Annex I and Annex II of the International Standard for Phytosanitary Measures, "Guidelines for Regulating Wood Packaging Material in International Trade", Publication No 15, published by the Food Agricultural Organisation of the United Nations (ISPM15).
- 23.8. The Contractor shall be responsible for ascertaining whether the Spares being supplied are, or contain, dangerous goods and shall comply with the following as appropriate:
- 23.8.1. The Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO), IATA Dangerous Goods Regulations;
 - 23.8.2. The International Maritime Dangerous Goods (IMDG) Code;
 - 23.8.3. The Regulations Concerning the International Carriage of Dangerous Goods by Rail (RID); and
 - 23.8.4. The European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR).

- 23.9. Save in relation to dangerous goods, the Contractor shall provide packages which are to a Commercial Packaging Standard to ensure that Spares may be transported to the consignee nominated in Schedule 18 (Addresses and Other Information) in undamaged and serviceable condition.
- 23.10. Packages (single or aggregated) shall be labelled and marked as follows:
- 23.10.1. name and address of consignor;
 - 23.10.2. name and address of consignee (as stated in the Contract or order);
 - 23.10.3. bar code in accordance with Clause 23.12; and
 - 23.10.4. destination where it differs from the consignee's address.
- 23.11. An external surface of each single package shall be marked with the following:
- 23.11.1. a description of the Spares;
 - 23.11.2. the full thirteen digit NATO Stock Number (NSN);
 - 23.11.3. the quantity enclosed in the package;
 - 23.11.4. the maker's part/catalogue, serial and/or batch number, as appropriate;
 - 23.11.5. the Contract number; and
 - 23.11.6. any statutory Hazard markings and any handling markings, including the mass of any package which exceeds 3 kg gross.
- 23.12. The bar code symbology used shall meet the requirements of STANAG 4329, "NATO Standard Bar Code Symbolologies", specifically Code 39. As a minimum the following information shall be given:
- 23.12.1. the full thirteen-digit NSN (or other Stock Reference number if so directed);
 - 23.12.2. denomination of quantity (D of Q);
 - 23.12.3. actual quantity (quantity in package) (QTY); and
 - 23.12.4. manufacturer's serial number, if one has been allocated (Serial).
- 23.13. Requirements for positioning bar codes to related text, as well as positioning on a package, are defined in Def Stan 81-41 (Part 6). If size of bar code does not allow a label to be directly attached then a tag may be used. Any difficulties over size or positioning of bar code markings shall initially be referred to the On Site Representative.
- 23.14. The Authority shall, without prejudice to all of its other rights and remedies under the Contract, have the right under Clauses 23.22 to 23.28 to reject any Spares which the Contractor has failed properly to label in accordance with this Clause 23.

Transport

- 23.15. The Contractor shall be responsible for the Carriage, Insurance and Freight of all Spares supplied under the Contract to the UK port point of delivery designated by the Authority in the Schedule 4 (ILS Specification). The Contractor shall provide the Authority's Transport Officer with the following information:
- 23.15.1. the consignee's name and address;
 - 23.15.2. the number of packages;
 - 23.15.3. the dead-weight and dimensions of each package;

- 23.15.4. a general description of the contents; and
- 23.15.5. any special handling requirements.

Obsolescence

- 23.16. The Contractor shall inform the Authority immediately in the event that an item or part thereof becomes obsolete.
- 23.17. Such notification shall include advice in respect of an updated version of the same item or a suitable alternative. No further action shall be taken by the Contractor until formal approval to proceed or otherwise is received in writing from the Authority's Commercial Officer.

Use of Spares and Stores

- 23.18. Prior to completion of the Tests, Trials and Inspections for any Ship, the Contractor shall be responsible for the expeditious supply, at its own expense, of any Spares (including consumables, oils, greases, fuels etc.) and stores required for Setting to Work, testing, running maintenance and repair of all machinery, systems and equipment in relation to such Ship or relevant ILS Deliverables.
- 23.19. In an emergency, the Contractor can make local arrangements through the On Site Representative to utilise items of spare gear and stores including Government Furnished Equipment which have already been delivered to the Shipyard providing that they are replaced promptly by the Contractor to the satisfaction of the Authority at the Contractor's expense.

Title and Risk

- 23.20. Subject to Clauses 23.22 to 23.28, title and risk of loss or damage to ILS Deliverables remains with the Contractor until delivered to the Authority in accordance with Schedule 4 (ILS Specification).

Delivery

- 23.21. Delivery of all ILS Deliverables by the Contractor shall be in accordance with Schedule 4 (ILS Specification).

Rejection

- 23.22. The Authority will (whether or not after inspection) reject any consignment of ILS Deliverables (or part thereof), by issuing a rejection notice in accordance with Clause 23.23, if:
 - 23.22.1. the ILS Deliverables (or part thereof) do not conform with the requirements of Schedule 4 (ILS Specification); or
 - 23.22.2. samples taken randomly from the ILS Deliverable consignment do not conform with the requirements of Schedule 4 (ILS Specification).
- 23.23. The Authority will provide the Contractor with a rejection notice in writing which:
 - 23.23.1. identifies the ILS Deliverable (or part thereof) which has been rejected; and
 - 23.23.2. states the grounds for rejection.
- 23.24. Subject to Clauses 23.26 to 23.27, the Contractor shall remove, replace or rectify any rejected ILS Deliverable (or part thereof) promptly and no later than fifteen (15) Days (for all ILS Deliverables excluding Spares) or ninety (90) Days (for Spares) after the issue of the Authority's rejection notice in accordance with Clause 23.22.

- 23.25. Where the Authority rejects an ILS Deliverable (or part thereof) in accordance with Clause 23.22, title and risk of loss or damage to the ILS Deliverable (or part thereof) shall revert to the Contractor upon the earlier of:
- 23.25.1. the removal of the rejected ILS Deliverable (or part thereof) by the Contractor in accordance with Clause 23.24; or
 - 23.25.2. the close of business on the last Day of the period specified in Clause 23.24; and
 - 23.25.3. return of the rejected ILS Deliverables (or part thereof) by the Authority in accordance with Clause 23.28.
- 23.26. Within the period specified at Clause 23.24, the Contractor may dispute the Authority's grounds for rejection of the ILS Deliverables by providing written notice to the Authority. If the dispute has not been resolved within ten (10) Days of the Authority's receipt of the notice provided in accordance with this Clause 23.26 it shall be resolved in accordance with Clause 86 (Disputes).
- 23.27. Unless and until a dispute raised in accordance with Clause 23.26 has been resolved in favour of the Authority the Contractor shall not be obliged to remove the rejected ILS Deliverables (or part thereof) and title and risk of loss or damage in respect of the rejected ILS Deliverables shall remain with the Authority.
- 23.28. If the Contractor fails to remove the rejected ILS Deliverables (or part thereof):
- 23.28.1. within the period specified at Clause 23.24; or
 - 23.28.2. following resolution of the dispute in the favour of the Authority,
- the Authority may return the rejected ILS Deliverables (or part thereof) to the Contractor at the Contractor's expense.

24. FIRST OUTFIT OF SHIP'S STORES

- 24.1. No later than twelve (12) Months before the Delivery Date of FSS.01 (as set out in the Schedule of Requirements), the Contractor shall, at its own expense, provide a Lay Apart Store to accommodate the Ship's Stores that shall:
- 24.1.1. be of not less than 300 square metres, including secure storage facilities of 9 cubic metres minimum;
 - 24.1.2. be within either the Contractor's or Shipbuilder's premises, unless otherwise agreed with the Authority;
 - 24.1.3. be either separate from any other store of the Contractor, or clearly segregated and access-controlled from any other store of the Contractor;
 - 24.1.4. be secure and dry with appropriate regulation of temperature;
 - 24.1.5. have an entrance with easy access and capable of facilitating the loading and unloading of heavy bulky equipment;
 - 24.1.6. have a workbench, overhead gantry and a forklift truck;
 - 24.1.7. have local qualified staff to operate Materials Handling Equipment (MHE) in the building during working hours;
 - 24.1.8. have suitable, secure and furnished office accommodation and facilities to include:

- 24.1.8.1. for each member of the Authority supply chain stores personnel team of up to four staff:
 - 24.1.8.1.1. a desk and chair;
 - 24.1.8.1.2. mains power connection;
 - 24.1.8.1.3. high speed internet connection; and
 - 24.1.8.1.4. telephone and connection;
 - 24.1.8.2. a laser printer for A4 and A3 paper;
 - 24.1.8.3. a photocopier for A4 and A3 paper;
 - 24.1.8.4. a computer linked to the Contractor's Shared Data Environment (TSDE) (for access to design and support documentation and management information);
 - 24.1.8.5. four filing cabinets each with four drawers;
 - 24.1.8.6. clothing locker for each member of the Authority stores team referenced at Clause 24.1.8.1;
 - 24.1.8.7. ready access to toilets, washrooms and showers (male and female);
 - 24.1.8.8. parking spaces for up to four vehicles adjacent to the office accommodation;
 - 24.1.8.9. ready access to basic catering facilities (kitchen areas with sink, running hot and cold water, water boiler, refrigerator, microwave); and
 - 24.1.8.10. office supplies and/or stationery to meet the Authority's requirements.
- 24.2. The Lay Apart Store and office accommodation shall:
- 24.2.1. comply with the health and safety requirements set out in Part 5 of Schedule 2 (Project Management Specification);
 - 24.2.2. comply with the physical security requirements of the Project Management Plan as set out in Schedule 2 (Project Management Specification); and
 - 24.2.3. be satisfactory to the Authority as regards temperature, humidity, lighting and cleanliness.
- 24.3. The Contractor shall be liable for all costs and expenses incurred in the provision and proper use of the accommodation and facilities provided in accordance with Clauses 24.1 and 24.2 except international phone calls to be charged to the Authority at cost.
- 24.4. The Contractor shall render reasonable assistance to the Authority in relation to:
- 24.4.1. arranging suitable living accommodation;
 - 24.4.2. obtaining necessary visas, residence and work permits; and
 - 24.4.3. providing any other administrative assistance as the case may be.
- 24.5. The Parties shall agree the arrangements and programme for embarking each Ship's Stores onto the relevant Ship.

- 24.6. The Contractor shall be responsible for the transportation of the Ship's Stores (including all loading and unloading):
- 24.6.1. from delivery at the Shipyard to the Lay Apart Store;
 - 24.6.2. from delivery at the Shipyard to the storeroom onboard the relevant Ship; and
 - 24.6.3. from the Lay Apart Store to the storeroom onboard the relevant Ship, including additional manpower if necessary to assist the Authority in moving Stores around the Ship,
- as directed by the Authority from time to time.
- 24.7. During the hours worked by the Authority's stores personnel, the keys of the Lay Apart Store and Ship's storerooms shall be held by Authority's stores personnel. At all other times the keys shall be entrusted to a responsible person nominated by the Contractor to take custody of them.
- 24.8. The Contractor shall be liable for the security and safekeeping of the Ship's Stores at all times except for those Ship's Stores which are in the Lay Apart Store or the Ship's storerooms when the respective keys are in the Authority's custody.
- 24.9. The Contractor shall provide a full inventory list of all First Outfit Stores held within each store on request of the Authority, within five (5) Business Days of the request.

25. PLATFORM INTEGRATION AND VERIFICATION

- 25.1. The role of Fleet Solid Support Platform Integrator shall be performed by the Contractor. Platform systems integration and verification includes testing of all interfaces, data flows, control mechanisms, performance and behaviour of the 'complete ship system' in accordance with the Technical Specification requirements.

Governance

- 25.2. Until Acceptance into Service of the relevant Ship, the Contractor shall be responsible for the integration of design solutions for all systems, including sub-system suppliers into an overall Ship design which satisfies the requirements of the Technical Specification.

Interface Management

- 25.3. The Contractor shall own and manage the technical interface processes governing all technical interfaces between systems (including sub-system) suppliers design scope. In undertaking this role, the Contractor shall apply the following "Interface Management Principles":
- 25.3.1. maturity of the Ship design shall be planned, measured, reported and acted upon by the Contractor in accordance with their risk management process throughout the Design and Build phases of the lifecycle;
 - 25.3.2. sub system elements shall be managed according to their criticality to the achievement of the overall Platform design; and
 - 25.3.3. the Contractor shall set each sub system a maturity target for each phase of interface development.
- 25.4. Sub system maturity status shall be measured and regularly reviewed by the Contractor and the impact of any variance on both interfaces and current and later

phases of the project evaluated and acted upon. The achievement of sufficient maturity within a sub system enabling a design freeze and hence interface maturity shall be formally recorded and agreed with the Authority.

26. ATTENDANCE AT AUTHORITY PREMISES

General

26.1. The following general provisions apply:

- 26.1.1. the Officer in Charge will provide such available administrative and technical facilities for the Contractor's Representatives employed at Government Establishments for the purpose of the Contract as may be necessary for the effective and economical discharge of work under the Contract. These facilities will be provided free of charge unless otherwise stated in the Contract. The status to be accorded to the Contractor's Representatives for messing purposes will be at the discretion of the Officer in Charge;
- 26.1.2. any land or premises (including temporary buildings) made available to the Contractor by the Authority in connection with the Contract shall be made available to the Contractor free of charge, unless otherwise stated in the Contract, and shall be used by the Contractor solely for the purposes of performing the Contract. The Contractor shall have the use of such land or premises as licensee and shall vacate the same upon completion of the Contract. Any utilities required by the Contractor shall be subject to the charges set out in the Contract; and
- 26.1.3. the Contractor shall have no claim against the Authority for any additional cost or delay occasioned by the closure for holidays of Government Establishments, where this is made known to him prior to entering into the Contract.

Liability in Respect of Damage to Government Property

26.2. Without prejudice to the provisions of Clause 28 (Government Furnished Equipment), the Contractor shall, except as otherwise provided for in the Contract, make good or, at the option of the Authority, pay compensation for all damage occurring to any Government Property, which includes land or buildings, occasioned by the Contractor, or by any of its Representatives, arising from its or their presence on a Government Establishment in connection with the Contract, provided that this Clause shall not apply to the extent that the Contractor is able to show that any such damage was not caused or contributed to by any circumstances within its or their reasonable control.

Contractor's Property

26.3. All property of the Contractor and his Representatives shall be at the risk of the Contractor whilst it is on any Government Establishment, and the Authority shall accept no liability for any loss or damage howsoever occurring thereto or caused thereby, except as follows:

- 26.3.1. where any such loss or damage was caused or contributed to by any act, neglect or default of any Government Servant, agent or contractor then the Authority shall accept liability therefor to the extent to which such loss or damage is so caused or contributed to as aforesaid; and

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

Contractor's Representatives

- 26.4. The Contractor shall submit in writing to the Authority for approval, initially and as necessary from time to time, a list of those of its Representatives who may need to enter a Government Establishment for the purpose of, or in connection with, work under the Contract, giving such particulars as the Authority may require, including full details of birthplace and parentage of any such Representative who:
- 26.4.1. was not born in the United Kingdom; or
- 26.4.2. if s/he was born in the United Kingdom, was born of parents either or both of whom were not born in the United Kingdom.
- 26.5. The Authority shall issue passes for those Representatives who are approved by it for admission to a Government Establishment and a Representative shall not be admitted unless in possession of such a pass. Passes shall remain the property of the Authority and shall be surrendered on demand or on completion of the work.
- 26.6. Notwithstanding the provisions of Clauses 26.4 and 26.5 hereof if, in the opinion of the Authority, any Representative of the Contractor shall misconduct himself, or it shall not be in the public interest for any person to be employed or engaged by the Contractor, the Contractor shall remove such person without delay on being required to do so and shall cause the work to be performed by such other person as may be necessary.
- 26.7. The decision of the Authority upon any matter arising under Clauses 26.4 to 26.6 inclusive shall be final and conclusive.

Observance of Regulations

- 26.8. The following provisions apply:
- 26.8.1. the Contractor shall ensure that its Representatives have the necessary probity (by undertaking the Government's Baseline Personnel Security Standard) and, where applicable, are cleared to the appropriate level of security when employed within the boundaries of a Government Establishment;
- 26.8.2. where the Contractor requires information on the Government's Baseline Personnel Security Standard ("**the Standard**") or security clearance for its Representatives or is not in possession of the relevant rules, regulations or requires guidance on them, the Contractor shall apply in the first instance to the Authority's Project Manager/Equipment Support Manager;
- 26.8.3. on request, the Contractor shall be able to demonstrate to the Authority that the Contractor's processes to assure compliance with the Government's Baseline Personnel Security Standard have been carried out satisfactorily. Where that assurance is not already in place, the Contractor shall permit the Authority to inspect the processes being applied by the Contractor to comply with the Government's Baseline Personnel Security Standard;

- 26.8.4. the Contractor shall comply and shall ensure that its Representatives comply with the rules, regulations and requirements that are in force whilst at that Establishment which shall be provided by the Authority on request; and
- 26.8.5. when on board a Ship, compliance with the rules, regulations, and requirements shall be in accordance with the Ship's regulations as interpreted by the Officer in Charge. Details of those rules, regulations and requirements shall be provided on request by the Officer in Charge.

Transport Overseas

- 26.9. Where the Contractor's Representatives are required in accordance with the Contract to join or visit a Government Establishment overseas, transport between the United Kingdom and the place of duty (but excluding transport within the United Kingdom) shall be provided free of charge by the Authority whenever possible, normally by Royal Air Force or by Authority chartered aircraft. The Contractor shall make such arrangements through the Project Manager/Equipment Support Manager named for this purpose in Schedule 18 (Addresses and Other Information). When such transport is not available within a reasonable time, or in circumstances where the Contractor wishes its Representatives to accompany material for installation which the Contractor is to arrange to be delivered, the Contractor shall make its own transport arrangements. The Authority shall reimburse the Contractor's costs for such transport of its Representatives on presentation of evidence supporting the use of alternative transport and of the costs involved. Transport of the Contractor's Representatives locally overseas which is necessary for the purposes of the Contract shall be provided wherever possible by the Authority and, where so provided, will be free of charge.

Medical Treatment Overseas

- 26.10. Out-patient medical treatment given to the Contractor's Representatives by a Service Medical Officer or other Government Medical Officer at a Government Establishment overseas shall be free of charge. Treatment in a Service hospital or medical centre, dental treatment, the provision of dentures or spectacles, conveyance to and from a hospital, medical centre or surgery not within the Establishment, and transportation of the Contractor's Representatives back to the United Kingdom, or elsewhere, for medical reasons, shall be charged to the Contractor at the appropriate local rate.

Injuries, Disease and Dangerous Occurrences

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

Dependants of Contractor's Representatives

- 26.12. No assistance from public funds, and no messing facilities, accommodation or transport overseas shall be provided for dependants or members of the families of the Contractor's Representatives. Medical or necessary dental treatment may,

however, be provided for dependants or members of families on repayment at current Authority rates.

Provision of Funds Overseas

- 26.13. The Contractor shall, wherever possible, arrange for funds to be provided to its Representatives overseas through normal banking channels (e.g. by travellers cheques). If banking or other suitable facilities are not available, the Authority shall, upon request by the Contractor and subject to any reasonable limitation required by the Contractor, make arrangements for payments, converted at the prevailing rate of exchange (where applicable), to be made by the Establishment to which the Contractor's Representatives are attached. All such advances made by the Authority shall be recovered from the Contractor.

Health and Safety Hazard Control

- 26.14. Where the Contractor enters a Government Establishment for the purpose of performing work under the Contract:
- 26.14.1. the Contractor shall notify the Officer in Charge or the site project liaison officer or overseeing officer nominated in the Contract of:
 - 26.14.1.1. any health and safety Hazards associated with the work to be performed by the Contractor or any of its Representatives;
 - 26.14.1.2. any foreseeable risks to the health and safety of all persons associated with such Hazards; and
 - 26.14.1.3. any precautions to be taken by the Contractor as well as any precautions which, in its opinion, ought to be taken by the Authority, in order to control such risks.
 - 26.14.2. The Authority shall notify the Contractor of:
 - 26.14.2.1. any health and safety Hazards which may be encountered by the Contractor or any of its Representatives on the Government Establishment;
 - 26.14.2.2. any foreseeable risks to the health and safety of the Contractor or any of its Representatives, associated with such Hazards; and
 - 26.14.2.3. any precautions to be taken by the Authority as well as any precautions which, in its opinion, ought to be taken by the Contractor, in order to control such risks.
 - 26.14.3. The Contractor shall notify its Representatives of and, where appropriate, provide adequate instruction in relation to:
 - 26.14.3.1. the Hazards, risks and precautions notified by the Contractor to the Authority under Clause 26.14.1;
 - 26.14.3.2. the Hazards, risks and precautions notified by the Authority to the Contractor under Clause 26.14.2; and
 - 26.14.3.3. the precautions which, in the Contractor's opinion, ought to be taken by its Representatives in order to control those risks.
 - 26.14.4. The Contractor shall provide the Officer in Charge or the site project liaison officer or overseeing officer nominated in the Contract with:

- 26.14.4.1. copies of those sections of the Contractor's own and, where appropriate, its Representatives' Safety Policies which are relevant to the risks notified under Clause 26.14.1;
- 26.14.4.2. copies of any related risk assessments; and
- 26.14.4.3. copies of any notifications and instructions issued by the Contractor to its Representatives under Clause 26.14.3.
- 26.14.5. The Authority shall provide the Contractor with:
 - 26.14.5.1. copies of those sections of the Authority's own Safety Policies which are relevant to the risks notified under Clause 26.14.2;
 - 26.14.5.2. copies of any related risk assessments; and
 - 26.14.5.3. copies of any notifications and instructions issued by the Authority to its employees similar to those called for from the Contractor under Clause 26.14.3.

27. GOVERNMENT FURNISHED INFORMATION

General

- 27.1. The Authority does not give any warranty or undertaking as to the completeness, accuracy, or fitness for any purpose of any of the Authority provided information. Neither the Authority nor its agents or employees shall be liable to the Contractor in contract (save as expressly provided elsewhere in the Contract), tort, statute nor otherwise, as a result of any inaccuracy, omission, unfitness for any purpose, or inadequacy of any kind, in any of the Authority provided information including the Government Furnished Information.
- 27.2. Details of the Government Furnished Information are set out in Schedule 9 (Government Furnished Equipment and Government Furnished Information).
- 27.3. Subject to Clauses 27.1 and 27.4 the Contractor shall not in any way be relieved from any obligation under the Contract nor shall it be entitled to claim against the Authority on grounds that the Government Furnished Information is insufficient, and shall make its own enquiries as to the adequacy of that information.
- 27.4. In the event the Contractor discovers that the Government Furnished Information supplied by the Authority is inaccurate, the Contractor shall immediately notify the Authority of such inaccuracy and any impact on the Contract including any requirement for a change in the Contract under Clause 53 (Formal Amendments to Contract) or extension of time in accordance with Clause 58 (Permissible Delays).
- 27.5. Nothing in this Clause 27 shall exclude any liability which the Authority or any of its agents or employees would otherwise have to the Contractor in respect of any statements made fraudulently or fraudulent omissions to make statements prior to the date of the Contract.

Drawings, Documents and Information

- 27.6. Where the Contract states that the Authority will supply any drawings, documents or information to the Contractor they will be provided free of charge unless agreed otherwise by the Parties.
- 27.7. On completion of the Contract, the Authority Project Manager will advise the Contractor of the method of disposal of all drawings, documents and other information supplied to him in accordance with Clause 27.6.

28. GOVERNMENT FURNISHED EQUIPMENT

- 28.1. The Government Furnished Equipment listed in Schedule 9 (Government Furnished Equipment and Government Furnished Information) shall be issued, free of charge to the Contractor for embarkation and embodiment or fitting to the relevant Ship by the Contractor.
- 28.2. Embarkation, embodiment, fitting or support for any Setting to Work activities of the Government Furnished Equipment to the relevant Ship shall be at the expense of the Contractor unless otherwise specified in writing by the Authority.
- 28.3. In relation to each Ship, the Contractor shall provide:
 - 28.3.1. storage space at the Shipyard for the Government Furnished Equipment which shall be secure, of adequate volume and have a controlled environment suitable for the Government Furnished Equipment;
 - 28.3.2. lifting equipment, racking and shelving;
 - 28.3.3. goods inwards inspection, stores accounting to include receipt recording, notification of receipts to the Authority, storage recording, issue to the Ship and filing of supporting vouchers in a dedicated file for periodic inspection by the Authority, stowage and simple maintenance tasks;
 - 28.3.4. to ensure the Authority's audit trail, records of Government Furnished Equipment issued within the Contractor's control should be maintained and passed to the Authority on request; and
 - 28.3.5. the Authority or its Authorised Representatives access to its stores during the Contractor's normal working day. Access should otherwise be controlled as agreed with the Authority.
- 28.4. The Contractor hereby acknowledges that the Government Furnished Equipment includes pyrotechnics associated with the lifesaving equipment.
- 28.5. The delivery dates and quantities of Government Furnished Equipment shall:
 - 28.5.1. be agreed between the Authority and the Contractor on the Commencement Date; or
 - 28.5.2. agreed between the Authority and the Contractor within one (1) Month of end of Detailed Design; and
 - 28.5.3. be recorded in Schedule 9 (Government Furnished Equipment and Government Furnished Information).
- 28.6. Government Furnished Equipment will be subject to change control in accordance with Clauses 53 (Formal Amendments to Contract) to 55 (Contractor Change Procedure).
- 28.7. In relation to each Ship, the Delivery Date is based on the assumption that all items of Government Furnished Equipment shall be delivered on the dates stated in Schedule 9 (Government Furnished Equipment and Government Furnished Information). In the event that the Delivery Date is revised, the Parties may agree to amend the delivery dates in Schedule 9 (Government Furnished Equipment and Government Furnished Information) to accord with the changed Delivery Date.
- 28.8. The Authority shall be liable for the costs of:

- 28.8.1. removing and/or replacing defective Government Furnished Equipment;
- 28.8.2. repairing or replacing any part of the Ship damaged by defective Government Furnished Equipment;
- 28.8.3. repeat trials occasioned by faulty design of, or defects in, Government Furnished Equipment; and
- 28.8.4. any delay to the Delivery Date of the Ship caused by late delivery of the Government Furnished Equipment and where the Authority has agreed an extension of time in accordance with Clause 58 (Permissible Delays),

provided that such costs are not due to error, default, breach, omission or negligence on the part of the Contractor.

- 28.9. All Government Furnished Equipment shall remain the property of the Authority and title shall remain with the Authority at all times and neither the Contractor nor any Sub-Contractor shall have any right, title or interest in the Government Furnished Equipment. It shall be used solely in the execution of the Contract and for no other purpose, without the prior approval in writing of the Authority.
- 28.10. Neither the Contractor, nor any Sub-Contractor, nor any other person, shall create or permit to subsist any Security Interest on any Government Furnished Equipment, for any sum due to the Contractor, Sub-Contractor or other person or for any other reason, and the Contractor shall take all such steps as may be necessary to ensure that the title of the Authority to the Government Furnished Equipment, and the exclusion of any such Security Interest, are brought to the notice of all Sub-Contractors and other persons dealing with any Government Furnished Equipment.

Receipt of Government Furnished Equipment

- 28.11. The Contractor shall supply the details required at Clauses 45.2 to 45.8 when importing Government Furnished Equipment.
- 28.12. The Authority shall, twelve (12) Months prior to delivery of Government Furnished Equipment, notify the Contractor of any specific storage requirements other than internal storage.
- 28.13. Subject to Clauses 28.14 to 28.15, the Contractor shall promptly and no later than within ten (10) Days of receipt of Government Furnished Equipment:
 - 28.13.1. check, in the presence of an Authority Representative, that the Government Furnished Equipment corresponds with the Government Furnished Equipment specified in the Contract;
 - 28.13.2. conduct a reasonable visual inspection; and
 - 28.13.3. notify the On Site Representative of any defects, deficiencies or discrepancies discovered.
- 28.14. Where Government Furnished Equipment is packaged it shall not be unpacked earlier than is necessary. The receipt period identified at Clause 28.13 shall count from the date on which packages are opened.
- 28.15. The Authority shall within a reasonable time after receipt of any notice under Clause 28.13 replace, re-issue or arrange for the repair of the defective or deficient Government Furnished Equipment. If appropriate, it shall also issue written

instructions for the return or disposal of the defective or deficient Government Furnished Equipment.

- 28.16. The proceeds of the sale of defective or deficient Government Furnished Equipment shall be credited to the Authority in accordance with arrangements made between the Contractor and the Authority. A list of the Government Furnished Equipment sold by the Contractor shall be sent to the Authority's Commercial Officer specified in the Schedule 18 (Addresses and Other Information) together with a statement of the proceeds of sale.
- 28.17. In the event that the Authority fails to provide, replace, or arrange for the repair of the defective or deficient Government Furnished Equipment within a reasonable time of receipt of a notice in accordance with Clause 28.13, the Parties shall agree appropriate changes to the Contract in accordance with Clauses 53 (Formal Amendments to Contract) to 55 (Contractor Change Procedure) provided that the Contractor has taken all reasonable measures to mitigate the consequences of any such delay.

Custody of Government Furnished Equipment

- 28.18. The Contractor shall be responsible for:
- 28.18.1. safe custody and return to the Authority of;
 - 28.18.2. calibration and maintenance of;
 - 28.18.3. loss or damage to,
- the Government Furnished Equipment from the expiry of the period specified in Clause 28.10 until the earlier of Acceptance Off Contract or re-delivery of the Government Furnished Equipment to the Authority in accordance with the Authority's instructions.
- 28.19. If requested, the Authority shall, within a reasonable time and where practicable before delivery of the Government Furnished Equipment, notify the Contractor of the value of the Government Furnished Equipment.
- 28.20. The Contractor shall not be liable to the Authority in respect of:
- 28.20.1. defects or deficiencies notified to the Authority in accordance with Clause 28.13 or latent defects which the Contractor can show could not reasonably have been discovered by means of the activities described at Clause 28.13; and/or
 - 28.20.2. fair wear and tear of Government Furnished Equipment resulting from its normal and proper use in the execution of the Contract save where the deterioration is contributed to by any misuse, lack of care or maintenance by the Contractor.
- 28.21. At Acceptance Off Contract of each Ship, the Contractor shall forward a list of the relevant Government Furnished Equipment still held by the Contractor to the Authority's Commercial Officer named in Schedule 18 (Addressees and Other Information) and shall return or dispose of the Government Furnished Equipment in accordance with the Authority's instructions.

29. SPECIAL JIGS AND TOOLS

- 29.1. The Contractor shall provide Jigs and Tools.

- 29.2. The Contractor shall advise the Authority in writing within twelve (12) Months of Contract Award of any Special Jigs and Tools required for the purposes of the Contract.
- 29.3. Save as provided in Clause 29.8, the cost of all Jigs and Tools and Special Jigs and Tools including the cost of maintenance and calibration is included in the Contract Price. The Contractor shall not claim assistance from other UK Government funds towards the cost of any Special Jigs and Tools.
- 29.4. Special Jigs and Tools shall be the absolute property of the Authority and title shall remain with the Authority at all times and neither the Contractor nor any Sub-Contractor shall have any right, title or interest in the Special Jigs and Tools.
- 29.5. The Contractor shall not and shall procure that no Sub-Contractor, nor any other person shall create or permit to subsist any Security Interest on the Special Jigs and Tools for any sum due to the Contractor, Sub-Contractor or any other person. The Contractor shall take all reasonable steps necessary to ensure that the provisions of this Clause 29 are brought to the notice of all Sub-Contractors and other persons dealing with any Special Jigs and Tools.
- 29.6. Save as provided in this Clause 29, Special Jigs and Tools shall be treated as Government Furnished Equipment in accordance with Clause 27 (GFE).
- 29.7. The Contractor shall be free to modify the Special Jigs and Tools as they deem to be necessary in order to perform the Contract and the Authority's approval of such modifications shall not be required.
- 29.8. In the event that any Special Jigs and Tools are required by the Contractor for installation of Government Furnished Equipment, the Authority shall provide these to the Contractor free of charge. The Contractor shall be responsible for the cost of maintenance and calibration of Special Jigs and Tools provided under this Clause 29.8.
- 29.9. The Contractor shall not use the Special Jigs and Tools for any purposes other than those of the Authority without first obtaining the written approval of the Authority which may be conditional upon the Parties agreeing terms for commercial exploitation of the Special Jigs and Tools.

30. SUPPLY OF DOCUMENTATION FOR NATO CODIFICATION PURPOSES

- 30.1. The purpose of Codification is to catalogue Items of Supply, using the minimum information required to distinguish them from similar items available. The cataloguing information is not normally a full technical specification and definition that could be used for manufacture of alternative items.
- 30.2. In the case of an Item of Supply for which the Contractor is the Design Control Authority (DCA), the Contractor shall:
- 30.2.1. provide Technical Data to the Codification Authority where:
 - 30.2.1.1. the Item of Supply is not already codified in the NATO Codification System. If the Item of Supply has already been NATO codified the Contractor shall supply the NATO Stock Number(s) to the Codification Authority; or
 - 30.2.1.2. the Contractor has not previously supplied that information either in the recommended spare parts list supplied by the Contractor in the initial provisioning phase or under another contract. If that information has previously been supplied the

Contractor shall inform the Codification Authority when and to whom the data was supplied. Under normal circumstances there will be no requirement to supply information already provided,

- 30.2.2. where the Item of Supply has already been NATO codified, supply the NSN(s) to the Codification Authority, or the Authority's Agent; and
- 30.2.3. inform the Codification Authority, or the Authority's Agent, when and to whom the data was supplied if the information has previously been supplied by the Contractor.
- 30.3. In the case of an Item of Supply for which the Contractor is not the DCA, the Contractor shall ensure that the Technical Data is supplied, either by the subcontract DCA or by the Contractor. The Contractor shall, where appropriate, include the terms of this Clause 30, or equivalent text, in any Sub-Contract(s), to ensure delivery of the cataloguing information.
- 30.4. Unless otherwise provided by the Contract, the cost of supplying the information under Clauses 30.2 and 30.3, and any other information specifically called for under the Contract, shall be deemed to have been included in the Contract Price.
- 30.5. The Contractor may from time to time be requested to supply additional information necessary for Codification. To the extent that it has the right to do so, the Contractor shall supply that additional data. The extent of additional information shall be governed by the requirements of the Codification System at that time. Full details of the Codification System can be obtained from the Codification Authority. At any time during the life of the Contract the Contractor shall notify the Codification Authority of all modifications or design changes made to an Item of Supply, which affect the Item Identification, including reference number changes, Form, Fit or Function.
- 30.6. Subject to the restrictions resulting from Clause 30.8, the Authority shall have the right, free of charge, to use and copy or have used and copied for Codification purposes information supplied under the provisions of this Clause 30, use and copying being limited to that necessary for Codification purposes. The Authority may convert or have converted any Technical Data provided in whatever format to an alternative format, including digital formats.
- 30.7. Subject to the restrictions resulting from Clause 30.8, the data constituting the Item Identification may be included in the databases of codification data which are produced by the Authority or any international organisation of which the Authority is a member and may be made available to other Governments, contractors, organisations or individuals who are authorised to have access to those databases by the Authority or the organisation(s) of which the Authority is a member.
- 30.8. The Contractor shall endeavour to ensure that all information supplied under this Clause 30 can be used for Codification purposes; however, where any of the information supplied is marked to indicate it is proprietary in nature the Contractor shall indicate what restrictions apply to its use.
- 30.9. The Codification Authority shall not retain or use the Technical Data supplied under this Clause 30 for any purpose other than for Codification.
- 30.10. If the DCA is located in a NATO country other than the UK, the equivalent organisation in that NATO country shall be substituted for the United Kingdom National Codification Bureau (UKNCB). All contact with those equivalent organisations will be via the United Kingdom National Codification Bureau.

- 30.11. If the DCA is located in a country which is not a member of the NATO Alliance or a NATO sponsored (NATO Codification System participating) country, the Codification Authority will be deemed to be the United Kingdom National Codification Bureau, which may nominate an agent to act on its behalf.
- 30.12. The Contractor, Sub-Contractor or supplier may contact the Codification Authority for any information concerning the NATO Codification System.
- 30.13. The requirements set out in Annex B to Schedule 4 (ILS Specification) shall apply in relation to Item Identification.

31. CONTRACTOR'S RECORDS

- 31.1. The Contractor shall maintain all records required pursuant to the Contract, all records required by the Classification Society and/or any Regulatory Authority or by law or Legislation generally and any other information/records held by the Contractor relating in any way to each Ship or any materials forming part of any Ship.
- 31.2. Subject to the provisions of Clause 88 (Disclosure of Information), the Contractor shall, on reasonable notice, make all records referred to in this Clause 31 available to the Authority to be examined and if necessary copied, by the Authority, or Representative of the Authority, as the Authority may require.
- 31.3. Unless the Contract specifies otherwise the records referred to in this Clause 31 shall be retained for a period of at least six (6) Years from:
 - 31.3.1. the end of the Contract term;
 - 31.3.2. the Termination of the Contract; or
 - 31.3.3. the Final Instalment Payment,whichever occurs latest.

32. QUALITY ASSURANCE

- 32.1. The Contractor shall:
 - 32.1.1. ensure that the quality of the Contractor Deliverables including those of its Sub-Contractors conforms to the requirements of the Contract and the Specifications;
 - 32.1.2. maintain a Quality Management System and continually improve its effectiveness in accordance with ISO 9001-2008 (its successor ISO 9001:2015) or its equivalent and the contractual obligations of Primary AQAP 2110 – NATO QA Requirements for Design, Development and Production; and
 - 32.1.3. comply with the requirements of Part 4 (Quality Management) of Schedule 2 (Project Management Specification) including but not limited to the development and maintenance of a Quality Management Plan.
- 32.2. The Authority reserves the right to reject any Contractor Deliverable that does not, in the opinion of the Authority, conform to the requirements of the Contract.
- 32.3. Non-Conformities shall be dealt with in accordance with Clause 55 (Contractor Change Procedure).

- 32.4. In relation to each Ship, the Contractor shall retain the quality control / inspection records for a period of ten (10) Years after Acceptance Off Contract of such Ship, and shall promptly make them accessible to the Authority upon request.

Deliverable Quality Management Plan

- 32.5. The Contractor shall provide the Authority with an agreed Quality Management Plan in compliance with AQAP 2015 NATO QA Requirements for deliverable Quality Management Plans as defined in AQAP 2105 to the Authority in accordance with the Contract.
- 32.6. When agreed by the Authority, the Quality Management Plan shall be incorporated into the Contract at Schedule 26 (Contractor Plans). Notwithstanding that the Quality Management Plan will have been seen and agreed by the Authority, the Contractor shall be solely responsible for the accuracy, suitability and applicability of the final deliverable Quality Management Plan.

33. INTERNATIONAL MARITIME ORGANISATION (IMO) INVENTORY OF HAZARDOUS MATERIALS

- 33.1. In respect of each Ship, the Contractor shall in accordance with IMO Guidelines on Ship Recycling, Resolution A.962 (23), with all amendments in force up to the Delivery Date of the relevant Ship:
- 33.1.1. take due account of the Ship's ultimate disposal when designing and constructing the Ship by using materials which can be recycled safely and in an environmentally sound manner and by minimising the use of materials known to be potentially hazardous to health and the environment; and
 - 33.1.2. in consultation with equipment manufacturers provide the Authority with an inventory of hazardous materials (as surveyed by the Classification Society), listing all materials known to be potentially hazardous utilised in the construction of the Ship.
- 33.2. The list of materials known to be potentially hazardous shall contain the location and the approximate quantity/volume of each identified material on board the Ship.
- 33.3. Any Sub-Contract shall incorporate the requirements of this Clause 33.

34. SUPPLY OF DATA FOR HAZARDOUS ARTICLES, MATERIALS AND SUBSTANCES

- 34.1. The Contractor shall provide to the Authority:
- 34.1.1. for each hazardous material or substance supplied, a Safety Data Sheet (SDS) in accordance with the extant Chemicals (Hazard Information and Packaging for Supply) Regulations (CHIP) and /or the Classification, Labelling and Packaging Regulation 1272/2008 (CLP) (whichever is applicable); and
 - 34.1.2. for each hazardous article, safety information as required by the Health and Safety at Work, etc Act 1974, at the time of supply.

Nothing in this Clause 34 shall reduce or limit any statutory duty or legal obligation of the Authority or the Contractor.

- 34.2. If the Item of Supply contains or is a substance falling within the scope of the REACH Regulation (EC) No 1907/2006:

- 34.2.1. the Contractor shall provide to the Authority an SDS for the substance in accordance with the REACH Regulation. If the Contractor becomes aware of new information which may affect the risk management measures or new information on the hazard, the Contractor shall update the SDS and forward it to the Authority and to the address listed in Clause 34.8; and
 - 34.2.2. the Authority, if it becomes aware of new information regarding the hazardous properties of the substance, or any other information that might call into question the appropriateness of the risk management measures identified in the safety data sheet supplied, will report this information in writing to the Contractor.
- 34.3. If the Contractor is required, under, or in connection with the Contract, to supply equipment, supplies or components of Contractor Deliverables thereof that, in the course of their use, maintenance, disposal, or in the event of an accident, may release hazardous materials or substances, they shall provide to the Authority a list of those hazardous materials or substances, and for each hazardous material or substance listed, provide an SDS.
- 34.4. The Contractor shall provide to the Authority and maintain a completed Hazardous Articles, Deliverables, Materials or Substances Statement.
- 34.5. If the Contractor Deliverables, materials or substances are ordnance, munitions or explosives, in addition to the requirements of CHIP and/or the CLP (whichever is applicable) and REACH the Contractor shall comply with hazard reporting requirements of DEF STAN 07-085 Design Requirements for Weapons and Associated Systems.
- 34.6. If the Contractor Deliverables, materials or substances are or contain or embody a radioactive substance as defined in the Ionising Radiation Regulations SI 1999/3232, the Contractor shall additionally provide details of:
 - 34.6.1. activity; and
 - 34.6.2. the substance and form (including any isotope).
- 34.7. If the Contractor Deliverables, materials or substances have magnetic properties, the Contractor shall additionally provide details of the magnetic flux density at a defined distance, for the condition in which it is packed.

Supply of Data for Hazardous Articles, Materials and Substances

- 34.8. Any SDS to be provided in accordance with this Clause 34, including any related information to be supplied in compliance with the Contractor's statutory duties under Clauses 34.1.1 and 34.2.1, any information arising from the provisions of Clauses 34.5, 34.6 and 34.7 and the completed Hazardous Articles, Materials or Substances Statement in accordance with Schedule 14 (Supply of Hazardous Material), shall be sent directly to the Authority's Commercial Officer defined in Schedule 18 (Addresses and Other Information) as soon as practicable, and no later than one (1) Month prior to the Contract delivery date for each Ship, unless otherwise stated in the Contract. In addition, so that the safety information can reach users without delay, a copy shall be sent preferably as an email with attachment(s) in Adobe PDF or MS WORD format, or, if only hardcopy is available, to the addresses below:
 - 34.8.1. Hard copies to be sent to:
Hazardous Stores Information System (HSIS)

Defence Safety Authority (DSA)
Movement Transport Safety Regulator (MTSR)
Hazel Building Level 1, #H019
MOD Abbey Wood (North)
Bristol BS34 8QW

34.8.2. Emails to be sent to:

DSA-DLSR-MovTpt-DGHSIS@mod.gov.uk

34.9. Failure by the Contractor to comply with the requirements of this Clause 34 shall be grounds for rejecting the affected Contractor Deliverables. Any withholding of information concerning hazardous articles, materials or substances shall be regarded as a material breach of the Contract under Clause 66 (Termination for Contractor Default) for which the Authority reserves the right to require the Contractor to rectify the breach immediately at no additional cost to the Authority or to terminate the Contract in accordance with Clause 66 (Termination for Contractor Default).

35. SHIP SAFETY AND ENVIRONMENTAL PROTECTION

35.1. The Authority has dual responsibilities in relation to safety and environmental protection:

- 35.1.1. as the Safety Regulator (naval ships being excepted by IMO); and
- 35.1.2. as the owner of the Ship after Acceptance Off Contract.

35.2. The Contractor shall ensure that:

- 35.2.1. each Ship is safe to operate and maintain;
- 35.2.2. the requirements of Part 3 (Safety and Environmental Management) of Schedule 2 (Project Management Specification) and Schedule 3 (Technical Specification) are met; and
- 35.2.3. in performing the Contract it will comply with all its statutory duties and obligations relating to safety and environmental protection.

35.3. If, at any time after the Commencement Date, it becomes apparent to the Contractor that anything contained in Schedule 3 (Technical Specification) renders any Ship non-compliant with, or the Contractor in breach of, any applicable Legislation relating to safety the Contractor shall:

- 35.3.1. immediately draw that fact to the Authority's attention; and
- 35.3.2. vary the Ship design (at the Contractor's own expense) in a manner acceptable to the Authority so as not to render the Ship, or the Contractor non-compliant with, any applicable Legislation relating to safety.

35.4. Any form of approval by the Authority of any plans, calculations or documents relating to ship safety and environmental protection submitted by the Contractor shall not be taken as transferring liability for ship safety and environmental protection to the Authority prior to Acceptance Off Contract.

36. USE OF ASBESTOS

Prohibition of Asbestos

- 36.1. Subject to Clauses 36.3 and 36.4, no asbestos of any type shall be incorporated into any Contractor Deliverables or other material to be supplied under the Contract.

Notification

- 36.2. The Contractor shall notify the Authority in writing as soon as they become aware that asbestos may be incorporated into the Contractor Deliverables or other materials to be supplied or processed during performance of the Contract.

Exemption

- 36.3. The Secretary of State may issue a Defence Exemption Certificate under the REACH Regulations exempting the Contractor from parts of the REACH Regulations. The Contractor may incorporate asbestos into Contractor Deliverables and/or material supplied, or use or process it in the performance of services under the Contract in accordance with the conditions set out in the Defence Exemption Certificate.
- 36.4. If at any stage during the lifetime of the Contract, an alternative substance becomes available, the Contractor shall bring this to the attention of the Authority immediately, by notice in writing. The Authority shall then determine, in consultation with the Contractor and the Health and Safety Executive where appropriate, whether the substance would be suitable for incorporation into any Contractor Deliverables or material which have yet to be supplied under the Contract. The Authority may require the Contractor to suspend any further production of such Contractor Deliverables or material or delivery of services, pending such determination, thereby relieving the Contractor (for the time being) of any contractual obligations to provide such Contractor Deliverables, material or services. In the event that the Authority determines that the alternative substance would be suitable for incorporation into such Contractor Deliverables or material or in the performance of services in lieu of asbestos, the Authority may vary its requirements in the light of any such determination.
- 36.5. If, at any stage during the lifetime of the Contract, the Secretary of State for Defence issues a further certificate which varies or revokes any Defence Exemption Certificate granted in accordance with the REACH Regulations, the effect of which is that any further supply of the Contractor Deliverables or delivery of services under the Contract would be prohibited by the REACH Regulations, the Contractor shall, on becoming aware of the further certificate, immediately refrain from incorporating asbestos into any such Contractor Deliverables or performing the service and shall provide the Authority with written confirmation of this within forty-eight hours. The Authority reserves the right to vary its requirements in the light of any such decision.
- 36.6. Where the Contract is for the provision of a service, the Contractor shall obtain from the Health and Safety Executive or the Secretary of State for Defence as appropriate, an exemption from the requirements of the COAR under Regulation 29 or 30 where an exemption is necessary for performance of the Contract.

37. TIMBER AND WOOD CONTAINING PRODUCTS SUPPLIED UNDER THE CONTRACT

Requirements for Timber

- 37.1. All Timber and Wood-Derived Products supplied by the Contractor under the Contract (including all Timber and Wood-Derived Products supplied by sub-contractors):

- 37.1.1. shall comply with the Specification; and
- 37.1.2. must originate either;
 - 37.1.2.1. from a Legal and Sustainable source; or
 - 37.1.2.2. from a FLEGT-licensed or equivalent source.
- 37.2. In addition to the requirements of Clause 37.1, all Timber and Wood-Derived Products supplied by the Contractor under the Contract (including all Timber and Wood-Derived Products supplied by sub-contractors) shall originate from a forest source where management of the forest has full regard for:
 - 37.2.1. identification, documentation and respect of legal, customary and traditional tenure and use rights related to the forest;
 - 37.2.2. mechanisms for resolving grievances and disputes including those relating to tenure and use rights, to forest management practices and to work conditions; and
 - 37.2.3. safeguarding the basic labour rights and health and safety of forest workers.

Requirements for Proof of Timber Origin

- 37.3. If requested by the Authority, the Contractor shall provide to the Authority evidence that the Timber and Wood-Derived Products supplied to the Authority under the Contract complies with the requirements of Clause 37.1 or Clause 37.2, or both.
- 37.4. The Authority reserves the right at any time during the execution of the Contract and for a period of five (5) Years from final delivery under the Contract to require the Contractor to produce the evidence required for the Authority's inspection within fourteen (14) Days of the Authority's request.
- 37.5. If the Contractor has already provided the Authority with the evidence required under Clause 37.3, the Contractor may satisfy these requirements by giving details of the previous notification and confirming the evidence remains valid and satisfies the provisions of Clauses 37.1 and 37.2.
- 37.6. The Contractor shall maintain records of all Timber and Wood-Derived Products, delivered to and accepted by the Authority, in accordance with Clause 37.9.

Recycled Timber

- 37.7. Notwithstanding Clause 37.3, if exceptional circumstances render it strictly impractical for the Contractor to record evidence of proof of timber origin for previously used Recycled Timber, the Contractor shall support the use of this Recycled Timber with:
 - 37.7.1. a record tracing the Recycled Timber to its previous end use as a standalone object or as part of a structure; and
 - 37.7.2. an explanation of the circumstances that rendered it impractical to record evidence of proof of timber origin.

Independent Verification

- 37.8. The Authority reserves the right to decide, except where in the Authority's opinion the timber supplied is incidental to the requirement and from a low risk source, whether the evidence submitted to it demonstrates compliance with Clause 37.1 and Clause 37.2. In the event that the Authority is not satisfied, the Contractor shall

commission and meet the costs of an "*Independent Verification*" and resulting report that will:

- 37.8.1. verify the forest source of the timber or wood; and
- 37.8.2. assess whether the source meets the relevant criteria of Clause 37.2.

Statistical Reporting

- 37.9. The statistical reporting requirement at Clause 37.10 applies to all Timber and Wood-Derived Products delivered under the Contract. The Authority reserves the right to amend the requirement for statistical reporting, in the event that the UK Government changes the requirement for reporting compliance with the Government Timber Procurement Policy. Amendments to the statistical reporting requirement will be made in accordance with Clause 54 (Authority Change Procedure).
- 37.10. The Contractor shall provide to the Authority, using the format at Schedule 15 (Timber and Wood-Derived Products) supplied under the Contract – Data Requirements), the data or information the Authority requires in respect of Timber and Wood-Derived Products delivered to the Authority under the Contract, or in respect of each Order in the case of a Framework Agreement, or at such other frequency as stated in the Contract. The Contractor shall send all completed forms including nil returns where appropriate, to the Authority's Commercial Officer.

38. PRICE

- 38.1. All prices shall be in Pounds Sterling.
- 38.2. The Contract Price and any other payments to be made to the Contractor shall be in accordance with Clauses 39 (Payment) and 40 (Payment by Instalments).
- 38.3. The Contract contains a mix of Firm and Fixed prices as stated at Schedule 1 (Schedule of Requirements). All prices quoted are exclusive of UK VAT in accordance with Clause 41 (VAT).
- 38.4. Prices identified in Schedule 1 (Schedule of Requirements) as FIRM are not subject to variation in any respect (including on account of fluctuations in wages, and/or cost of materials, interest rates and/or currency exchange rates) save as provided for in Clauses 53 (Formal Amendments to Contract), 54 (Authority Change Procedure), 55 (Contractor Change Procedure) and 20 (Changes in Certification, Classification and Law).
- 38.5. Prices identified in Schedule 1 (Schedule of Requirements) as FIXED are at Financial Year (FY) 19/20 price levels. The prices do include provision beyond this date for increases or decreases in the market price of the Ships being purchased. Any such variation shall be calculated in accordance with the following formulae:

For Ship 2 Build and Option Ship 3 Build Fixed Price Payments

$$V = P (a+b (O_i/O_0)) - P$$

Where:

V represents the variation of price

P represents the FIXED price as stated in the Schedule of Requirements

O represents the index K38B – Other Transport Equipment

O0 represents the average OUTPUT Price Index figure for the base period April 2019 to March 2020 (as above)

O_i represents the annual average of index Output across the 12 Months prior to the period for which variation is being added

a represents the non variable element at 0.1

b represents the variable element at 0.9

a+b=1

The Index referred to above shall be taken from the following Table:

OUTPUT Price Index - ONS Publication MM22 Table 2 Index **K38B - Other transport equipment**.

For Ship 2 ILS and Option Ship 3 ILS Fixed Price Payments

$$V = P (a+b (O_i/O_0)) - P$$

Where:

V represents the variation of price

P represents the FIXED price as stated in the Schedule of Requirements

O represents the index K8ZU - Top Level Service Producer Price Index (SPPI)

O0 represents the average OUTPUT Price Index figure for the base period April 2019 to March 2020 (as above)

O_i represents the annual average of index Output across the 12 Months prior to the period for which variation is being added

a represents the non variable element at 0.1

b represents the variable element at 0.9

a+b=1

The Index referred to above shall be taken from the following Table:

OUTPUT Price Index - ONS Publication MM22 Table 2 Index **K8ZU - Top Level Service Producer Price Index (SPPI)**

- 38.7. The Contractor shall notify the Authority of any significant changes in the purchasing / manufacturing plan on the basis of which these provisions were drawn up and agreed, or of any other 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.

- 38.8. FIXED prices shall be adjusted taking into account the effect of the above formulae and agreed with the Authority immediately prior to the Contractor submitting a claim for payment in accordance with Schedule 13 (Instalment Payment Scheme).
- 38.9. Notwithstanding the FIXED price nature of items four (4) to seven (7) of Schedule 1 (Schedule of Requirements) all Milestone Events that occur within the first three (3) years of the Contract shall be treated as FIRM and not subject to variation in line with Clause 38.8.
- 38.10. Adjustment to FIXED prices shall be calculated using the planned milestone achievement date listed in Schedule 13 (Instalment Payment Scheme) for such Milestone Event not the actual date the Milestone Event was completed.

39. PAYMENT

- 39.1. Payments shall be in Pounds Sterling.
- 39.2. Payment will be made via electronic transfer and prior to submitting any claims for payment under Clause 39.3 the Contractor shall be required to register their details (Supplier on-boarding) on the Contracting, Purchasing and Finance (CP&F) electronic procurement tool.
- 39.3. Where the Contractor submits an invoice to the Authority in accordance with Clause 39.2, the Authority will consider and verify that invoice in a timely fashion.
- 39.4. The Authority will pay the Contractor any sums due under such an invoice no later than a period of thirty (30) Days from receipt of valid and undisputed invoice.
- 39.5. The approval for payment of a valid and undisputed claim for payment by the Authority shall not be construed as acceptance by the Authority of the performance of the Contractor's obligations nor as a waiver of its rights and remedies under the Contract.
- 39.6. Where the Authority is responsible for arranging all or any part of the transportation of Contractor Deliverables to be supplied under the Contract the Authority shall be deemed not to have received the claim for payment for the purposes of this Clause 39 (Payment) until either:
- 39.6.1. the consignee has physically received the Contractor Deliverables; or
 - 39.6.2. five (5) Days after the Contractor Deliverables are ready for collection as notified to the Authority's Transport Office,
- whichever occurs first.
- 39.7. Wherever possible, the Contractor shall inform the Authority's Transport Office at least five (5) Days in advance of the date upon which the Contractor Deliverables shall be ready for collection.
- 39.8. Where and to the extent that the debt would otherwise be a '*qualifying debt*' under the Late Payment of Commercial Debts (Interest) Act 1998 ('the LPCDA):
- 39.8.1. the interest provided for by this Clause 39 is a contractual remedy and is not statutory interest. Therefore, to the extent permissible by law, the provisions of the LPCDA relating to statutory interest shall not apply to the Contract;
 - 39.8.2. from the day after the Relevant Day and thereafter until payment is made, simple interest at a rate calculated in accordance with Clause 39.8.3 may be claimed by the Contractor on the value of all valid claims for payment (or unpaid parts thereof);

- 39.8.3. without prejudice to Clause 39.8.1, the rate of interest referred to in Clause 39.8.2 shall be the prevailing rate of statutory interest (as defined in the LPCDA) on the Relevant Day;
 - 39.8.4. no interest shall be payable for any period of delay attributable to the conduct of the Contractor; and
 - 39.8.5. all claims for interest made pursuant to this Clause 39 shall be notified in writing to the Authority's Commercial Officer.
- 39.9. Any interest pursuant to this Clause 39 shall not form a part of the Contract Price and, as a remedy for late payment, shall not be subject to VAT.

40. PAYMENT BY INSTALMENTS

- 40.1. In relation to each Ship and ILS Deliverables and subject to Clauses 40.3 to 40.8, the Authority shall pay the Contractor for the Contractor Deliverables by way of Instalment Payments, which shall be applied for and paid in accordance with Clause 39 (Payment).
- 40.2. The Contractor shall be entitled to claim an Instalment Payment upon satisfactory completion or performance of the relevant Milestone Event on the date shown in Schedule 13 (Instalment Payment Scheme) or the actual date the Milestone Event is achieved, whichever is the later, subject to:
- 40.2.1. the Contractor having provided to the Authority evidence supporting the Contractor's claim that it is entitled to the Instalment Payment sought by submission and approval by the Authority of a Milestone Acceptance Certificate in accordance with Schedule 28;
 - 40.2.2. the Milestone Events for Instalment Payments have been completed sequentially unless otherwise agreed between the Parties and
 - 40.2.3. in respect of those Instalment Payments associated with Acceptance Off Contract, for each Ship the Contractor must achieve the relevant ILS Milestone for the respective Ship on or before the date that the Ship is offered up to the Authority for Acceptance Off Contract in accordance with Clause 17.2 and Schedule 2 (Project Management Specification). In the event that the relevant ILS Milestone is not achieved the Authority may at its sole discretion elect not to accept the Ship until the relevant ILS Milestone is achieved. Any costs associated with the delay to AOC will be borne by the Contractor.
- 40.3. Notwithstanding the Contractor's compliance with Clause 40.2, the Authority will not be obliged to make an Instalment Payment if the Authority is not satisfied that the relevant Milestone Event has been completed and/or performed in accordance with the Contract and/or if the Contractor has failed to adequately maintain and preserve the structure of the relevant Ship and associated equipment whether installed or otherwise.
- 40.4. Where the Authority intends to rely on Clause 40.3 as the basis for rejecting any claim for an Instalment Payment, the Authority will give five (5) Business Days' notice in writing of such to the Contractor together with reasons for the rejection.
- 40.5. In the event that the Authority terminates the Contract in accordance with Clauses 66 (Termination for Contractor Default) or 67 (Termination for a Permissible Delay) (in so far as the Delay Event is not wholly caused by the Authority), the Contractor shall, without prejudice to any other right or remedy of

either Party, reimburse the Authority in full all Instalment Payments in accordance with Clause 70 (Financial Consequences of Termination).

- 40.6. The Contractor shall not without the prior written approval of the Authority, by any act or omission whatsoever reduce or permit to be reduced in value the work or materials for which the Contractor has been paid. In the event of any reduction in the value of such work or materials (either with or without the Authority's prior written consent), the Contractor shall immediately upon demand repay to the Authority the amount by which the Authority considers that the value of such work and materials has been reduced and in this regard the Authority's decision as to the said amount shall be final. The amount so repaid shall be refunded to the Contractor only when the Authority is satisfied that the work and materials reduced in value have been restored or renewed to the value for which payment was originally made. This Clause 40 shall not apply to any defects discovered in the work or materials.
- 40.7. Any sums due to the Authority in respect of Liquidated Damages payable in accordance with Clause 62 (Deficiencies and Liquidated Damages) shall be calculated and determined before the actual AOC date of the relevant Ship and shall, at the option of the Authority in its sole and absolute discretion, be deducted from the Instalment Payment due to the Contractor at Acceptance Off Contract or paid by the Contractor to the Authority.
- 40.8. All expenses payable in accordance with Clause 14 (Test, Trials and Inspections) shall be paid together with the Instalment Payment due to the Contractor at Acceptance Off Contract for the relevant Ship subject to no Contractor Default having occurred and being continuing.

41. Not Used

42. VAT

- 42.1. The Contract Price excludes any UK output VAT and any similar EU (or non-EU) taxes chargeable on the supply of Contractor Deliverables by the Contractor to the Authority.
- 42.2. If the Contractor is required by UK VAT law to be registered for UK VAT (or has registered voluntarily) in respect of the Contractor's business activities at the time of any supply, and the circumstances of any supply are such that the Contractor is liable to pay the tax due to HM Revenue and Customs (HMRC), the Authority shall pay to the Contractor in addition to the Contract Price (or any other sum due to the Contractor) a sum equal to the output VAT chargeable on the tax value of the supply of Contractor Deliverables, and all other payments under the Contract according to the law at the relevant tax point.
- 42.3. The Contractor is responsible for the determination of VAT liability. The Contractor shall consult its Client Relationship Manager or the HMRC Enquiries Desk (and not the Authority's Commercial Officer) in cases of doubt. The Contractor shall notify the Authority's Commercial Officer of the Authority's VAT liability under the Contract, and any changes to it, within twenty (20) Days of becoming aware the liability is other than at the standard rate of VAT. In the event of any doubt about the applicability of the tax in such cases, the Authority may require the Contractor to obtain, and pass to the Authority, a formal ruling from HMRC. The Contractor shall comply promptly with any such requirement. Where the Contractor obtains a ruling from HMRC, it shall supply a copy to the Authority within three (3) Days of receiving that ruling unless it proposes to challenge the ruling. Where the Contractor challenges the ruling, it shall supply to the Authority a copy of any final decisions

issued by HMRC on completion of the challenge within three (3) Days of receiving the decision.

- 42.4. Where supply of Contractor Deliverables comes within the scope of UK VAT, but the Contractor is not required by UK VAT law to be registered for UK VAT (and has not registered voluntarily), the Authority shall be responsible for assessing and paying over directly to HMRC any UK output VAT due in respect of the Contractor Deliverables. The Contractor shall be responsible for ensuring it takes into account any changes in VAT law regarding registration.
- 42.5. Where Contractor Deliverables are deemed to be supplied to the Authority outside the UK, the Contractor may be required by the laws of the country where the supply takes place to register there for EU (or non- EU) turnover or similar tax. In that event, the Authority shall pay to the Contractor in addition to the Contract Price (and any other sum due to the Contractor under the Contract) a sum equal to the tax the Contractor is liable to pay to the tax authorities of the country in question in relation to the Contractor Deliverables within thirty (30) Days of a written request for payment of any such sum by the Contractor.
- 42.6. In relation to the Contractor Deliverables supplied under the Contract the Authority shall not be required to pay any sum in respect of the Contractor's input VAT (or similar EU or non-EU or both input taxes). However, these input taxes will be allowed where it is established that, despite the Contractor having taken all reasonable steps to recover them, it has not been possible to do so. Where there is any doubt that the Contractor has complied with this requirement the matter shall be resolved under Clause 86 (Disputes) or some other form of dispute resolution as agreed between the Parties.
- 42.7. Should HMRC decide that the Contractor has incorrectly determined the VAT liability, in accordance with Clause 42.2, the Authority will pay the VAT assessed by HMRC. In the event that HMRC so determines, the Contractor shall pay any interest charged on any assessment or penalties or both directly to HMRC. Such interest or penalties or both shall not be recoverable from the Authority under the Contract or any other contract. The Contractor shall supply the Authority with a copy of all correspondence between HMRC and the Contractor's advisors regarding the VAT assessment within three (3) Days of a written request from the Authority for such correspondence.

43. TAX COMPLIANCE

Warranty

- 43.1. The Contractor represents and warrants that at the date the Contract came into effect, it has notified the Authority in writing of any Occurrence of Tax Non-Compliance (OOTNC) or any litigation that it is involved in that is in connection with any OOTNC.

Duty of the Contractor to notify OOTNC

- 43.2. If, at any point during the performance of the Contract, an OOTNC occurs, the Contractor shall:
 - 43.2.1. notify the Authority in writing of such fact within twenty (20) Days of its occurrence; and
 - 43.2.2. promptly provide to the Authority:

- 43.2.2.1. details of the steps which the Contractor is taking to address the OOTNC and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - 43.2.2.2. such other information in relation to the OOTNC as the Authority may reasonably require.
- 43.3. For the avoidance of doubt, the obligation at Clause 43.2 also applies to OOTNC in non-UK jurisdictions. If the OOTNC occurred in non-UK jurisdictions, the notification must be accompanied by a full explanation of the OOTNC and any relevant tax laws and administrative provisions so the Authority can understand the nature and seriousness of the OOTNC.
- 43.4. The duty to notify does not substitute the Contractor's obligations under Schedule 2 (Project Management Specification) when used.

Duties of the Authority

- 43.5. In exercising its rights or remedies under this Clause 43, the Authority shall:
 - 43.5.1. act in a reasonable and proportionate manner taking into account, among other things:
 - 43.5.1.1. the gravity and duration of the OOTNC and any sanctions imposed by a court or tribunal; and
 - 43.5.1.2. any remedial action taken by the Contractor to prevent reoccurrence of the OOTNC.
 - 43.5.2. without prejudice to Clause 66 (Termination for Contractor Default), where deemed appropriate by the Authority (in the Authority's sole and absolute discretion), undertake action other than termination of the Contract to deal with the failure by the Contractor to comply with this Clause 43.

Tax Indemnity

- 44.6. All taxes, duties and fees of whatsoever nature (including, export taxes (if any)) arising directly or indirectly from or in connection with the performance of the Contract by the Contractor shall be deemed to be included in the Contract Price and shall be borne by the Contractor (and the Contractor shall fully and effectually indemnify and hold the Authority harmless in respect of the same) save where such taxes, duties and fees relate to the ownership, employment or operation of the Ship following the Delivery Date.

44. CUSTOMS DUTY DRAWBACK

- 44.1. The Contract Price shall be inclusive of any UK HM Customs and Excise or other duty payable. The Contractor shall not make any claim for drawback of UK import duty on any portion of the Contractor's Deliverables supplied which may be for shipment overseas.

45. IMPORT AND EXPORT LICENCES

UK Import and Export Licences

- 45.1. If, in the performance of the Contract, the Contractor needs to import into the UK or export out of the UK anything not supplied by or on behalf of the Authority and for which a UK import or export licence is required, the responsibility for applying for the licence shall rest with the Contractor. The Authority shall provide the Contractor

with sufficient information, certification, documentation and other reasonable assistance in obtaining any necessary UK import or export licence.

Obtaining a Licence or Authorisation from a Foreign Government – Contractor obligations

- 45.2. When an export licence or import licence or authorisation either singularly or in combination is required from a foreign government for the performance of the Contract, the Contractor shall as soon as reasonably practicable consult with the Authority on the licence requirements. Where the Contractor is the applicant for the licence or authorisation the Contractor shall:
- 45.2.1. ensure that when end use or end user restrictions, or both, apply to all or part of any Contractor Deliverable (which for the purposes of this Clause shall also include information, technical data and software), the Contractor, unless otherwise agreed with the Authority, shall identify in the application:
 - 45.2.1.1. the end user as: Her Britannic Majesty's Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter "HM Government"); and
 - 45.2.1.2. the end use as: For the Purposes of HM Government;
 - 45.2.2. include in the submission for the licence or authorisation a statement that "information on the status of processing this application may be shared with the Ministry of Defence of the United Kingdom".
- 45.3. If the Contractor or any Sub-Contractor in the performance of the Contract needs to export material not previously supplied by or on behalf of the Authority for which an export licence or import licence or authorisation from a foreign government is required, the responsibility for instituting expeditious action to apply for and obtain the licence shall rest with the Contractor or that Sub-Contractor. For the purposes of this Clause 45 material shall mean information, technical data and items, including Contractor Deliverables, components of Contractor Deliverables and software.
- 45.4. Where the Contract performance requires the export of material for which a foreign export licence or import licence or authorisation is required, the Contractor shall include the dependencies for the export licence or import licence or authorisation application, grant and maintenance in the Contract risk register and in the risk management plan for the Contract, with appropriate review points. Where there is no requirement under the Contract for a risk management plan the Contractor shall submit this information to the Authority's Representative.
- 45.5. During the term of the Contract and for a period of up to 2 years from completion of the Contract, the Authority may make a written request to the Contractor to seek a variation to the conditions to a foreign export licence or import licence or authorisation to enable the Authority to re-export or re-transfer a licensed or authorised item or licensed or authorised information from the UK to a non-licensed or unauthorised third party. If the Authority makes such a request it will consult with the Contractor before making a determination of whether the Authority or the Contractor is best placed in all the circumstance to make the request. Where, subsequent to such consultation the Authority notifies the Contractor that the Contractor is best placed to make such request:
- 45.5.1. the Contractor shall, or procure that the Contractor's Sub-Contractor shall, expeditiously consider whether or not there is any reason why it should object to making the request and, where it has no objection, file an application to seek a variation of the applicable export licence or

import licence or authorisation in accordance with the procedures of the licensing authority. Where the Contractor has an objection, the Parties shall meet within five (5) Days to resolve the issue and should they fail the matter shall be escalated to an appropriate level within both Parties' organisations, to include their respective export licensing subject matter experts; and

- 45.5.2. the Authority shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the application for the requested variation.
- 45.6. Where the Authority determines that it is best placed to make such request the Contractor shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the Authority to make the application for the requested variation.
- 45.7. Where the Authority invokes Clause 45.5 or 45.6 the Authority will pay the Contractor a fair and reasonable charge for this service based on the cost of providing it.
- 45.8. Where the Contractor subcontracts work under the Contract, which is likely to be subject to foreign export control, import control or both the Contractor shall use reasonable endeavours to incorporate in each subcontract equivalent obligations to those set out in this Clause 45. Where it is not possible to include equivalent terms to those set out in this Clause 45, the Contractor shall report that fact and the circumstances to the Authority.

Obtaining a Licence or Authorisation from a Foreign Government – Authority Obligations

- 45.9. Without prejudice to the Authority's position on the validity of any claim by a foreign government to extra-territoriality, the Authority shall provide the Contractor with sufficient information, certification, documentation and other reasonable assistance to facilitate the granting of export licences or import licences or authorisations by a foreign Government in respect of the performance of the Contract.
- 45.10. The Authority shall provide such assistance as the Contractor may reasonably require in obtaining any UK export licences necessary for the performance of the Contract.

Contractor Obligation to Provide Information

- 45.11. The Contractor shall identify whether any Contractor Deliverable is subject to:
 - 45.11.1. a non-UK export licence, authorisation or exemption; or
 - 45.11.2. any other related transfer or export control,that imposes or will impose end use, end user or re-transfer or re-export restrictions, or restrictions on disclosure to individuals based upon their nationality. This does not include the Intellectual Property-specific restrictions of the type referred to in Clause 73 (Intellectual Property Rights).
- 45.12. If at any time during the term of the Contract the Contractor becomes aware that all or any part of the Contractor Deliverables are subject to Clause 45.11.1 or 45.11.2, it shall notify the Authority of this as soon as reasonably practicable by providing details in the format at Schedule 21 (Import and Export Control Information) or other mutually agreed alternative format. Such notification shall be no later than thirty (30) Days of knowledge of any affected Contractor Deliverable and in any event such

notification shall be not less than thirty (30) Days prior to delivery of the Contractor Deliverables.

- 45.13. If the information to be provided under Clause 45.12 has been provided previously to the Authority by the Contractor under the Contract, the Contractor may satisfy these requirements by giving details of the previous notification and confirming they remain valid and satisfy the provisions of Clause 45.12.
- 45.14. During the term of the Contract, the Contractor shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under Clause 45.12 or 45.13 of which it becomes or is aware that would affect the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those Clauses by issuing an updated Import and Export Control Information Form to the Authority.
- 45.15. For a period of up to two (2) years from completion of the Contract and in response to a specific request by the Authority, the Contractor shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under Clause 45.12 or 45.13 of which it becomes aware that would affect the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those Clauses by issuing an updated Import and Export Control Information Form to the Authority.
- 45.16. Where following receipt of material from a Sub-Contractor or any of its other suppliers restrictions are notified to the Contractor by that Sub-Contractor, supplier or other third party or are identified by the Contractor, the Contractor shall immediately inform the Authority by issuing an updated Import and Export Control Information Form. Within twenty (20) Days of such notification, the Contractor shall propose to the Authority actions to mitigate the impact of such restrictions. Such proposals may include, where appropriate, mutually supported attempts to obtain removal or modification to the restrictions or to obtain appropriate authorisations from the relevant foreign government. The Authority shall notify the Contractor within twenty (20) Days of receipt of a proposal whether it is acceptable and where appropriate the Contract shall be modified in accordance with its terms to implement the proposal.
- 45.17. If the restrictions prevent the Contractor from performing its obligations under the Contract and have not been removed, modified or otherwise satisfactorily managed within a reasonable time, the Authority may at its absolute discretion elect to amend the Contract in accordance with Clause 54 (Authority Change Procedure) or as otherwise may be provided by the Contract or to terminate the Contract. Except as set out in Clause 45.18, in the event of termination by the Authority in these circumstances, such termination shall be in accordance with Clause 67 (Termination for Permissible Delay).
- 45.18. In the event that the restrictions notified to the Authority pursuant to Clause 45.12 were known or ought reasonably have been known by the Contractor (but were not disclosed) at Contract Award or if restrictions notified to the Authority pursuant to Clause 45.14 or 45.16 were known or ought reasonably to have been known by the Contractor at the date of submission of the most recent Import and Export Control Information Form submitted to the Authority in accordance with Clause 45.12, Termination under Clause 45.17 will be in accordance with Clause 68 (Termination for Convenience) and the provisions of Clause 45.22 will not apply.

Authority obligation to provide information

- 45.19. The Authority will use reasonable endeavours to identify any export control restrictions applying to material to be provided to the Contractor as GFE. Where the Authority is to provide material necessary to enable the Contractor to perform the Contract or in respect of which the Services are to be provided, and that material is subject to a non-UK export licence, authorisation, exemption or other related transfer or export control as described in the provisions of Clause 45.11, the Authority shall provide a completed Import and Export Control Information Form or will provide a new or updated Import and Export Control Information Form to the Contractor within thirty (30) Days of the date of knowledge and in any case not later than thirty (30) Days prior to the delivery of such material to the Contractor.
- 45.20. In the event that the Authority becomes aware that the Import and Export Control Information disclosure was incomplete or inaccurate or in the event additional such material is identified then the Authority shall provide, as soon as reasonably practicable a new or revised Import and Export Control Information Form. In the event that the Authority becomes aware that a prior disclosure included in Import and Export Control Information Form submitted to the Contractor was incomplete or inaccurate less than thirty (30) Days prior to the delivery to the Contractor of any material to which the updated or new disclosure relates, the Parties will meet as soon as reasonably practicable to discuss how to mitigate the impact of the incomplete or inaccurate disclosure.
- 45.21. Where:
- 45.21.1. restrictions are advised by the Authority to the Contractor in an Import and Export Control Information Form provided pursuant to Clause 45.19 or 45.20 or both; or
 - 45.21.2. any of the information provided by the Authority in any Import and Export Control Information Form proves to be incorrect or inaccurate, the Authority and the Contractor shall act promptly to mitigate the impact of such restrictions or incorrect or inaccurate information. Such mitigation shall include, where appropriate, mutually supported attempts to obtain removal or modification to the restrictions or to obtain appropriate authorisations from the relevant foreign government. If the restrictions or incorrect or inaccurate information adversely affect the ability of the Contractor to perform its obligations under the Contract, the matter shall be handled under the terms of Clause 54 (Authority Change Procedure) or as may otherwise be provided by the Contract as appropriate and if the restrictions have not been removed, modified or otherwise satisfactorily managed within a reasonable time the Authority may terminate the Contract. Termination under these circumstances will be in accordance with Clause 66 (Termination for Contractor Default).

Interim Position

- 45.22. Pending agreement of any amendment of the Contract as set out in Clause 45.17 or 45.21, provided the Contractor takes such steps as are reasonable to mitigate the impact the Contractor shall be relieved from its obligations to perform those elements of the Contract directly affected by the restrictions or provision of incorrect or incomplete information.

46. WARRANTY

- 46.1. The Contractor shall guarantee each Ship against Defects provided that such Defects are:
- 46.1.1. discovered within the Warranty Period for such Ship; and
 - 46.1.2. notified to the Contractor as soon as reasonably possible after discovery describing the nature of the Defects and not later than thirty (30) Days after the expiry of the Warranty Period.
- 46.2. The Contractor shall not be liable for rectifying or paying the cost of rectifying any Defect arising from:
- 46.2.1. fair wear and tear; or
 - 46.2.2. mis-management or neglect by any persons in control of the relevant Ship other than the Contractor, his servants, agents or Sub-Contractors.
- 46.3. The Contractor shall be responsible for all aspects of Warranty Guarantee management including but not limited to:
- 46.3.1. progressing the rectification of all Defects;
 - 46.3.2. the management of Sub-Contract guarantees including the transfer of any rights in Sub-Contract guarantees to the Authority in accordance with Clause 46.12;
 - 46.3.3. the production and distribution of Defect status reports; and
 - 46.3.4. attendance at meetings with the Authority and/or Sub-Contractors to review Defects.
- 46.4. Save as provided for in Clause 46.2, the Contractor shall promptly make any necessary repairs or replacements to rectify any Defects or damage to any Ship caused as a direct consequence of such Defects. Such repairs and replacements shall be made at the Contractor's cost and expense.
- 46.5. In accordance with the process at Schedule 2 (Project Management Specification) the Authority shall have the right to arrange for the rectification of any Defect, or damage to any Ship caused as a direct consequence of a Defect, to be undertaken at a location of the Authority's choice and obtain any necessary replacement parts and materials where:
- 46.5.1. the Contractor cannot supply necessary replacement parts and materials without impairing or delaying the operation or working of the Ship; or
 - 46.5.2. the Contractor is in default of Clause 46.4.
- 46.6. In the event that the Authority proposes to rectify Defects, the Authority shall notify the Contractor of the time and place the Defect rectification will take place. The Contractor shall be given a reasonable opportunity to inspect the nature and extent of the Defect and promptly advise the Authority whether or not they accept that the Defect is covered by the Warranty Guarantee but such advice to the Authority shall not be conclusive.
- 46.7. The Contractor shall pay the Authority the reasonable cost and expenses of rectifying a Defect in accordance with Clause 46.5 which shall be:
- 46.7.1. set off against the Final Instalment Payment; or

- 46.7.2. paid within (thirty) 30 Days of receipt of a written demand for payment from the Authority where:
 - 46.7.2.1. the Final Instalment Payment has already been paid by the Authority; or
 - 46.7.2.2. the amount payable by the Contractor exceeds those sums which have been set off by the Authority in accordance with Clause 46.7.1.
- 46.8. At any time prior to rectification in accordance with Clause 46.5 the Contractor shall be entitled to request that the Authority return any parts replaced to the Contractor. The Authority shall make reasonable endeavours to comply with the Contractors request and any parts returned shall be at the Contractor's cost.
- 46.9. In the event that any replaced parts returned to the Contractor in accordance with Clause 46.8 are the subject of a dispute under Clause 86 (Disputes), the Contractor shall make available the replaced parts for inspection by the Authority.
- 46.10. The Contractor shall guarantee the repairs or replacements made in accordance with Clause 46.4 for a period which is the later of:
 - 46.10.1. twelve (12) Months from the date of completion of the remedial work; or
 - 46.10.2. the end of the Warranty Period, provided however in any event the Warranty Period including any extension under Clauses 46.10.1 and 46.11 shall not exceed thirty-six (36) Months after Acceptance Off Contract.
- 46.11. In relation to any Ship, the relevant Warranty Period shall be extended where the Ship has been lying idle for a continuous or cumulative period of thirty (30) Days as a result of any work undertaken in accordance with this Clause 46 up to a maximum of thirty-six (36) Months. The period of the extension shall be equivalent to the total time that the Ship has been lying idle.
- 46.12. The Contractor shall assign to the Authority all guarantees or warranties given by the Sub-Contractors or suppliers of any of the materials or equipment used in the construction of the Ship which exceed the relevant Warranty Period upon:
 - 46.12.1. the date of expiry of the Warranty Period; and/or
 - 46.12.2. the Authority exercising its rights in accordance with Clause 69 (Take Over / Tow-Out Option).
- 46.13. The Contractor shall, as a pre-requisite of Acceptance Into Service, provide the Authority with an On Demand Guarantee Bond in favour of the Authority in the form of Schedule 12 (On Demand Guarantee).
- 46.14. The Warranty Guarantee contained in this Clause 46 replaces and excludes any other liability, guarantee, warranty and/or condition imposed or implied by the law, customary, statutory or otherwise in relation to Defects.

47. CONTRACTOR'S REFUND GUARANTEE

- 47.1. To secure the Contractor's obligations pursuant to the Contract to refund the Instalment Payments paid by the Authority to the Contractor prior to Acceptance Off Contract, the Contractor shall provide the Authority with a Refund Guarantee for each Ship, issued by the Refund Guarantor in the form set out in Schedule 6 (Contractor's Refund Guarantee).

- 47.2. The Refund Guarantee for each Ship shall be provided to the Authority at least ten (10) Days before the date for payment of the first Instalment Payment to the Contractor in accordance with Clause 40 (Payment by Instalments) and Schedule 13 (Instalment Payment Scheme).
- 47.3. The Refund Guarantee for each Ship provided in accordance with Clause 47.1 shall remain in force until the later of:
 - 47.3.1. Acceptance Off Contract of the relevant Ship; or
 - 47.3.2. thirty (30) Days after the final resolution of any dispute under Clause 86 (Disputes).
- 47.4. In the event that the credit rating of the Refund Guarantor falls below Standard and Poors A or any Insolvency Event occurs in relation to the Refund Guarantor the following shall apply:
 - 47.4.1. the Contractor shall:
 - 47.4.1.1. notify the Authority immediately; and
 - 47.4.1.2. provide a suitable replacement Refund Guarantee in the form set out in Schedule 6 (Contractor's Refund Guarantee) within seven (7) Days.
- 47.5. Unless and until the Authority has been provided with a replacement Refund Guarantee in accordance with Clause 47.4.1.2, the Authority shall not be required to make any further payments which may be due to the Contractor under the Contract.
- 47.6. Any breach of this Clause 47 shall entitle the Authority to terminate the Contract in accordance with Clause 66 (Termination for Contractor Default).

48. EARNED VALUE MANAGEMENT

Earned Value Management System (EVMS) Implementation

- 48.1. Definitions for the purposes of Clause 48 shall have the meaning ascribed in Schedule 23 (Earned Value Management Templates).
- 48.2. The Contractor, in accordance with Schedule 23 (Earned Value Management Templates) Annex A (DID-PC-001), shall develop, deliver and update as needed over the term of the Contract, an Earned Value Management Plan (EVMP) that:
 - 48.2.1. describes an EVMS that is compliant with the Association for Project Management (APM) Earned Value Management: APM Guidelines (2008), the Nominated EV Standard) or an equivalent standard (such as EIA-748) to be expressly agreed by the Authority; and
 - 48.2.2. describes how tools, processes and Suitably Qualified and Experienced Personnel (SQEP) are available to support the implementation and use of an EVMS throughout the Contract duration. The Contractor shall conduct Earned Value Management (EVM) in accordance with the Approved EVMP until Contract expiry;
 - 48.2.3. describes how the EVMS is governed, lists the accountabilities and outlines the approval and timeframe for regular review and updating;

- 48.2.4. details how configuration control is applied to the EVMS system. Describes a Change Control process in accordance with Schedule 23 (Earned Value Management Templates) Annex F (DID-PC-005) (including but not limited to change to the EVMP, engineering, technical, baseline, or Contract changes); and
- 48.2.5. the Contractor shall facilitate the Authority's Representative to conduct a Pre-Contract Award Readiness Review to enable assurance to the Authority of the Contractor's ability to comply with the Contract.
- 48.3. The Contractor shall, within three (3) Months (or earlier specified date as agreed by the Authority in writing) after Contract award, have an established EVMS that complies with the requirements as defined in the Nominated EV Standard and the Approved EVMP.
- 48.4. The Contractor shall, within a period of three (3) Months after the Commencement Date (or as agreed by the Authority in writing), facilitate the Authority review of the Contractor's EVMS in accordance with the Nominated EV Standard for the purpose of assessing compliance with the requirements of the Contract.
- 48.5. The Contractor shall ensure that its EVMS continues to meet the requirements of the Contract subsequent to successful completion of an EVMS Demonstration Review, during which any issues found shall be rectified.
- 48.6. The Contractor shall facilitate the Authority Representative to conduct ongoing System Surveillance of its EVMS in accordance with the Nominated EV standard to assess continuing compliance with the requirements of the Contract. The Authority reserves the right to conduct a review of the Contractor EVMS at any time.
- 48.7. The Contractor shall, in accordance with the EVMP, provide all facilities and assistance reasonably required by the Authority to conduct EVMS Mandated Reviews (IBRs, Demonstration and Surveillance Reviews) including Readiness Assessments for Contract Extensions or New Contract Phases.

Contract Work Breakdown Structure

- 48.8. The Contractor shall develop, deliver and update a Contract Work Breakdown Structure (CWBS) in accordance with Schedule 23 (Earned Value Management Templates) Annex B (DID-PC-002) that meets both the Authority reporting requirements
- 48.9. The Contractor shall manage the Contract in accordance with the approved CWBS & CWBS Dictionary. Alignment of data from CWBS to Contract Line Item Number (CLIN) is to be maintained to enable the Authority Contracting, Purchasing and Finance (CP&F) data requirements.
- 48.10. The Contractor shall maintain and update the CWBS Structure and Dictionary throughout the Contract using configuration control as defined within the agreed Change Control Process. Proposed changes to the CWBS that may affect Authority requirements must be provided to the Authority, within five (5) Business Days of the change being proposed, and must include an updated CWBS Dictionary for Approval. No change that may affect Authority requirements may be implemented without prior approval.
- 48.11. The Contractor may amend the approved CWBS or CWBS Dictionary, without first obtaining the Authority's approval under Clause 48.10 provided changes are formally recorded as part of the agreed Change Control Process under delegated authority and:

- 48.11.1. all elements affected by the amendment are below the reporting level;
 - 48.11.2. the amendments are consistent with the Approved CWBS; and
 - 48.11.3. the Authority is notified within thirty (30) Business Days of the changes being made.
- 48.12. The CWBS implemented shall enable reconciliation of the EVMS back to the Contract. The Contractor Budget Baseline shall be equal to the Contract Price minus margin/fees. The Contractor Budget Baseline shall comprise of the Performance Measurement Baseline and Management Reserve. The Performance Measurement Baseline shall be set with a deterministic schedule with the balance of cost being defined as Management Reserve and the balance of schedule remaining being defined as schedule reserve.

Contract Master Schedule (CMS)

- 48.13. The Contractor shall develop, deliver and update a Contract Master Schedule (CMS) in accordance with Schedule 23 (Earned Value Management Templates) Annex C (DID-PC-003). This will include the Performance Measurement Baseline (PMB), a current forecast schedule with updated performance against the PMB, and a high-level summary schedule as agreed with the Authority.
- 48.14. The Contractor shall use the approved CMS as the primary schedule for managing the Contract.
- 48.15. The Contractor shall conduct schedule health checks to assure compliance with DE&S standards. The standards applied are consistent with the Defence Contract Management Agency (DCMA) Fourteen Point Schedule Health Checks, or as otherwise agreed with the Authority.
- 48.16. The Contractor shall ensure that the CMS fully incorporates all of the defined scope within the CWBS and will be used as the basis of the Performance Measurement Baseline (PMB).
- 48.17. The Contractor shall ensure that the CMS is created in a format that allows an Export file compatible with scheduling software as defined by the Authority, e.g. Primavera P6 .xer and .xml file. The output of any alternative software systems must be compatible with being translated to an alternative file format as agreed by the Authority.
- 48.18. The Contractor shall produce Baseline and Progress Reports based on the CMS in accordance with Schedule 23 (Earned Value Management Templates) Annex C (DID-PC-003).
- 48.19. The Performance Measurement Baseline (PMB) must be under configuration control with any approved changes in accordance with the standards defined in this Clause 48 (Earned Value Management) and in Schedule 23 (Earned Value Management Templates). The PMB change log shall describe the changes to time and budget to Control Account level on the change request.
- 48.20. The Contractor shall preserve a record of historical Budgeted Cost of Work Scheduled and not implement retroactive changes, including but not limited to re-baselining the Performance Measurement Baseline, unless approved by the Authority.
- 48.21. The Contractor may amend the agreed CMS, without first obtaining the Authority's Approval under Clause 48.18 provided:
- 48.21.1. payments under the Contract are not affected;

- 48.21.2. the Baseline dates for the Milestone Events are not affected;
 - 48.21.3. the ability of the Authority to meet its obligations under the Contract is not affected; and
 - 48.21.4. it does not impact any Authority dependent activities.
- 48.22. Authority approval of an amendment to the Approved CMS under Clause 48.20 shall be obtained when the next update to the CMS is required, as specified in the Data Item Description (DID).
- 48.23. Authority Approval of an amendment to the approved CMS shall not affect either party's responsibilities or obligations under Earned Value Management System (EVMS).
- 48.24. If the Contractor becomes aware that the baseline is no longer achievable, they shall notify the Authority within five (5) Business Days.

Risk and Opportunity Management

- 48.25. In accordance with Schedule 23 (Earned Value Management Templates) Annex E (DID-PC-005), the Contractor shall maintain a Risk and Opportunity Management Plan (ROMP) that enables a risk process to be jointly managed with the Authority.
- 48.26. Prior to establishing the Performance Measurement Baseline an assessment will be made of the associated risk, allowing an appropriate Management Reserve to be established.
- 48.27. The Contractor shall make it possible for the Authority to engage with the regular risk update process via regular risk reviews and formal risk reporting.

Integrated Baseline Review (IBR)

- 48.28. The Contractor shall, within a period of four (4) Months (or earlier as agreed with the Authority in writing) after the date of the Contract, be suitably prepared for and participate in a formal on-site IBR by the Authority Representative, in accordance with the Nominated EV Standard to enable an assessment of and acceptance of the Performance Measurement Baseline (PMB).
- 48.29. The Authority may, at its discretion, conduct subsequent IBRs to reassess and accept a revised PMB.
- 48.30. Subsequent to the IBR further EVMS demonstration and on-going surveillance reviews shall be completed to ensure the continued validity of the EVMS, as outlined in the Mandated Events of Schedule 23 (Earned Value Management Templates).

Earned Value Performance Reporting

- 48.31. The Contractor shall produce Contract Performance Reports (CPR) in accordance with Schedule 23 (Earned Value Management Templates) Annex D (DID-PC-004) with data at the following minimum levels:
- 48.31.1. CPR Format 1 to the appropriate material level agreed with the Authority to represent a Managerially Significant breakdown of the work, in accordance with DID-PC-004, unless otherwise specified in the Approved EVMP;
 - 48.31.2. CPR Format 3 to the appropriate material level to accurately reflect the Performance Management Baseline (PMB) and any formally approved changes implemented during the reporting period.

- 48.31.3. CPR Format 5 at the appropriate material level agreed with the Authority to represent a Managerially Significant breakdown of the work, in accordance with DID-PC-004 unless otherwise specified in the approved EVMP. An analysis report is required each agreed monthly reporting period where the cost and schedule variance, current or cumulative to date, or the variance at completion of any reporting element:
- 48.31.3.1. adversely affects any activity that lies on the critical path and Sub-Critical Path;
 - 48.31.3.2. adversely affects the top ten risk elements as notified from time to time to the Contractor by the Authority Representative; or
 - 48.31.3.3. either exceeds the variance thresholds in Table 1 or alternate variance thresholds as defined in the approved EVMP.

Project % Complete As a % of BAC	Cumulative Cost Variance	Cumulative Schedule Variance	Variance at Completion
0 - 25%	+/-15%	+/-10%	+/-10%
26 – 75%	+/-10%	+/-7%	+/- 7%
76 – 89%	+/-7%	+/-4%	+/- 4%
90 – 100%	+/-5%	+/-4%	+/- 4%

Table 1 – Cost and Schedule Variance Thresholds (For this Table: $SV\% = (SV \times 100) / BCWS$: or $(SV \times 100) / PV$ $CV\% = (CV \times 100) / BCWP$: or $(CV \times 100) / EV$)

- 48.32. The Contractor shall conduct workshops with the Authority as part of each mandated EVMS review or other project reviews, to agree on the CPR reporting levels, time increments and the reporting threshold for CPR formats over the next project phase. The agreed reporting levels, time increments and reporting thresholds, including to an initial standard agreed with the Authority, shall be documented by the Contractor in an update to the EVMP.
- 48.33. The Contractor shall provide electronic copies of all CPRs and full open-book access to data (including but not limited to source data for planned value, earned value, actual cost and schedule performance) so that the Authority can validate the data.
- 48.34. The Contractor shall provide or make available Suitably Qualified and Experienced Personnel (SQEP) to provide in-depth analysis of EVM data presented, typically to include the Project Control Manager (PCM), Control Account Manager (CAM), and senior Project Controls staff or alternatives to be agreed in advance with the Authority.

Change Control

- 48.35. The Contractor shall identify a process that is in accordance with Schedule 23 (Earned Value Management Templates) Annex F (DID-PC-006) and that ensures

the PMB is not changed without appropriate analysis, communication, and approval. The change control process shall:

- 48.35.1. document, track and communicate changes to the Performance Measurement Baseline;
 - 48.35.2. reconcile current budgets to prior budgets in terms of changes to the authorised work in the detail needed by management for effective control;
 - 48.35.3. control retroactive changes to records pertaining to work performed that would change previously reported amounts for actual costs, earned value, or budgets. Adjustments should be made only for correction of errors, routine accounting adjustments, effects of customer or management directed changes, or to improve the baseline integrity and accuracy of performance measurement data; and
 - 48.35.4. prevent revisions to the program budget except for authorised changes.
- 48.36. The Authority shall review and the Contractor shall ensure that the change control process and procedures meet the needs of the Authority, in accordance with Schedule 23 (Earned Value Management Templates) Annex F (DID-PC-006).

Sub-Contractor Management – Project Control

- 48.37. The Contractor shall ensure that all Sub-Contractors shall manage their contracts in accordance with the Contractor's own approved project management and earned value management plans.
- 48.38. Contract elements delivered by Sub-Contractor(s) must be listed in the Contractor PMP, EVMP or Contractor Management Plan (as appropriate) with the value and scope of the Sub-Contract. Sub-Contractors must have separate Control Accounts within the Contractor's PMB.
- 48.39. Unless otherwise agreed by the Authority, the minimum requirement for an EVMS (including EVMP, CWBS, CMS and CPRs and Sub-Contractor PMB shall be flowed down to Major Subcontractors at the appropriate material level agreed with the Authority to represent a Managerially Significant breakdown of the work. A Major Subcontractor is where the Sub-Contract or group of Sub-Contracts requires effort:
- 48.39.1. in excess of twelve (12) Months and the Sub-Contract price exceeds £20m;
 - 48.39.2. represents more than 20% of the Contract value;
 - 48.39.3. as deemed appropriate by the Contractor; or
 - 48.39.4. as directed by the Authority. Authority direction will be based on a risk assessment of the scope of work being undertaken in the Sub-Contract.

Sub-Contractor Earned Value Management Requirements

- 48.40. Where EVMS requirements flow down to a Sub-Contractor, the Sub-Contractor shall maintain and use, throughout the delivery of the Sub-Contract, an EVMS compliant with the Nominated EV Standard, Contractor Approved Sub-Contract EVMP that meets the requirements of the Contract.
- 48.41. The Contractor shall ensure the Sub-Contractor's EVMS is compliant during Contractor pre Contract Readiness Reviews, or at the point of Sub-Contract Award,

with the requirements of the Contract. EVMS Reviews shall be in accordance with the Nominated EV Standard.

- 48.42. The Contractor shall be responsible for reviewing and accepting the Sub-Contractor's Performance Measurement Baseline (PMB) and Contract Budget Baseline (CBB) through an Integrated Baseline Review (IBR) conducted in accordance with the Nominated EV Standard.
- 48.43. The Contractor shall permit Authority Representative(s) to participate in any review associated with the Sub-Contractor's EVMS, including IBRs, EVMS Demonstration Reviews and System Surveillance activities for the Sub-Contract, to ensure compliance of the Sub-Contract EVMS with the requirements of the Contract.
- 48.44. The Contractor shall give the Authority at least thirty (30) Days prior notice in writing of when a Sub-Contractor Review is to be carried out.
- 48.45. The Contractor shall make available to the Authority records and source data that supports any EVMS compliance review or Demonstration Review or Surveillance Review of a Sub-Contractor's EVMS within thirty (30) Days of receipt or production.
- 48.46. The Contractor shall include EVM data from approved Subcontractors within their CPRs, which has the same status as the Contractor's EVM data when preparing CPRs in accordance with Schedule 23 (Earned Value Management Templates) Annex D (DID-PC-004).
- 48.47. The Contractor for small high-risk Sub-Contract(s), especially where placed on fixed or firm price contract(s), instead of a CPR Format 1 shall mandate the delivery from the Sub-Contractor of a Contract Cost and Schedule Status Report (CSSR) similar to the template provided in Annex I of Schedule 23 (Earned Value Management Templates). These reports will be made available to the Authority aligning to the Authority data requirements.

Sub-Contractor Monitoring and Control where EVM does not apply

- 48.48. The Contractor shall ensure that the approved Sub-Contractors monitor progress against their own plans.
- 48.49. The Contractor shall ensure that the approved Sub-Contractors implement corrective actions to address any deviations from any plan.
- 48.50. The Contractor shall ensure that the Sub-Contractors prepare and deliver Sub-Contract status reports to the Contractor within the same intervals that the Contractor reports to the Authority.
- 48.51. The Contractor shall derive and include EVM data from approved Sub-Contractors, which corresponds to the data being provided by the Contractor's EVM data, when preparing CPRs in accordance with Schedule 23 (Earned Value Management Templates) Annex D (DID-PC-004).
- 48.52. Upon request, the Contractor shall provide the Authority with a copy of the Sub-Contractors' supporting data / basis of performance reports.

Deliverable Data Formats

- 48.53. The Contractor shall ensure that project/programme data can be exchanged using the Authority preferred software tools. These include:
 - 48.53.1. Microsoft Office tools for narrative documents;
 - 48.53.2. Primavera P6 for schedules; or outputs that can be translated to a .xer and .xml file as agreed by the Authority;

- 48.53.3. Microsoft Excel compatible for numerical reports; and
- 48.53.4. Oracle Unifier.
- 48.54. The output of an alternative software system must be compatible with being translated to a .xer and .xml format file or alternative file as agreed by the Authority. The Contractor shall ensure that the CMS is created in a format that allows an export file compatible with scheduling software defined above or as approved by the Authority.

Assurance

- 48.55. The Contractor shall report to the Authority through formal design reviews the extent to which design integration arrangements and requirement compliance arrangements between the system and sub-systems suppliers are considered satisfactory.
- 48.56. The engagement of Sub-Contractors by either the Contractor or the Authority shall in no way extinguish, diminish or reduce the Contractor's responsibilities under Clause 25.1 to 48.55.

49. ON SITE REPRESENTATIVES

- 49.1. In relation to each Ship, the On Site Representatives shall be permitted full and free access to the Ship and Shipyard and/or premises of Sub-Contractors at all times for the purpose of exercising their delegated authority provided that the On Site Representatives shall not obstruct or impede the Contractor's construction of the Ship and shall comply with any relevant safety rules at the Shipyards and/or the premises of the Sub-contractor.
- 49.2. The Contractor shall, at its own cost and expense, provide the On Site Representatives with reasonable office accommodation within a single complex at the build location for up to thirty (30) staff consisting of:
 - 49.2.1. a conference room for up to twenty staff with voice, video tele conferencing and presentation facilities;
 - 49.2.2. for each member of the team of thirty (30) staff:
 - 49.2.2.1. a desk and chair;
 - 49.2.2.2. mains power connections;
 - 49.2.2.3. high speed internet connection; and
 - 49.2.2.4. telephone and connection;
 - 49.2.3. a laser printer for A4 and A3 paper;
 - 49.2.4. a A0 plotter for large Drawings;
 - 49.2.5. a photocopier for A4 and A3 paper;
 - 49.2.6. a scanner for A4 and A3 paper;
 - 49.2.7. two (2) computers linked to the Contractor's SDE (for access to design and support documentation and management information);
 - 49.2.8. 15 lockable filing cabinets each with 4 drawers;
 - 49.2.9. ready access to toilets and washrooms (male and female);

- 49.2.10. separate adjacent and lockable male/female changing rooms for storage of personal protective equipment;
 - 49.2.10.1. an additional ten (10) lockers should be provided for visitors of the Authority Representative;
- 49.2.11. parking spaces for up to 20 vehicles adjacent to the office accommodation;
- 49.2.12. basic catering facilities (kitchen areas with sink, running hot and cold water, water boiler, refrigerator, microwave); and
- 49.2.13. office supplies and/or stationery up to a value of £150 GBP per month.
- 49.3. The accommodation for the Authority shall:
 - 49.3.1. comply with the health and safety requirements set out in Part 5 of Schedule 2 (Project Management Specification);
 - 49.3.2. comply with the physical security requirements of the Project Management Plan developed by the Contractor in accordance with Part 1 of Schedule 2 (Project Management Specification); and
 - 49.3.3. be satisfactory to the Authority as regards temperature, humidity, lighting and cleanliness.
- 49.4. The Contractor shall be liable for all costs and expenses incurred in the provision and proper use of the accommodation and facilities provided in accordance with Clauses 49.2 to 49.3, except international phone calls to be charged to the Authority at cost.
- 49.5. The Authority shall indemnify the Contractor in respect of:
 - 49.5.1. damage occurring at the Shipyard;
 - 49.5.2. any third party claims; and
 - 49.5.3. injury or death to the Contractor's employees,
 caused by the acts or omissions of the Authority's Representatives.
- 49.6. The Contractor shall indemnify the Authority in respect of third party claims, injury or death to Authority Representatives caused by the acts or omissions of the Contractor's Representatives.
- 49.7. Clause 49.5 and Clause 49.6 shall not apply to the extent that a Party is able to show that any such damage, injury or death was caused or contributed to by the gross negligence or wilful misconduct of the Authority's Representatives or Contractor's Representatives as appropriate.
- 49.8. The Contractor shall render reasonable assistance to the Authority in relation to:
 - 49.8.1. arranging suitable living accommodation;
 - 49.8.2. obtaining necessary visas, residence and work permits; and
 - 49.8.3. providing any other administrative assistance as the case may be.

50. SHIP STAFF

- 50.1. Without in any way relieving the Contractor of its responsibilities under the Contract, the Authority shall appoint officers and ratings to stand by the Ships during construction so that they may:

- 50.1.1. acquire knowledge of the Ships and of the operation and maintenance of the structure, machinery and equipment that will eventually be placed in their charge;
- 50.1.2. assist the On Site Representative on matters relating to:
 - 50.1.2.1. the installation and maintenance of machinery, equipment and systems in accordance with the drawings and specifications;
 - 50.1.2.2. the safety and security of the Ships;
 - 50.1.2.3. the embarkation, stowage and safe custody of stores, in accordance with the Specifications;
 - 50.1.2.4. progressively take and retain custody, during normal working hours, of the keys to security containers that are placed on board the Ships and each ship's storerooms; and
 - 50.1.2.5. undertake specific duties for the Contractor, if so requested and if available, in accordance with Clause 14 (Tests, Trials and Inspections).
- 50.2. Notwithstanding Clause 50.1.2.4, while the keys of security containers and each Ship's storerooms are in the Contractor's custody, the Contractor shall be responsible for the safe keeping of the stores and contents of the security containers.
- 50.3. The Authority will progressively appoint an initial Ship Staff of up to twenty (20) officers and ratings up to nine (9) Months prior to Acceptance Off Contract.
- 50.4. The Authority will progressively increase the number of Ship Staff arriving up to thirty (30) Days before Acceptance Off Contract by up to eighty (80) mixed gender personnel. Provision is to be made for changing, toilet, washing and rest and eating facilities in compliance with the UK Workplace (Health, Safety and Welfare) Regulations 1992 or equivalent local standards whichever the higher.
- 50.5. Unless otherwise provided for in the Contract, the Ship Staff standing by shall:
 - 50.5.1. not change, vary or amend the terms of the Contract or the Authority's requirement unless authorised to do so in writing by the On Site Representative; and
 - 50.5.2. remain responsible and report to the On Site Representative.
- 50.6. To enable Ship Staff standing by to carry out their duties the Contractor shall provide, at its own expense:
 - 50.6.1. furnished office accommodation conveniently situated for the task for at least twenty (20) personnel;
 - 50.6.2. 15 desks each with mains power connection, telephone and telephone connection;
 - 50.6.3. 25 chairs suitable for comfortable use with the desks;
 - 50.6.4. 15 computers with internet connection and linked to the Contractor's TSDE (for access to design and support documentation and management information);
 - 50.6.5. one black and white, A3 laser printer;
 - 50.6.6. ready access to male and female toilets and washrooms;

- 50.6.7. separate adjacent and lockable room for storage of personal protective equipment;
- 50.6.8. suitable number of parking spaces adjacent to the office facilities;
- 50.6.9. basic catering facilities (kitchen areas with sink, running hot and cold water, water boiler, refrigerator and microwave);
- 50.6.10. office supplies and/or stationery up to a value of £100 GBP per Month; and
- 50.6.11. a laundry service for Ship Staff clothes, including overalls.

The total concurrent requirement will depend on the delivery schedule of the Ships.

50.7. The accommodation referred to at Clause 50.6.1 shall:

- 50.7.1. comply with the health and safety requirements set out in Part 4 of Schedule 2 (Project Management Specification);
- 50.7.2. comply with the physical security requirements of the Project Management Plan; and
- 50.7.3. be satisfactory to the Authority as regards temperature, humidity, lighting and cleanliness.

50.8. The Authority shall indemnify the Contractor in respect of:

- 50.8.1. damage occurring at the Shipyard;
- 50.8.2. any third party claims; and
- 50.8.3. injury or death to the Contractor's employees,

caused by the gross negligence or wilful misconduct of the Ship Staff.

50.9. The Contractor shall indemnify the Authority in respect of third party claims, injury or death to Ship Staff caused by the acts or omissions of the Contractor's Representatives.

50.10. Clause 50.8 and Clause 50.9 shall not apply to the extent that a Party is able to show that any such damage, injury or death was caused or contributed to by circumstances beyond the reasonable control of the Ship Staff or the Contractor's Representative as appropriate.

50.11. The Contractor shall render reasonable assistance to the Authority in relation to:

- 50.11.1. arranging suitable living accommodation; and
- 50.11.2. obtaining necessary visas, residence and work permits,

providing any other administrative assistance as the case may be.

50.12. The Contractor shall provide to Ship Staff all reasonable assistance, including but not limited to:

- 50.12.1. copies, on loan, of such drawings and documents as selected by the On Site Representative;
- 50.12.2. access at all reasonable times to the work in progress; and
- 50.12.3. allowing the Ship Staff the opportunity to operate and become acquainted with the Ships, its equipment and systems for which eventually they will be responsible and to actively participate in all trials up to and including Contractor Sea Trials.

- 50.13. The Contractor shall fully and effectually indemnify the Authority for all costs and expenses incurred by the Authority in the provision and proper use of the accommodation and facilities provided in accordance with Clause 50.2, except international phone calls to be charged to the Authority at cost.

51. MEETINGS AND PROGRESS REPORTS

- 51.1. The Contractor shall supply the Authority with reports on the progress of the Contract in the form and frequency required by and to the addressees specified in Schedule 2 (Project Management Specification).
- 51.2. The submission by the Contractor and receipt by the Authority of these reports shall not prejudice any rights or obligations of the Authority or the Contractor under the Contract.
- 51.3. Meetings between the Contractor and the Authority shall be held as specified in the Contract or at such other intervals as the Authority may reasonably request and are accepted by the Contractor. Any additional meetings shall be at no cost to the Authority.
- 51.4. Unless stated otherwise the Contractor shall be responsible for taking the minutes of all meetings, which will be provided in draft form to the Authority's Project Manager or On Site Representative (as appropriate) within two weeks of the meeting taking place.

52. SERVICE FORMALITIES

Cut Steel, Keel laying and Launch

- 52.1. In relation to each Ship and notwithstanding the TTI Programme, the Contractor shall provide to the Authority's Project Manager:
- 52.1.1. a minimum of one (1) Month written notice prior to the cutting of the first plate for each Ship;
 - 52.1.2. a minimum of one (1) Month written notice prior to laying the first keel plate or fabricated unit of such Ship; and
 - 52.1.3. a minimum of two (2) Months written notice prior to launch or first floating (Naming) of such Ship.
- 52.2. The notice provided in accordance with Clause 52.1 shall include any other relevant information, including but not limited to berth or dock number, proposals for ceremonies, arrangements for publicity and attendance of the public.
- 52.3. The date of launch or first floating of each Ship shall be agreed with the Authority following notice for such Ship being provided in accordance with Clause 52.1.

Naming Ceremony

- 52.4. In relation to each Ship, a naming ceremony, at which the formalities customarily used in Her Majesty's Service are to be observed, shall be performed either at the launch, first floating of the Ship or at some point later in the programme as shall be agreed between the Authority and the Contractor. The Authority, consulting the Contractor as necessary, shall nominate a lady sponsor to perform the Ship naming ceremony.
- 52.5. At the naming ceremony a Christian religious service, however brief and informal, shall be held. The Contractor may, with or before its formal notification of the proposed launch date, submit for the Authority's approval the name of a minister of religion to conduct the service. If the Contractor does not wish to make a

nomination or its nominee does not receive the Authority's approval, the Authority shall appoint a minister of religion to officiate.

- 52.6. The Contractor shall be responsible for the arrangements and all costs associated with the organisation and execution of the naming ceremony including:
- 52.6.1. in-country travel and accommodation costs for the Authority to cover up to 12 Authority VIP guests;
 - 52.6.2. photographs; and
 - 52.6.3. provision of sponsor's gifts that shall not exceed £500 in value for any and all.

Publicity

- 52.7. If the Contractor wishes to admit members of the press or media or the public to any ceremony or to organise any form of publicity, the Contractor shall seek prior written approval from the Authority's Project Manager and all arrangements are to be compliant with the Authority's security requirements as may be specified from time to time.
- 52.8. The Contractor shall agree the wording of all press statements with the Authority at least seven (7) Days prior to the proposed release.

Wearing of Flags

- 52.9. Before Acceptance Off Contract for the relevant Ship, no ensign or flag shall be flown on the Ship except as permitted by the Authority's Project Manager.
- 52.10. The Authority's Project Manager will, on request, advise the Contractor on the appropriate flags to be flown for specific occasions and the Authority will provide the Contractor with appropriate flags on a temporary loan basis.

Other Ceremonies

- 52.11. The Authority does not require any ceremony additional to that required by Clause 52.4 (Naming Ceremony) or provided for in Clause 52.1 (Cut Steel, Keel Laying and Launch). The Contractor may, subject to obtaining the Authority's prior written approval and complying with the requirements of Clause 52.12 and Clauses 52.7 to 52.10, arrange additional publicity events, ceremonies, or organised events entirely at his own expense.
- 52.12. The Contractor shall notify the Authority, in writing, of its intention to hold a ceremony or event not less than two (2) Months prior to the proposed date of the ceremony or event. Such notification shall include:
- 52.12.1. a description of the proposed ceremony or organised event with an outline itinerary;
 - 52.12.2. the name of the Minister of Religion proposed to conduct the service (if appropriate);
 - 52.12.3. the proposed attendance/guest list; and
 - 52.12.4. any proposed arrangements for publicity, including draft statements.

53. FORMAL AMENDMENTS TO CONTRACT

- 53.1. The Contract shall only be amended by the written agreement of the duly authorised representatives of the Parties.
- 53.2. The written agreement shall consist of the:

- 53.2.1. Authority Notice of Change under Clause 54 (Authority Change Procedure);
 - 53.2.2. issue of a serially numbered amendment letter, by the Authority; and
 - 53.2.3. unqualified acceptance of the offer from the Contractor.
- 53.3. The amendment shall come into force only when the Contractor's unqualified acceptance of the Authority's offer, in the form required by the Authority has been received by the Authority's Commercial Officer.
- 53.4. No Contract amendment shall come into effect unless it satisfies Clauses 53.1 and 53.2.
- 53.5. Where an amendment to a Specification results in a Contract Price change, that price shall be agreed prior to any formal amendments to the Contract.
- 53.6. In exceptional circumstances where the Authority wishes to add work to the Contract requirement that is unpriced at the time of the amendment, the Authority shall have the right to negotiate prices under the terms of Clause 56 (Price Fixing of Changes). Where Clause 56 (Price Fixing of Changes) is used the Contractor shall make arrangements with its Sub-Contractors in accordance with Clause 56 (Price Fixing of Changes).
- 53.7. Where necessary the Contractor shall either confirm the existing Parent Company Guarantee is relevant or provide a revised Parent Company Guarantee, with their unqualified acceptance.

54. AUTHORITY CHANGE PROCEDURE

Authority Changes

- 54.1. Subject always to Clause 53 (Formal Amendments to Contract), the Authority shall be entitled, acting reasonably, to require changes or modifications to any of the Contractor Deliverables (a "Change") in accordance with this Clause 54.

Notice of Change

- 54.2. If the Authority requires a Change, it shall serve a notice (an "Authority Notice of Change") on the Contractor.
- 54.3. The Authority Notice of Change shall set out the change required to the Contractor Deliverables in sufficient detail to enable the Contractor to provide a written proposal (a "Contractor Change Proposal") in accordance with Clause 54.4.

Contractor Change Proposal

- 54.4. As soon as practicable, and in any event within fifteen (15) Days (or such other period as the Parties may agree) after having received the Authority Notice of Change, the Contractor shall deliver to the Authority a Contractor Change Proposal.
- 54.5. The Contractor Change Proposal shall include:
- 54.5.1. the effect of the Change on the Contractor's obligations under the Contract;
 - 54.5.2. a detailed breakdown of any costs which result from the Change;
 - 54.5.3. the programme for implementing the Change;
 - 54.5.4. any amendment required to the Contract as a result of the Change, including, where appropriate, to the Contract Price; and

- 54.5.5. such other information as the Authority may reasonably require.
- 54.6. The price for any Change shall be in accordance with Clause 56 (Price Fixing of Changes) and 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.

Contractor Change Proposal – Process and Implementation

- 54.7. As soon as practicable after the Authority receives a Contractor Change Proposal, the Authority shall:
- 54.7.1. evaluate the Contractor Change Proposal; and
 - 54.7.2. where necessary, discuss with the Contractor any issues arising and following such discussions the Authority may modify the Authority Notice of Change and the Contractor shall as soon as practicable, and in any event not more than ten (10) Days (or such other period as the Parties may agree) after receipt of such modification, submit an amended Contractor Change Proposal.
- 54.8. As soon as practicable after the Authority has evaluated the Contractor Change Proposal (amended as necessary) the Authority shall:
- 54.8.1. Indicate its acceptance of the Contractor Change Proposal by issuing a serially numbered amendment letter in accordance with Clause 53 (Formal Amendments to Contract); or
 - 54.8.2. Serve a notice on the Contractor rejecting the Contractor Change Proposal and withdrawing (where issued) the Authority Notice of Change.
- 54.9. If the Authority rejects the Change Proposal it shall not be obliged to give its reasons for such rejection.
- 54.10. The Authority shall not be liable to the Contractor for any additional work undertaken or expense incurred unless a Contractor Change Proposal has been accepted in accordance with Clause 54.8.1.

55. CONTRACTOR CHANGE PROCEDURE

- 55.1. If the Contractor wishes to propose a Change, it shall serve a Contractor Change Proposal on the Authority, which shall include all of the information required by Clause 54.5, and the process at Clause 54.7 to 54.10 shall apply.

56. PRICE FIXING OF CHANGES

Price Changes having a value of under £5,000,000

- 56.1. In respect of Authority Changes, Contractor Changes, and Changes in Classification and Certification which have a proposed change to the Contract Price of less than £5,000,000, the Authority and the Contractor shall agree fair and reasonable prices as soon as practicable.
- 56.2. In the event of a delay in fixing prices in accordance with Clause 56.1 above:
- 56.2.1. fair and reasonable provisional prices shall be fixed by the Authority (provided always that the Authority reserves the right to alter from time to time the provisional prices so fixed); and
 - 56.2.2. the Authority will pay to the Contractor the amount by which any sum payable on the basis of the prices finally fixed exceeds any sum paid

on the basis of the provisional prices (in the event of any alteration of the provisional prices similar provisions for payment and repayment shall apply); or

- 56.2.3. the Contractor shall pay to the Authority the amount by which any sum paid on the basis of the provisional prices exceeds the sum payable on the basis of the prices finally fixed (in the event of any alteration of the provisional prices similar provisions for payment and repayment shall apply) and the Authority and the Contractor shall agree fair and reasonable prices as soon as practicable after provisional prices have been fixed by the Authority.

- 56.3. For the purpose of fixing prices for changes in accordance with Clause 56.2 above, the Contractor shall at all times before prices have been finally fixed:

- 56.3.1. furnish such estimates of the costs of production of the change as the Authority may reasonably require; and
- 56.3.2. afford such facilities as the Authority may reasonably require for his representatives to visit the Contractor's premises and examine any or all of the processes involved in the change in order to estimate the costs of their production; and
- 56.3.3. maintain and on request furnish such particulars of his plans for the change as the Authority may reasonably require and on request by the Authority confirm these particulars or bring them up to date in any respect which might significantly affect the costs of the change; and
- 56.3.4. maintain and on request furnish such particulars as the Authority may reasonably require in order that he may be satisfied that the prices paid by the Contractor to Sub-Contractors and suppliers (including subsidiary companies or firms) are fair and reasonable.

- 56.4. If, at any time before prices for the change have been finally fixed in accordance with Clause 56.2 above, the Contractor places a Sub-Contract with a value exceeding £75,000 on a non-competitive basis (including to a subsidiary or sister company) the Contractor shall:

- 56.4.1. include in any such Sub-Contract provisions which impose on the Sub-Contractor the same obligations imposed on the Contractor by Clauses 56.1 to 56.3, and
- 56.4.2. take all reasonable steps to secure the due observance by the Sub-Contractor of his obligations under the said provisions.

unless otherwise agreed in writing by the Authority.

- 56.5. The Authority shall not disclose to any person outside Her Majesty's Government in the United Kingdom or its professional advisors any information obtained by him in consequence of the application of any of the provisions of this Clause 56.

Price Changes having a value of £5,000,000 or more

- 56.6. In respect of Authority Changes, Contractor Changes, and Changes in Classification and Certification which have a proposed change to the Contract Price of £5,000,000 or more, shall be priced in accordance with the Single Source Regulations 2014 as amended from time to time and in particular the Contract Profit Rate as defined by Regulation 10 of the Single Source Contract Regulations 2014.

57. DEATH AND PERSONAL INJURY, DAMAGE TO PROPERTY AND THIRD PARTY CLAIMS

- 57.1. Upon one Party discovering any damage to property and/or receiving notice of a claim by a third party against it, such Party's Representative shall, as soon as practicable, notify the other Party's Representative, providing a record of any relevant details of the damage (including photographs if necessary) and/or third party claim.

Contractor's Indemnity

- 57.2. The Contractor shall be responsible for, and shall release and indemnify the Authority, its employees, agents and contractors, excluding the Contractor and any of the Contractor's Sub-Contractors, on demand from and against all Losses suffered, incurred or paid by the Authority in connection with:
- 57.2.1. death or personal injury; and
 - 57.2.2. loss of or damage to property (including property belonging to the Authority or for which it is responsible ("Authority Property")) only to the extent that such loss or damage to property has not already been made good by the Contractor in accordance with, and within the relevant time periods permitted under, the terms of the Contract; and
 - 57.2.3. third party actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis),
- which may arise out of, or in consequence of the design, construction, manufacture, operation or maintenance of any of the Contractor Deliverables or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Sub-Contractor on any property which is in the ownership or control of the Authority and/or adjacent to any such property or the Shipyard.
- 57.3. The Contractor shall be responsible for, and shall release and indemnify the Authority, its employees, agents and contractors on demand from and against all liability for Losses arising from third party actions, claims or demands brought against the Authority or any Authority Related Party for breach of statutory duty which may arise out of, or in consequence of a breach by the Contractor of its obligations under the Contract to the extent there are no other remedies available to the Authority under the Contract.
- 57.4. The Contractor shall not be responsible or be obliged to indemnify the Authority for:
- 57.4.1. any matter referred to in Clauses 57.2 or 57.3 which arise as a direct result of the Contractor acting on a written notice issued by the Authority's Representative; and/or
 - 57.4.2. any injury, loss, damage, cost and expense caused by the negligence or wilful misconduct of the Authority or any Authority Related Party or by the breach of the Authority of its obligations under the Contract; and/or
 - 57.4.3. any injury, loss, damage, cost and expense which is the sole responsibility of the Authority.

Conduct of Indemnity Claims

- 57.5. An indemnity by either Party under any provision of the Contract shall be without limitation to any indemnity by that Party under any other provision of the Contract.
- 57.6. If any claim is subject to an indemnity from either Party to the other, the Party wishing to make a claim (the Indemnified Party) shall notify the other Party (the Indemnifying Party) of the relevant claim as soon as reasonably practicable, giving full particulars of the claim.
- 57.7. In respect of any indemnity claim which is also an insurance claim, no Party has the right to settle and negotiate any claims without the prior consent of insurers.

Other Indemnity Claims

- 57.8. The Indemnified Party shall:
 - 57.8.1. take all reasonable steps (and, if the Contractor is the Indemnified Party, it shall procure that the Sub-contractors shall take all reasonable steps) to minimise and mitigate any Loss for which the Indemnifying Party is liable under the Contract; and
 - 57.8.2. if the claim relates to an action by a third party against the Indemnified Party, the Indemnifying Party may, unless the Contractor is the Indemnifying Party and a Senior Civil Servant (or equivalent grade) or above personally notifies the Contractor that the Authority is refusing to allow the Contractor to have conduct of the claim on grounds of national security, at its own expense and with the assistance and co-operation of the Indemnified Party have conduct of such claim including its settlement and the Indemnified Party shall not, unless the Indemnifying Party has failed to resolve the claim within a reasonable period, take any action to settle or prosecute the claim.
- 57.9. If the Indemnifying Party wishes to have conduct of the claim it shall:
 - 57.9.1. give reasonable security to the Indemnified Party for any cost or liability arising out of the conduct of the claim by the Indemnifying Party; and
 - 57.9.2. keep the Indemnified Party reasonably informed of the conduct of the claim and consult with the Indemnified Party to the extent reasonably practicable and not compromise the claim in any way whatsoever by making statements or admissions (other than in accordance with the Indemnified Party's consent, not to be unreasonably withheld or delayed) and do nothing which could prejudice the defence of any such claim; and
 - 57.9.3. not bring the name of the Indemnified Party into disrepute.
- 57.10. If the Indemnifying Party pays to the Indemnified Party an amount in respect of an indemnity and the Indemnified Party subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the claim under the indemnity, the Indemnified Party shall forthwith repay to the Indemnifying Party whichever is the lesser of:
 - 57.10.1. an amount equal to the sum recovered (or the value of the saving or benefit obtained) less any out of pocket costs and expenses properly incurred by the Indemnified Party in recovering the same; and

- 57.10.2. the amount paid to the Indemnified Party by the Indemnifying Party in respect of the claim under the relevant indemnity; and

provided that:

- 57.10.3. there shall be no obligation on the Indemnified Party to pursue such recovery; and
- 57.10.4. the Indemnifying Party shall be repaid only to the extent that the amount of such recovery aggregated with any sum recovered from the Indemnifying Party exceeds any loss sustained by the Indemnified Party (including for this purpose indirect Losses or claims for loss of profits which are excluded by the Contract from being recovered from the Indemnifying Party).

58. PERMISSIBLE DELAYS

- 58.1. The Contractor shall notify the Authority in writing within five (5) Days of the occurrence of a Force Majeure Event or Delay Event and may request in writing an extension to the Delivery Date in accordance with Clause 58.2 provided that:

- 58.1.1. any Delay Event:

- 58.1.1.1. was not caused by the error, neglect, act or omission of the Contractor or its Sub-Contractors;
- 58.1.1.2. could not reasonably have been, foreseen by the Contractor at the date of the Contract; and
- 58.1.1.3. the circumstances or events giving rise to such delay could not have been prevented or overcome by the exercise of due diligence by the Contractor, its Sub-Contractors or their respective employees or agents; and

- 58.1.2. the Contractor shall have made all reasonable efforts to avoid and mitigate the effects such Force Majeure Event or Delay Event has on the delivery of the relevant Ship(s).

- 58.2. A request for an extension of time to the Delivery Date shall be submitted by the Contractor to the Authority within ten (10) Days of the occurrence of the Force Majeure Event or Delay Event and shall include:

- 58.2.1. the cause and extent of the delay;
- 58.2.2. a statement on the effect the event has, or will have on the critical programme path of any Ship that has been or will be delayed;
- 58.2.3. those contractual obligations which have been affected by the delay; and
- 58.2.4. proposals for mitigating the delay, including alternative arrangements.

- 58.3. A failure of the Contractor to notify the Authority in accordance with Clauses 58.1 and 58.2 shall prevent the Contractor from claiming an extension to the Delivery Date.

- 58.4. The Contractor shall:

- 58.4.1. advise the Authority immediately in writing that the Force Majeure Event or Delay Event has ended; and

- 58.4.2. as soon as reasonably practicable thereafter, and no later than fifteen (15) Days after the end of the Force Majeure Event or Delay Event, submit in writing details of the length of extension to the Delivery Date claimed including evidence that the critical programme path of the Ship has been delayed.
- 58.5. Any extension of time granted or rejected by the Authority pursuant to this Clause 58 shall be fair and reasonable. For the avoidance of doubt the Authority shall have a right to grant an extension to the Delivery Date irrespective of any claim by the Contractor.
- 58.6. For the avoidance of doubt, any act or omission of the Authority causing a Delay Event to any Ship shall not necessarily be a Delay Event in respect of any subsequent Ships and such decision in relation to whether any Delay Event will apply to any subsequent Ship shall be at the sole and absolute discretion of the Authority.
- 59. MEASURES IN A CRISIS (MIAC)**
- 59.1. If, at any time, the Authority believes, in its sole opinion, that there exist circumstances to which Clause 59.2 applies, the Authority's Representative shall issue a written notice to the Contractor's Representative of such belief.
- 59.2. The circumstances referred to in Clause 59.1 are where, in view of:
 - 59.2.1. the national interest, the requirements of national security, or the occurrence of a state of transition to war, war, or other emergency (whether or not involving hostilities);
 - 59.2.2. a request to the Authority by a local authority, public body, or statutory corporation for assistance in relation to the occurrence or possible occurrence of a major accident, crisis or natural disaster; or
 - 59.2.3. a request by NATO, the United Nations, the European Union or any other country for support and assistance in relation to international obligations,

it is necessary, appropriate, or desirable for the Authority to take all or any of the measures described in Clause 59.4 and/or 59.6.
- 59.3. Measures in a Crisis shall cease to apply when the Authority's Representative issues a written notice to that effect to the Contractor's Representative and thereafter the Contractor shall continue to be bound by the provisions of the Contract.

Effect of Implementation of Measures in a Crisis

- 59.4. If the Authority's Representative has issued the notice contemplated in Clause 59.1 the Authority's Representative may require the Contractor, within such period as the Authority's Representative in its sole discretion specifies (but provided that such period is reasonable taking into account all relevant circumstances), to provide such information in the possession, knowledge or control of the Contractor as the Authority's Representative may, in its sole discretion, require, including information relating to all or any of the following matters:
 - 59.4.1. Contractor Deliverables currently being provided by the Contractor;
 - 59.4.2. Contractor Deliverables to be provided by the Contractor (and due to commence within a period specified by the Authority);

- 59.4.3. the Contractor's current deployment of its employees whether inside of outside Authority Sites; and
 - 59.4.4. all supporting equipment and documentation currently held by the Contractor and the location of such equipment and documentation,
- and the Contractor shall promptly and diligently comply fully with the requirement to provide such information.
- 59.5. Upon providing the Authority's Representative with the information requested pursuant to Clause 59.4, or upon expiry of the period specified by the Authority for the supply of such information, the Contractor shall, upon being so requested by the Authority's Representative, discuss in good faith with the Authority's Representative any matters which the Authority, in its sole opinion, may consider relevant or appropriate to any proposals the Authority may have for the reallocation of priorities for, or for the reorganisation of, Contractor Deliverables currently being provided or to be provided by the Contractor. These shall be in order to deal with the circumstances which gave rise to the issuing of a notice pursuant to Clause 59.1, including the following matters:
- 59.5.1. the revision (including the early completion, suspension or cancellation) of any provision of Contractor Deliverables; and
 - 59.5.2. the immediate implementation of new services,
- and the Parties shall endeavour, as far as reasonably possible to reach agreement as a matter of urgency on such matters.

Authority's Overriding Rights

- 59.6. Notwithstanding any provision to the contrary in the Contract, and notwithstanding that any of the measures described in Clause 59.4 may not have been taken, are required to be taken, or have been completed, the Authority may, at any time and in its sole discretion, step in to the Contract, pursuant to Clause 60 (Authority Step In) and/or the Authority's Representative may instruct the Contractor:
- 59.6.1. to accelerate to early completion or to suspend provision of any Contractor Deliverables;
 - 59.6.2. to carry out any changes whatsoever to the Contract required by the Authority without reference to Clause 54 (Authority Change Procedure); and
 - 59.6.3. to deploy its employees and all assets or rights used in connection with the assets or to use, or make available for use by the Authority or as directed by the Authority, all such assets or rights in accordance with the Authority's directions, and the Contractor shall promptly and diligently comply with any instruction issued by the Authority's Representative referred to in this Clause 59.

Authority's Indemnity on Measures in a Crisis

- 59.7. If the Authority has stepped in to the Contract pursuant to Clause 60.2 (Authority Step In), the provisions of Clause 60.5 shall apply. In all other cases where the Authority has issued a notice pursuant to Clause 59.1:

- 59.7.1. so long as, and to the extent that, the provisions of Clause 59.4 or any instruction issued by the Authority's Representative pursuant to Clause 59.6 ("**MIAC Required Action**") prevents the Contractor from providing all or any part of the Contractor Deliverables, the Contractor shall be relieved from its obligations to provide such part of the Contractor Deliverables; and
- 59.7.2. in respect of the period in which the Authority is taking the MIAC Required Action and provided that the Contractor complies with its obligations under Clause 59.4 or Clause 59.6, then:
 - 59.7.2.1. in respect of the period in which the Authority is taking the MIAC Required Action and provided that the Contractor provides the Authority with reasonable assistance (such assistance to be at the expense of the Authority to the extent that incremental costs are incurred), the amount due from the Authority to the Contractor in respect of the Contractor Deliverables shall equal the amount the Contractor would receive if it were satisfying all its obligations and providing the Contractor Deliverables affected by the MIAC Required Action in full over that period.

60. AUTHORITY STEP IN

- 60.1. In this Clause 60 references to the Authority taking action shall be deemed to include references to the Authority procuring the taking of action by others on behalf of the Authority.
- 60.2. If the Authority believes in its sole and absolute discretion that it needs to take action in connection with the Contractor Deliverables:
 - 60.2.1. because a serious risk exists to the health or safety of persons or property or to the environment;
 - 60.2.2. to discharge a statutory duty;
 - 60.2.3. because the Authority issues a notice pursuant to Clause 59.1 (Measures in a Crisis); and/or
 - 60.2.4. any other reason as directed by the Authority,
 then the Authority shall be entitled to take action in accordance with this Clause 60.
- 60.3. If Clause 60.2 applies and the Authority wishes to take action, the Authority's Representative shall notify the Contractor's Representative of the following:
 - 60.3.1. the action it wishes to take;
 - 60.3.2. the reason for such action;
 - 60.3.3. the date it wishes to commence such action;
 - 60.3.4. the time period which it believes shall be necessary for such action; and
 - 60.3.5. to the extent practicable, the effect on the Contractor and its obligation to provide the Contractor Deliverables during the period such action is being taken.
- 60.4. Following service of such notice, the Authority shall take such action as notified under Clause 60.3.1 and any consequential additional action as it reasonably

believes is necessary (together, the "Required Action") and the Contractor shall give all reasonable assistance to the Authority while it is taking the Required Action.

- 60.5. If the Contractor is not in breach of its obligations under the Contract and the Authority exercises its right to take action in connection with the Contractor Deliverables pursuant to Clause 60.2:
- 60.5.1. then, for so long as, and to the extent that the Required Action is taken, and this prevents the Contractor from providing all or any part of the Contractor Deliverables, the Contractor shall be relieved from its obligations to provide such part of the Contractor Deliverables; and
 - 60.5.2. in relation to those Contractor Deliverables in respect of which the Authority is taking the Required Action, the amount due from the Authority to the Contractor shall equal the amount that the Contractor would receive had the Required Action not been taken, less an amount equal to all the Authority's Operating Expenditure in taking the Required Action (provided that such deduction shall only be made to the extent that the Authority takes the Required Action in consequence of the Contractor being in breach of its obligations under the Contract).

61. AUTHORITY STEP OUT

- 61.1. The Authority's Representative may at any time during the period of the Required Action notify the Contractor's Representative that the Authority wishes to cease the Required Action and the date on which it intends to cease the Required Action.
- 61.2. On receipt of the Authority's Representative's notification pursuant to Clause 61.1, the Parties shall consult with each other as to the method by which the Authority shall cease the Required Action.
- 61.3. On the date on which the Required Action ceases:
- 61.3.1. the Authority shall be released from all of its obligations and liabilities in relation to the Required Action arising prior to the cessation of the Required Action other than its obligations to pay the Contractor in accordance with Clause 60 (Authority Step In); and
 - 61.3.2. the Contractor shall resume all or any part of the provision of the Contractor Deliverables which was the subject of, and was interrupted by, the Required Action.

62. DEFICIENCIES AND LIQUIDATED DAMAGES

- 62.1. The Parties recognise that a failure of the Contractor to deliver the Contractor Deliverables to the Authority wholly in compliance with the Contract and by the Delivery Date will cause the Authority loss and damage. The provisions of this Clause 62 and the Liquidated Damages payable under this Clause 62 shall apply with respect to each Ship.
- 62.2. Having regard to the military, governmental and non-commercial purposes for which the Contractor Deliverables are being supplied, the Parties further recognise and agree that:
- 62.2.1. the loss and damage suffered by the Authority does not allow or readily admit precise proof or calculation in advance; and
 - 62.2.2. any sums payable in accordance with this Clause 62 represent a genuine and reasonable pre-estimate of the loss or damage likely to be sustained by the Authority in the event of such failure.

- 62.3. Subject to Clause 62.4, the Authority acknowledges and agrees that any Liquidated Damages paid in accordance with this Clause 62 in relation to any Ship constitutes full and final settlement of any financial claims the Authority has (or may have) against the Contractor with respect to such Ship and the relevant matter for which the Liquidated Damage is payable in accordance with this Clause 62.
- 62.4. Subject to Clauses 62.3 and 70.2, the rights of the Authority in respect of this Clause 62 are without prejudice to any other rights of the Authority under the Contract, including but not limited to the right to claim Liquidated Damages in respect of each deficiency in accordance with this Clause 62, and the right to terminate the Contract in accordance with Clause 66 (Termination for Contractor Default).
- 62.5. Notwithstanding any other rights of the Authority in accordance with the Contract, the Contractor shall pay any claims for payment pursuant this Clause 62 within thirty (30) Days of written demand by the Authority.

Late Delivery

- 62.6. In relation to each Ship, in the event that the Contractor fails to deliver to the Authority the Ship in accordance with Clause 17.2 on or before the Delivery Date the Contractor shall, subject to Clause 62.7, pay to the Authority Liquidated Damages in the sum of £80,000 for each Day or part of a Day for which the Ship remain outstanding.
- 62.7. Liquidated damages payable in accordance with Clause 62.6 shall not:
- 62.7.1. exceed a maximum of £21,600,000 (per Ship) (Indexed); or
 - 62.7.2. be payable in so far as late delivery is caused by a Permissible Delay.

Speed Deficiency

- 62.8. In relation to each Ship, in the event that there is a Speed Deficiency following the analysis of data recorded on Contractor Sea Trials, in regard to the Upper Sustained Speed (as defined in Schedule 3 (Technical Specification) Section 044.4 – Speed) the Contractor shall, subject to Clause 62.9, pay to the Authority Liquidated Damages in the sum of £1,000,000 (Indexed) for each 0.1 of a knot of Speed Deficiency.
- 62.9. Liquidated damages payable in accordance with Clause 62.8 shall not:
- 62.9.1. exceed a maximum of £4,000,000 (per Ship) (Indexed); or
 - 62.9.2. accrue in respect of a Speed Deficiency of less than 0.1 of a knot.
- 62.10. In the event that there is a Speed Deficiency exceeding 0.5 knots, the Authority shall have the option (at its sole and absolute discretion) to terminate the Contract (whereupon the provisions of Clause 66 (Termination for Contractor Default) will apply) or accept a reduction of the Contract Price by £10,000,000 (per Ship).

Excessive Fuel Consumption

- 62.11. In relation to each Ship, in the event that there is Excessive Fuel Consumption as measured at Contractor Sea Trials (in regard to the fuel consumption estimated in the Contractor's tender return. The Contractor shall, subject to Clause 62.12, pay to the Authority liquidated damages in the sum of £600,000 (Indexed) for each full percentage of Excessive Fuel Consumption (commencing at 2%).
- 62.12. Liquidated damages payable in accordance with Clause 62.11 shall not:

- 62.12.1. exceed a maximum of £6,000,000 (per Ship) (Indexed); or
 - 62.12.2. accrue in respect of Excessive Fuel Consumption of less than 2%.
- 62.13. In the event that there is Excessive Fuel Consumption exceeding 12%, the Authority shall have the option (at its sole and absolute discretion) to terminate the Contract (whereupon the provisions of Clause 66 (Termination for Contractor Default) will apply) or accept a reduction of the Contract Price by £10,000,000 (per Ship).

Deficiency in Deadweight

- 62.14. In relation to each Ship, in the event that there is Deficiency in Deadweight as measured at the inclining experiment (in regard to the deadweight of the Ship being less than 5,720 tonnes) the Contractor shall, subject to Clause 62.15, pay to the Authority Liquidated Damages in the sum of £1,500,000 (Indexed) for each 250 tonnes of Deficiency in Deadweight.
- 62.15. Liquidated damages payable in accordance with Clause 62.14 shall not:
- 62.15.1. exceed a maximum of £12,000,000 (Indexed); or
 - 62.15.2. accrue in respect of Deficiency in Deadweight of less than 250 tonne increments.
- 62.16. In the event that there is Deficiency of Deadweight in excess of 3,500 tonnes, the Authority shall have the option (at its sole and absolute discretion) to terminate the Contract (whereupon the provisions of Clause 66 (Termination for Contractor Default) will apply) or accept a reduction of the Contract Price by £15,000,000.

63. DECOUPLING

- 63.1. If the Contractor enters into any contract with the UK Government (other than the Contract), then no breach by the UK Government of that other contract, nor any other act or omission, written or oral statement nor any representation whatsoever of or by the UK Government, its servants or agents, or other contractors relating to or connected with any other contracts as aforesaid shall, regardless of any negligence on its part or their part:
- 63.1.1. give the Contractor any right under the Contract to an extension of time or additional payment or damages or any other relief or remedy whatsoever against the Authority;
 - 63.1.2. affect, modify, reduce or extinguish either the obligations of the Contractor under the Contract or the rights or remedies of the Authority under the Contract (including the right to any Liquidated Damages); or
 - 63.1.3. be taken to amend, add to, delete or waive any term or condition of the Contract.

64. RECOVERY OF SUMS DUE

- 64.1. Without prejudice to any other right or remedy, the Authority reserves the right to set-off any amount owing at any time from the Contractor to the Authority against any amount payable by the Authority to the Contractor under the Contract or under any other contract with the Authority, or with any other Government Department.
- 64.2. The Contractor shall not exercise any rights of set-off or counterclaim with respect to any amount which may be owing at any time from the Contractor to the Authority against any amount which may be payable by the Authority to the Contractor under

the Contract or under any other contract with the Authority, or with any other Government Department.

65. INSURANCE

- 65.1. Without prejudice to its obligation to indemnify or otherwise be liable to the Authority under the Contract, the Contractor shall for the periods specified in Schedule 10 (Required Insurances) take out and maintain, or procure the taking out and maintenance of insurances in accordance with the requirements specified in Schedule 10 (Required Insurances) and any other insurances required by relevant and applicable law or regulation (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.
- 65.2. The Required Insurances shall be taken out and maintained with insurers who are of good financial standing, appropriately regulated and of good repute in the international insurance market.
- 65.3. The Contractor shall ensure that the Authority's insured party status and separate interests in respect of the Required Insurances are protected as set out and where specified in Schedule 10 (Required Insurances). If required by the Authority, the Contractor shall procure a letter of undertaking to be issued by the Contractor's insurance broker in form and substance acceptable to the Authority.
- 65.4. The Contractor shall not (and the Contractor shall procure that none of its Sub-Contractors or any other person of any tier shall not) take any action or fail to take any action or, insofar as is reasonably within its power, permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Required Insurances.
- 65.5. If the Contractor is in breach of Clause 65.1, the Authority may elect, but shall not be obliged, to purchase any insurance which the Contractor is required to maintain pursuant to the Contract but has failed to maintain in full force and effect, and the Authority shall be entitled to recover the premium, insurance premium tax and other reasonable costs incurred in connection therewith as a debt due from the Contractor.
- 65.6. The Contractor shall, upon the date of the Contract and within fifteen (15) Days after the renewal of any of the Required Insurances, provide evidence, in a form satisfactory to the Authority, that the Required Insurances are in force and effect and meet the requirements of this Clause 65 (Insurance) and Schedule 10 (Required Insurances). The supply to the Authority of any evidence of insurance cover in compliance with the requirements of this Clause 65.6 shall not imply acceptance by the Authority that the extent of insurance cover is sufficient or that the terms and conditions thereof are satisfactory, in either case, for the purposes of the Contract nor be a waiver of the Contractor's liability under the Contract.
- 65.7. The Contractor shall notify the Authority at least five (5) Days prior to the cancellation, suspension, termination or non-renewal of any of the Required Insurances.
- 65.8. The Contractor shall promptly notify to insurers any matter arising from, or in relation to the Contract for which it may be entitled to claim under any of the Required Insurances. In the event that the Authority receives a claim relating to the Contract, the Contractor shall co-operate with the Authority and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.

- 65.9. Except where the Authority is the claimant party, the Contractor shall notify the Authority immediately (such notification to be accompanied by reasonable particulars of the incident or circumstances giving rise to such incident) after any:
- 65.9.1. occurrence or circumstances which may give rise to a claim amounting to or in excess of £250,000 in connection with the Contract and the Required Insurances; and
 - 65.9.2. occurrence or circumstances may give rise to any claim in connection with the Contract which may be in excess of the limits of Required Insurances in Schedule 10 (Required Insurances).
- 65.10. The Contractor shall maintain a written register of all losses or occurrences which result in a claim under the Required Insurances in connection with the Contract and shall allow the Authority to review such register at any time.
- 65.11. Where any Required Insurance requires payment of a premium, the Contractor shall be liable for such premium.
- 65.12. Where any Required Insurance is subject to an excess or deductible, below which the indemnity from insurers is excluded, the Contractor shall be liable for such excess or deductible which would otherwise be insured but for the excess or deductible. The Contractor shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Required Insurances whether under the terms of the Contract or otherwise.
- 65.13. The Contractor shall:
- 65.13.1. without limiting any specific requirements in the Contract, 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 Contractor, acting in accordance with industry best practice, including but not limited to the investigation and reporting of its claims to insurers; and
 - 65.13.2. use reasonable endeavours to procure that all insurance brokers through whom any Required Insurances to be effected by the Authority are effected or maintained shall maintain intact their files (including all documents disclosed and correspondence in connection with the placement of those Required Insurances and the payment of premiums and claims under such Required Insurances) until the date specified in Schedule 10 (Required Insurances).

Partial Loss

- 65.14. In the event of damage to any Ship not amounting to an actual, constructive or compromised total loss the Contractor shall be obliged to unconditionally and without delay repair such damage so that the Ship complies (again) with the Specifications and the requirements of the Contract. The Contractor shall apply the amounts received under any insurance policy to making good such damage to the Ship. The Contractor's duties, obligations and liabilities under the Contract (including the obligation to make good such damage to the Ship) shall be in no way affected, diminished or impaired by reason of any such damage to the Ship and/or by reason of the fact that the proceeds of the insurance policies are inadequate to cover the cost of making good such damage.

Total Loss

- 65.15. In the event that any Ship is determined from any cause whatsoever to be an actual constructive, arranged or compromise total loss the Authority shall be entitled either to:
- 65.15.1. require the Contractor to proceed in accordance with the terms of the Contract, in which case the amount recovered under the insurance policies shall be applied to the replacement, reconstruction and/or repair of the Ships damage, provided that the Parties shall first agree to an extension to the Delivery Date for such Ship as is necessary for the completion of such reconstruction; or
 - 65.15.2. receive prompt refund of all Instalment Payments or other amounts paid by the Authority to the Contractor in relation to such Ship and any associated ILS Deliverables together with interest at the Prescribed Rate and upon such receipt, the Contract shall be terminated in relation to such affected Ship only. Notwithstanding the foregoing, in the event that the Authority does not receive a full refund of all sums paid by the Authority to the Contractor in relation to such Ship and the ILS Deliverables, the Authority shall have the right to call upon the Refund Guarantee in order to recover the difference between all of the monies paid by the Authority to the Contractor under the Contract with respect to the relevant Ship and the ILS Deliverables and the monies (if any) recovered and paid to the Authority under the insurance policies or otherwise refunded by the Contractor in accordance with this Clause 65.15.2.
- 65.16. If the Parties fail to reach any agreement in accordance with Clause 65.5.1 within two (2) Months after the Ship is determined to be an actual or constructive total loss, the provisions of Clause 65.15.2 shall apply.

66. TERMINATION FOR CONTRACTOR DEFAULT

Right to Terminate

- 66.1. The Authority shall be entitled to terminate the whole or any part of the Contract (subject to the provisions of Clauses 66.5 to 66.8) upon the occurrence of any of the following Contractor Default events:
- 66.1.1. a breach by the Contractor of any of its obligations under the Contract which (in the opinion of the Authority) materially and adversely affects the provision of the Contractor Deliverables;
 - 66.1.2. the Contractor is in a breach of Clause 47 (Contractor's Refund Guarantee);
 - 66.1.3. a failure by the Contractor to perform any work relating to the construction of any Ship or any of the other Contractor Deliverables for a period of:
 - 66.1.3.1. at least ten (10) consecutive Business Days; or
 - 66.1.3.2. fifteen (15) Business Days or more in any three (3) consecutive Months,excluding Permissible Delays, provided that:
 - 66.1.3.2.1. the Authority gives the Contractor at least (fifteen) 15 Days' notice of its intention to terminate the Contract under this Clause 66.1.3;

- 66.1.3.2.2. within the notice period referred to Clause 66.1.3.2.1 the Contractor fails to remedy its breach; and
- 66.1.3.2.3. the notice of termination is given before the Contractor has remedied its breach;
- 66.1.4. a failure by the Contractor to deliver to the Authority the Ship and the ILS Deliverables within two hundred and seventy (270) Days of the Delivery Date excluding any Permissible Delays;
- 66.1.5. the occurrence of an Insolvency Event in relation to the Contractor or any Guarantor;
- 66.1.6. the occurrence of a Persistent Breach;
- 66.1.7. the occurrence of a Prohibited Act;
- 66.1.8. a failure by the Contractor to take out or maintain the Required Insurances in accordance with Clause 65 (Insurance) and Schedule 10 (Required Insurance);
- 66.1.9. any breach of Clause 43 (Tax Compliance);
- 66.1.10. a breach by the Contractor of Clause 34 (Supply of Data for Hazardous Articles, Materials and Substances) (subject to Clauses 66.15 and 66.16);
- 66.1.11. any expropriation, attachment, sequestration, distress or execution affects any of the Contractor Deliverables;
- 66.1.12. any Ship is requisitioned by any government;
- 66.1.13. a breach of Clause 5 (Change of Control of the Contractor) occurs;
- 66.1.14. keel laying has not taken place by the date falling one hundred and twenty (120) Days after the date for keel laying indicated in Schedule 13 (Instalment Payment Scheme);
- 66.1.15. launching has not taken place by the date falling one hundred and twenty (120) Days after the date for launching indicated in Schedule 13 (Instalment Payment Scheme);
- 66.1.16. it becomes unlawful for the Contractor to perform any of its obligations under the Contract;
- 66.1.17. any Refund Guarantee, Parent Company Guarantee and/or On Demand Guarantee Bond is withdrawn, expires or ceases to be in full force and effect;
- 66.1.18. any indebtedness of the Contractor [To be inserted prior to Contract Award [£♦]] is not paid when due or any such indebtedness becomes due and payable as a result of an event of default (however described) or any creditor becomes entitled to declare any such indebtedness due and payable prior to its specified maturity as a result of an event of default; or
- 66.1.19. the Contractor incurs indebtedness in excess of [To be inserted prior to Contract Award £♦].
- 66.2. Where the Authority exercises its right to terminate in accordance with Clause 66.1, the Authority may (in its sole and absolute discretion) elect to terminate the Contract with respect to the relevant Ship to which such Contractor Default relates (if

applicable) or with respect to all Ships (including any subsequent Ships for which construction has not commenced or completed yet).

- 66.3. If a Contractor Default has occurred and the Authority wishes to terminate the whole or any part of the Contract pursuant to Clauses 66.1 and 66.2, it must serve a Termination Notice on the Contractor stating:
- 66.3.1. that the Authority is terminating the Contract (or part thereof) for Contractor Default;
 - 66.3.2. where relevant, the part of the Contract that the Authority is terminating;
 - 66.3.3. whether the termination relates to the Ship or the Ship and all subsequent Ships;
 - 66.3.4. the type and nature of Contractor Default that has occurred, giving reasonable details; and
 - 66.3.5. that the Contract (or part thereof) shall, subject to Clauses 66.5 to 66.8, terminate on the Contractor Default Termination Date.
- 66.4. Where circumstances arise, without any breach by either Party, which render the performance of the Contract impossible or only possible in a radically different way than originally contemplated, including a Force Majeure Event or Delay Event, the Contract shall not be discharged, and the Authority shall remain entitled to terminate under the provisions of the Contract.

Rectification

- 66.5. Where a Termination Notice cites a Contractor Default of the type and nature falling under Clauses 66.1.1, 66.1.2, 66.1.3, 66.1.6, 66.1.8 or 66.1.10 the Contractor shall, in consultation with the Authority and within ten (10) Business Days of receipt of the Termination Notice, have the opportunity to present a rectification plan to the Authority setting out how it intends to remedy the Contractor Default in respect of the Ship and, if appropriate, subsequent Ships.
- 66.6. Where the Authority accepts the Rectification Plan in writing the Termination Notice shall be deemed to be revoked.
- 66.7. Where the Contractor fails to implement or is in breach of the Rectification Plan and such breach continues for a period of five (5) Business Days, the Authority may serve a further Termination Notice in accordance with Clause 66.3.
- 66.8. The Authority may reject the Rectification Plan in writing if it considers that the Rectification Plan will not adequately remedy the Contractor Default and the Contract shall then terminate on the Contractor Default Termination Date.

Termination Date for Contractor Default

- 66.9. Following the issue of a Termination Notice pursuant to Clause 66.3 the Contract shall (subject to Clause 66.6) terminate on the Contractor Default Termination Date.
- 66.10. The Contractor Default Termination Date shall be the date of the Termination Notice (save that, where any Rectification Plan has been accepted by the Authority in accordance with Clause 66.6, the Contractor Default Termination Date shall be the date of the Further Termination Notice in accordance with Clause 66.7).
- 66.11. The "Contractor Default Termination Date" shall be the Termination Date for the purposes of this Contract in relation to any termination arising as a result of a Contractor Default.

Partial Termination

- 66.12. Where the Authority is terminating part of the Contract, the Parties shall, subject to payment of all amounts under Clause 70 (Financial Consequences of Termination) and Clause 78 (Continuing Obligations), owe each other no further obligations in respect of such part of the Contract as is specified in the Termination Notice from the Contractor Default Termination Date.
- 66.13. For the avoidance of doubt, where Clause 66.12 applies the Parties shall continue to fulfil their respective obligations in respect of those parts of the Contract that are not identified in the Termination Notice as being terminated.

Termination following a Prohibited Act

- 66.14. In exercising its rights and remedies in respect of a Prohibited Act, the Authority will:
- 66.14.1. act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the Prohibited Act; and
 - 66.14.2. give all due consideration, where appropriate, to action other than termination of the Contract, including:
 - 66.14.2.1. requiring the Contractor to secure the termination of a Sub-Contract where the Prohibited Act was undertaken by or on behalf of a Sub-Contractor; and
 - 66.14.2.2. requiring the Contractor to secure the dismissal of an employee (whether its own or that of a Sub-Contractor or anyone acting on its behalf) where the Prohibited Act is that of such employee.

Termination following non-provision of Hazardous Material Data

- 66.15. In exercising its rights and remedies following a Contractor Default of the type described at Clause 66.1.10, the Authority shall act in a reasonable and proportionate manner having regard to the gravity of the failure and to the existence of the Authority's option under Clause 66.16.
- 66.16. As an alternative to terminating the Contract (or any part thereof) following a Contractor Default of the type described at Clause 66.1.10, the Authority shall have the option to require the Contractor to rectify the relevant breach immediately at no additional cost to the Authority.

67. TERMINATION FOR A PERMISSIBLE DELAY

- 67.1. If a Permissible Delay is continuing, or its consequence remains such that the affected Party is unable to comply with its obligations under the Contract, for a period of more than two hundred and seventy (270) Days, then the Authority may (subject to Clause 67.2) terminate the Contract or part thereof by serving upon the Contractor a Termination Notice stating that:
- 67.1.1. it is terminating the Contract pursuant to Clause 66; and
 - 67.1.2. the Contract shall terminate on the day falling fifteen (15) days after the date of the Termination Notice.
- 67.2. If the Termination Notice has been served by the Authority, the Authority may elect to require the Contract or part thereof to continue by serving the Contractor with written notice of such and the Parties shall agree a fair and reasonable adjustment

in accordance with Clause 54 (Authority Change Procedure). The Contract or part thereof shall not terminate until the earlier of:

- 67.2.1. any applicable date for the termination or expiry of the Contract set out in Clause 3 (Contract Period); and
- 67.2.2. the expiry of any subsequent written notice (of at least (thirty) 30 Days) from the Authority to the Contractor that it wishes the Contract to terminate.

67.3. Subject to Clause 67.2 the Contract shall terminate upon the expiry of fifteen (15) Days from the date of the Termination Notice.

68. TERMINATION FOR CONVENIENCE

68.1. The Authority shall have the right to terminate the Contract in whole or in part at any time by giving the Contractor at least twenty (20) Days written notice (or such other period as may be stated in the Contract). Upon expiry of the notice period the Contract, or relevant part thereof, shall terminate (such date being the Termination Date) without prejudice to the rights of the Parties already accrued up to the date of termination. Where only part of the Contract is being terminated, the Authority and the Contractor shall owe each other no further obligations in respect of the part of the Contract being terminated, but will continue to fulfil their respective obligations on all other parts of the Contract not being terminated.

68.2. Following the above notification, the Authority shall be entitled to exercise any of the following rights in relation to the Contract (or such part of the Contract being terminated) to direct the Contractor to:

- 68.2.1. not start work on any element of the Contractor Deliverables not yet started;
- 68.2.2. complete in accordance with the Contract the provision of any element of the Contractor Deliverables;
- 68.2.3. as soon as may be reasonably practicable take such steps to ensure that the production rate of the Contractor Deliverables is reduced as quickly as possible; and
- 68.2.4. terminate on the best possible terms any Sub-Contracts in support of the Contractor Deliverables that have not been completed, taking into account any direction given under Clauses 68.2.2 to 68.2.3.

68.3. Where this Clause applies (and subject always to the Contractor's compliance with any direction given by the Authority under Clause 68.2):

- 68.3.1. upon payment by the Authority to the Contractor in accordance with Clause 70.1 (Financial Consequences of Termination), the Authority shall take over from the Contractor all unused and undamaged material and any Contractor Deliverables in the course of manufacture that are:
 - 68.3.1.1. in the possession of the Contractor at the date of termination; and
 - 68.3.1.2. provided by or supplied to the Contractor for the performance of the Contract;

- 68.3.2. the Contractor shall deliver to the Authority within an agreed period, or in absence of such agreement within a period as the Authority may specify, a list of:
 - 68.3.2.1. all such unused and undamaged material; and
 - 68.3.2.2. Contractor Deliverables in the course of manufacture, that are liable to be taken over by, or previously belonging to the Authority, and shall deliver such material and Contractor Deliverables in accordance with the directions of the Authority;
- 68.4. The Authority shall (subject to Clause 68.5 and to the Contractor's compliance with any direction given by the Authority in Clause 68.2) indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable direct loss by the Contractor by reason of the termination of the Contract, subject to:
 - 68.4.1. the Contractor taking all reasonable steps to mitigate such loss; and
 - 68.4.2. the Contractor submitting a fully itemised and costed list of such loss, with supporting evidence, reasonably and actually incurred by the Contractor as a result of the termination of the Contract or relevant part.
- 68.5. The Authority's total liability under the provisions of this Clause 68 shall be limited to the total price of the Contractor Deliverables payable under the Contract (or relevant part), including any sums paid, due or becoming due to the Contractor at the date of termination.
- 68.6. The Contractor shall include in any Sub-Contract over £250,000 which it may enter into for the purpose of the Contract, the right to terminate the Sub-contract under the terms of Clauses 68.1 to 68.5 except that:
 - 68.6.1. the name of the Contractor shall be substituted for the Authority except in Clause 68.3.1;
 - 68.6.2. the notice period for termination shall be as specified in the Sub-Contract, or if no period is specified twenty (20) Days; and
 - 68.6.3. the Contractor's right to terminate shall be restricted by including the following additional clause "Provided that this right is not exercised unless the main contract, or relevant part, has been terminated by the Secretary of State for Defence in accordance with the provisions of Clause 70 (Financial Consequences of Termination).
- 68.7. Claims for payment under this Clause 68 shall be submitted in accordance with the Authority's direction.
- 69. TAKE OVER / TOW-OUT OPTION**
- 69.1. The Authority shall, within fifteen (15) Days after termination (or partial termination) of the Contract in accordance with Clause 66 (Termination for Contractor Default) or Clause 67 (Termination for a Permissible Delay), have the right to elect to take possession of any Ship and ILS Deliverables the subject of such termination in their current state and to:
 - 69.1.1. complete such work as be necessary in order to remove the Ship(s) and ILS Deliverables from the Shipyard, using the premises, labour,

plant, machinery and equipment of the Contractor (at the Contractor's risk); and

- 69.1.2. remove the Ship(s) and the ILS Deliverables from the Shipyard in order to complete such Ship(s) elsewhere in accordance with the Contract,

upon giving prior written notice of such to the Contractor. The Contractor shall promptly hand over to the Authority any Contractor Deliverable or materials in which the Authority has elected to take possession of in accordance with this Clause 69.

70. FINANCIAL CONSEQUENCES OF TERMINATION

Termination for Convenience

- 70.1. On termination of the Contract by the Authority pursuant to Clause 68 (Termination for Convenience), the Authority shall pay the Contractor the Authority Cancellation Termination Sum on the Termination Date. The ("Authority Cancellation Termination Sum") shall be an amount equal to the aggregate of, without double-counting:

- 70.1.1. the aggregate of Capital Expenditure and Operating Costs incurred by the Contractor as at the Termination Date plus gross profit on such Capital Expenditure and Operating Costs up to the Termination Date, subject to such Capital Expenditure and Operating Costs and the gross profit on such Capital Expenditure and Operating Costs in each case being no greater than the amounts shown for such expenditure, costs and gross profit in the Base Case;

less

- 70.1.2. total Instalment Payments paid to the Termination Date;

plus

- 70.1.3. Breakage Costs.

Termination for Contractor Default

- 70.2. Where the Authority has terminated the Contract in accordance with Clause 66 (Termination for Contractor Default), the Contractor shall, in respect of any Ships that have not been Accepted Off Contract, but terminated by the Authority, promptly refund to the Authority the full amount of sums paid by the Authority to the Contractor under Clause 40 (Payment by Instalments) together with interest at the Prescribed Rate from the date of payment to the date of refund.

- 70.3. Notwithstanding the refund of Instalment Payments [and ILS Payments] in accordance with Clause 70.2, the Authority may elect to pay the Contractor for some or all of the Contractor Deliverables at prices to be agreed by the Parties for the completion of such Contractor Deliverables.

- 70.4. Where the Authority is entitled to terminate the Contract pursuant to Clause 66 (Termination for Contractor Default) or as a result of the occurrence of a Prohibited Act, the Contractor shall, in addition to its rights set out in Clause 70.2 (but without any double-counting) fully and effectually indemnify the Authority for any:

- 70.4.1. Losses suffered, incurred or paid by the Authority as a result of such termination; and

- 70.4.2. where this Clause 70.4 applies but the Contract has not been terminated, to recover from the Contractor any other Loss suffered,

incurred or paid by the Authority as a result of such Prohibited Act or Contractor Default,

and any recovery action taken against any UK Government employee shall be without prejudice to any recovery action taken against the Contractor pursuant to this Clause.

Termination for a Permissible Delay

- 70.5. Where the Contract is terminated pursuant to Clause 67 (Termination for a Permissible Delay), the provisions of Clauses 70.6 to 70.8 shall apply.
- 70.6. Subject to Clause 70.7, where the Contract has been determined in accordance with Clause 67 (Termination for a Permissible Delay) the Contractor shall promptly refund to the Authority the full amount of sums paid by the Authority to the Contractor under Clause 40 (Payment by Instalments), together with interest at the Prescribed Rate from the date of payment to the date of refund.
- 70.7. The Contractor shall only be entitled to be paid from the sums refunded to the Authority in accordance with Clause 70.6 for any aspect of the Contractor Deliverables that it has, as at the Termination Date, delivered to the Authority in accordance with the Contract (subject to any other provisions of the Contract affecting the level of such payment).
- 70.8. The Authority shall not be entitled to a refund under Clause 70.6 where the Permissible Delay is caused entirely by an act or omission of the Authority.
- 70.9. If any amount of compensation payable under this Clause 70 (Financial Consequences of Termination) is subject to Tax payable to any authority in the United Kingdom, then the paying Party shall pay to the receiving Party such additional amount as shall put the receiving Party in the same after Tax position as it would have been in had the payment not been subject to Tax taking account of any relief, allowances deduction, setting off or credit in respect of Tax (whether available by choice or not) which may be available to the Contractor to reduce the Tax to which the payment is subject.

Exclusivity of Remedy

- 70.10. Subject to Clause 70.11, any payment by either Party of compensation pursuant to this Clause 70 shall be in full satisfaction of any claim which can be made against one Party by the other in relation to termination of the Contract. Without prejudice to the Authority's express rights in relation to the transfer of any assets on termination in accordance with the terms of the Contract, the compensation payable under this Clause 70 (Financial Consequences of Termination) shall be the sole remedy of either Party against the other in respect of termination of the Contract.
- 70.11. Any payment by the Authority pursuant to Clause 70.1 is without prejudice to the Authority's right to claim from the Contractor all reasonable and proper costs and expenses, if any, which it reasonably and properly incurs after any termination of the Contract in relation to rectification and/or maintenance work of the Ship to restore, replace or repair them so that they meet the Specification.

Reconciliation

- 70.12. In circumstances where the Authority has terminated the Contract for Contractor Default in accordance with Clause 66 (Termination for Contractor Default) and where:

- 70.12.1. the Authority has exercised its rights under Clause 69 (Take Over/Tow-Out Option) to take possession of any Ship and the ILS Deliverables; and
 - 70.12.2. the Contractor has paid to the Authority the full amount due to the Authority upon such termination in accordance with this Clause 70; and
 - 70.12.3. the Authority has been able to successfully procure that the relevant Ship and ILS Deliverables are completed with another shipyard,
- then, the Authority shall reimburse the Contractor:
- 70.12.4. an amount equal to the sum of:
 - 70.12.4.1. the total of all Instalment Payments which would have been paid to the Contractor under the Contract for the construction of the Ship and the associated ILS Deliverables under the Contract (had such termination not occurred);
 - Less
 - 70.12.4.2. the total aggregate amount of (i) the Instalment Payments originally paid by the Authority under the Contract up to the relevant termination date plus (ii) the amount paid by the Authority to complete the Ship and ILS Deliverables with another shipyard plus (iii) any Losses incurred by the Authority as a result of such termination,
- PROVIDED that such figure is greater than zero and subject to a maximum amount equal to the Instalment Payments refunded to the Authority by the Contractor following such termination.

Miscellaneous

- 70.13. Each Party shall (subject to the provisions of Clause 64 (Recovery of Sums Due) pay to the other any amounts payable pursuant to Clause 70.8 within twenty (20) Business Days of the Termination Date (or, if later, within twenty (20) Business Days of the amount being identified by both Parties as being payable, where it was not possible to determine on the Termination Date that such amount was payable).

71. PROTECTION OF UK MATERIAL

Security Grading

- 71.1. All aspects associated with the Contract are classified OFFICIAL. Some aspects are more sensitive and are classified as OFFICIAL-SENSITIVE. Schedule 25 (Security Aspects Letter), defines the OFFICIAL-SENSITIVE information that is furnished to the Contractor, or which is to be developed by the Contractor, under the Contract. The Contractor shall mark all OFFICIAL-SENSITIVE documents which it originates or copies in accordance with the Contract clearly with the OFFICIAL-SENSITIVE classification. However, the Contractor is not required to mark information/material related to the Contract which is only OFFICIAL.

Official Secrets Acts

- 71.2. The Contractor's attention is drawn to the provisions of the Official Secrets Acts 1911-1989 in general, and to the provisions of Section 2 of the Official Secrets Act 1911 (as amended by the Official Secrets Act 1989) in particular. The Contractor shall use all reasonable endeavours to make sure that all individuals employed on any work in connection with the Contract (including Sub-contractors) have notice

that these statutory provisions, or any others provided by the Authority, apply to them and shall continue so to apply after the completion or earlier termination of the Contract.

Protection of OFFICIAL and OFFICIAL-SENSITIVE Information.

- 71.3. The Contractor shall protect OFFICIAL and OFFICIAL-SENSITIVE information provided to it or generated by it in accordance with the requirements detailed in the Contract and any other conditions that may be specified by the Authority. The Contractor shall use all reasonable endeavours to prevent the loss or compromise of the information or from deliberate or opportunist attack.
- 71.4. The Contractor shall apply Industry Security Notice (ISN) 2017/01 requirements to every industry owned IT and communication system used to store, process or generate MOD information including those systems containing OFFICIAL and/or OFFICIAL-SENSITIVE information. ISN 2017/01 details Defence Assurance and Risk Tool (DART) registration, IT security accreditation processes, risk assessment and risk management requirements. The ISN is available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/594320/DART_ISN_-_V2_3.pdf

- 71.5. OFFICIAL and OFFICIAL-SENSITIVE information shall be protected in a manner to avoid unauthorised access. The Contractor shall use all reasonable endeavours to prevent the loss, compromise or inappropriate access of the information or from deliberate or opportunist attack.
- 71.6. All OFFICIAL and OFFICIAL-SENSITIVE material including documents, media and other material shall be physically secured to prevent unauthorised access. When not in use OFFICIAL and OFFICIAL- SENSITIVE documents/material shall be handled with care to prevent loss or inappropriate access. As a minimum, when not in use, OFFICIAL-SENSITIVE material shall be stored under lock and key and shall be placed in a lockable room, cabinets, drawers or safe and the keys/combinations shall be subject to a level of physical security and control.
- 71.7. The Contractor shall ensure that the disclosure of OFFICIAL and OFFICIAL-SENSITIVE information is strictly controlled in accordance with the "need to know" principle. Except with the written consent of the Authority, the Contractor shall not disclose any of the classified aspects of the Contract detailed in Schedule 25 (Security Aspects Letter) other than to a person directly employed by the Contractor or Sub-Contractor.
- 71.8. Any samples, patterns, specifications, plans, drawings or any other documents issued by or on behalf of the Authority for the purposes of the Contract remain the property of the Authority and must be returned on completion of the Contract or, if directed by the Authority, destroyed in accordance with Clause 71.29.

Access

- 71.9. Access to OFFICIAL and OFFICIAL-SENSITIVE information shall be confined to those individuals who have a "need-to-know", have been made aware of the requirement to protect the information and whose access is essential for the purpose of their duties.
- 71.10. The Contractor shall ensure that all individuals having access to OFFICIAL-SENSITIVE information have undergone basic recruitment checks. Contractors shall apply the requirements of the Government's Baseline Personnel Security Standard for all individuals having access to OFFICIAL-SENSITIVE information.

Further details and the full requirements of the BPSS can be found at the Gov.UK website at:

<https://www.gov.uk/government/publications/government-baseline-personnelsecurity-standard>.

Hard Copy Distribution

- 71.11. OFFICIAL and OFFICIAL-SENSITIVE documents shall be distributed, both within and outside company premises in such a way as to make sure that no unauthorised person has access. It may be sent by first class post or commercial couriers in a single envelope. The words OFFICIAL or OFFICIAL-SENSITIVE shall not appear on the envelope. The envelope should bear a stamp or details that clearly indicates the full address of the office from which it was sent.
- 71.12. Advice on the distribution of OFFICIAL-SENSITIVE documents abroad or any other general advice including the distribution of OFFICIAL-SENSITIVE hardware shall be sought from the Authority.

Electronic Communication, Telephony and Facsimile Services

- 71.13. OFFICIAL information may be emailed unencrypted over the internet. OFFICIAL-SENSITIVE information shall normally only be transmitted over the internet encrypted using either a CESG Commercial Product Assurance (CPA) cryptographic product or an Authority approved cryptographic technique such as Transmission Layer Security (TLS). In the case of TLS both the sender and recipient organisations must have TLS enabled. Details of the required TLS implementation are available at:

<https://www.ncsc.gov.uk/guidance/tls-external-facing-services>

Details of the CPA scheme are available at:

<https://www.ncsc.gov.uk/scheme/commercial-product-assurance-cpa>

Exceptionally, in urgent cases, OFFICIAL-SENSITIVE information may be emailed unencrypted over the internet where there is a strong business need to do so and only with the prior written approval of the Authority.

- 71.14. OFFICIAL-SENSITIVE information shall only be sent when it is known that the recipient has been made aware of and can comply with the requirements of this Clause 3 and subject to any explicit limitations that the Authority shall require. Such limitations, including any regarding publication, further circulation or other handling instructions shall be clearly identified in the email sent with the material.
- 71.15. OFFICIAL information may be discussed on fixed and mobile telephones with persons located both within the UK and overseas. OFFICIAL-SENSITIVE information may be discussed on fixed and mobile types of telephone within the UK, but not within earshot of unauthorised persons.

Use of Information Systems

- 71.16. The Parties acknowledge that the detailed functions that must be provided by an IT system to satisfy the minimum requirements cannot all be described herein; the Contractor shall identify possible means of attack and ensure proportionate security mitigations are applied to prevent a successful attack.
- 71.17. Subject to Clause 76 (Cyber), the Contractor shall ensure 10 Steps to Cyber Security is applied in a proportionate manner for each IT and communications

system storing, processing or generating Authority UK OFFICIAL or OFFICIAL-SENSITIVE information. 10 Steps to Cyber Security is available at:
<https://www.ncsc.gov.uk/guidance/10-steps-cyber-security>

The Contractor shall ensure competent personnel apply 10 Steps to Cyber Security.

71.18. Within the framework of the 10 Steps to Cyber Security, the following describes the minimum security requirements that shall be adopted for processing and accessing OFFICIAL-SENSITIVE information on IT systems.

71.18.1. Access. Physical access to all hardware elements of the IT system is to be strictly controlled. The principle of “least privilege” will be applied to System Administrators. Users of the IT System Administrators shall not conduct ‘standard’ User functions using their privileged accounts.

71.18.2. Identification and Authentication (ID&A). All systems shall have the following functionality:

71.18.2.1. Up-to-date lists of authorised users.

71.18.2.2. Positive identification of all users at the start of each processing session.

71.18.3. Passwords. Passwords shall be ‘strong’ using an appropriate method to achieve this, for example including numeric and “special” characters (if permitted by the system) as well as alphabetic characters.

71.18.4. Internal Access Control. All systems shall have internal Access Controls to prevent unauthorised users from accessing or modifying the data.

71.18.5. Data Transmission. Unless the Authority authorises otherwise, OFFICIAL-SENSITIVE information shall be transmitted or accessed electronically (e.g. point to point computer links) via a public network like the Internet, using a CPA product or equivalent as described in Clause 71.13.

71.18.6. Security Accounting and Audit. Security relevant events fall into two categories, namely legitimate events and violations.

71.18.6.1. The following events shall always be recorded:

71.18.6.1.1. all log on attempts whether successful or failed;

71.18.6.1.2. log off (including time out where applicable);

71.18.6.1.3. the creation, deletion or alteration of access rights and privileges;

71.18.6.1.4. the creation, deletion or alteration of passwords,

71.18.6.2. For each of the events listed above, the following information shall be recorded:

71.18.6.2.1. type of event;

71.18.6.2.2. user ID; and

71.18.6.2.3. date & Time.

- 71.18.7. Device ID. The accounting records shall have a facility to provide the System Manager with a hard copy of all or selected activity. There shall also be a facility for the records to be printed in an easily readable form. All security records shall be inaccessible to users without a need to know. If the operating system is unable to provide this then the equipment shall be protected by physical means when not in use i.e. locked away or the hard drive removed and locked away.
- 71.18.8. Integrity & Availability. The following supporting measures shall be implemented:
- 71.18.8.1. general protection against normally foreseeable accidents/mishaps and known recurrent problems (e.g. viruses, power supply variations);
 - 71.18.8.2. defined business contingency plan;
 - 71.18.8.3. data backup with local storage;
 - 71.18.8.4. anti-virus software (Implementation, with updates, of an acceptable industry standard anti-virus software);
 - 71.18.8.5. operating systems, applications and firmware should be supported; and
 - 71.18.8.6. patching of operating systems and applications used shall be in line with the manufacturers recommended schedule. If patches cannot be applied an understanding of the resulting risk will be documented.
- 71.18.9. Logon banners. Wherever possible, a “logon banner” shall be provided to summarise the requirements for access to a system which may be needed to institute legal action in case of any breach occurring. A suggested format for the text (depending on national legal requirements) could be:
- “Unauthorised access to this computer system may constitute a criminal offence”
- 71.18.10. Unattended Terminals. Users shall be automatically logged off the system if their terminals have been inactive for some predetermined period of time, or systems must activate a password protected screen saver after 15 minutes of inactivity, to prevent an attacker making use of an unattended terminal.
- 71.18.11. Internet Connections. Computer systems shall not be connected direct to the Internet or ‘untrusted’ systems unless protected by a firewall. A software based personal firewall shall be the minimum but the Contractor shall conduct a risk assessment and management must be used to identify whether this is sufficient.
- 71.18.12. Disposal. Before IT storage media (e.g. disks) are disposed of, an erasure product shall be used to overwrite the data. This is a more thorough process than deletion of files, which does not remove the data.

Laptops

- 71.19. Laptops holding any Authority supplied or Contractor generated OFFICIAL-SENSITIVE information are to be encrypted using a CPA product or equivalent as described in Clause 71.13.
- 71.20. Unencrypted laptops not on a secure site are to be recalled and only used or stored in an appropriately secure location until approved full encryption is installed. Where the encryption policy cannot be met, a risk assessment that fully explains why the policy cannot be complied with and the mitigation plan, which should explain any limitations on the use of the system, is to be submitted to the Authority for consideration. Unencrypted laptops and drives containing personal data are not to be taken outside of secure sites. Personal data shall be managed in accordance with the requirements of Clause 72 (Protection of Personal Data). For the avoidance of doubt the term “drives” includes all removable, recordable media (e.g. memory sticks, compact flash, recordable optical media e.g. CDs and DVDs), floppy discs and external hard drives.
- 71.21. Any token, touch memory device or password(s) associated with the encryption package is to be kept separate from the machine whenever the machine is not in use, left unattended or in transit.
- 71.22. Portable CIS devices holding any Authority data shall not to be left unattended in any public location. They are not to be left unattended in any motor vehicles either in view or in the boot or luggage compartment at any time. When the vehicle is being driven the CIS is to be secured out of sight in the glove compartment, boot or luggage compartment as appropriate to deter opportunist theft.

Loss and Incident Reporting

- 71.23. The Contractor shall immediately report any loss or otherwise compromise of any OFFICIAL or OFFICIAL-SENSITIVE information to the Authority.
- 71.24. In accordance with Industry Security Notice 2014/02 as may be subsequently updated at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/293480/ISN2014_02_Incident_Reporting.pdf

any security incident involving any Authority owned, processed, or Contractor generated OFFICIAL or OFFICIAL-SENSITIVE information defined in Schedule 25 (Security Aspects Letter) shall be immediately reported to the MOD Defence Industry Warning, Advice and Reporting Point (WARP), within the Joint Security Co-ordination Centre (JSyCC). This will assist the JSyCC in formulating a formal information security reporting process and the management of any associated risks, impact analysis and upward reporting to the Chief Information Officer (CIO) and, as appropriate, the company concerned. The MOD WARP will also advise the Contractor what further action is required to be undertaken.

JSyCC WARP Contact Details

Email: For those with access to the RLI: CIO-DSAS-JSyCCOperations

Email: For those without access to the RLI: CIO-DSAS-JSyCCOperations@mod.gov.uk

Telephone: Working Hours: 0306 770 2187

Out of Hours/Duty Officer Phone: 07768 558863

Fax: 01480 446328

Mail: Joint Security Co-ordination Centre (JSyCC), X007 Bazalgette Pavilion, RAF Wyton, Huntingdon, Cambs, PE28 2EA.

Sub-Contracts

71.25. The Contractor may sub-contract any elements of the Contract to Sub-Contractors within its own country or to contractors located in the United Kingdom in accordance with Clause 7 (Sub-Contracts). When sub-contracting to a Sub-Contractor located either in its own country or in the UK, the Contractor shall ensure that this Clause 71.25 shall be incorporated within the Sub-Contract document. The prior approval of the Authority shall be obtained should the Contractor wish to sub-contract any OFFICIAL-SENSITIVE elements of the Contract to a Sub-Contractor facility located in another country. The first page of Appendix 5 (MOD Form 1686 (F1686)) of the Security Policy Framework Contractual Process chapter is to be used for seeking such approval. The MOD Form 1686 can be found at Appendix 5 at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/367494/Contractual_Process_-_Appendix_5_form.doc.

If the Sub-Contract is approved, the Contractor shall incorporate this Clause 71 within the Sub-Contract document.

Publicity Material

71.26. The Contractor shall seek the prior approval of the Authority before the release of any publicity material or display hardware that arises from the Contract. Publicity material includes open publication in the Contractor's publicity literature or website or through the media; displays at exhibitions in any country; lectures or symposia; scientific or technical papers, or any other occasion where members of the general public may have access to the information even if organised or sponsored by the Authority, UK Armed Forces or any other government department.

Private Venture

71.27. Any defence related Private Venture (PV) derived from the activities of the Contract are to be formally assessed by the Authority for determination of its appropriate classification. The Contractors shall submit a definitive product specification for PV Security Grading in accordance with the requirement detailed at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/414857/20150310_PV_Ex_Guidance_Document.pdf

Promotions and Potential Export Sales

71.28. The Contractor shall seek the prior approval of the Authority before the release of any information promoting, demonstrating, selling or exporting any material that may lead to the release of information or equipment classified OFFICIAL-SENSITIVE information (including classified tactics, training or doctrine related to an OFFICIAL-SENSITIVE equipment) are to obtain the prior approval of the Authority utilising the MOD Form 680 process, as identified at:

<https://www.gov.uk/mod-f680-applications>.

Destruction

71.29. As soon as no longer required, OFFICIAL and OFFICIAL-SENSITIVE information/material shall be destroyed in such a way as to make reconstitution unlikely, for example, by burning, shredding or tearing into small pieces. Advice

shall be sought from the Authority when information/material cannot be destroyed or, unless already authorised by the Authority, when its retention is considered by the Contractor to be necessary or desirable. OFFICIAL-SENSITIVE information/material which cannot be destroyed in such a way shall be returned to the Authority.

Interpretation/Guidance

- 71.30. Advice regarding the interpretation of the above requirements shall be sought from the Authority.
- 71.31. Further requirements, advice and guidance for the protection of Authority information at the level of OFFICIAL-SENSITIVE may be found in Industry Security Notices at:

<https://www.gov.uk/government/publications/industry-security-notices-isns>

Audit

- 71.32. Where considered necessary by the Authority, the Contractor shall provide evidence of compliance with this Clause 71 and/or permit the inspection of the Contractor's processes and facilities by representatives of the Authority to ensure compliance with these requirements.

Security Grading

- 71.33. All aspects associated with the Contract are classified UK OFFICIAL. Some aspects are more sensitive and are classified as UK OFFICIAL-SENSITIVE. Schedule 25 (Security Aspects Letter), issued by the Authority specifically defines the UK OFFICIAL-SENSITIVE information that is furnished to the Contractor, or which is to be developed by it, under the Contract. The Contractor shall mark all UK OFFICIAL-SENSITIVE documents which it originates or copies during the Contract clearly with the UK OFFICIAL-SENSITIVE classification.

Security Conditions

- 71.34. The Contractor shall ensure that all individuals employed on any work in connection with the Contract have notice that these provisions apply to them and shall continue so to apply after the completion or earlier termination of the Contract.

Protection of UK OFFICIAL and UK OFFICIAL-SENSITIVE Information

- 71.35. The Contractor shall protect UK OFFICIAL and UK OFFICIAL-SENSITIVE information provided to it or generated by it in accordance with the requirements detailed in the Contract and any other conditions that may be specified by the Authority. The Contractor shall take all reasonable steps to prevent the loss or compromise of the information or from deliberate or opportunist attack.
- 71.36. The Contractor shall apply Industry Security Notice (ISN) 2017/01 requirements to every industry owned IT and communication system used to store, process or generate Authority information including those systems containing UK OFFICIAL and/or UK OFFICIAL-SENSITIVE information. ISN 2017/01 details Defence Assurance and Risk Tool (DART) registration, IT security accreditation processes, risk assessment and risk management requirements. The ISN is available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/594320/DART_ISN_-_V2_3.pdf

- 71.37. All UK OFFICIAL and UK OFFICIAL-SENSITIVE material including documents, media and other material shall be physically secured to prevent unauthorised

access. When not in use UK OFFICIAL and UK OFFICIAL-SENSITIVE documents/material shall be handled with care to prevent loss or inappropriate access. As a minimum UK OFFICIAL-SENSITIVE documents/material shall be stored under lock and key and shall be placed in a lockable room, cabinets, drawers or safe and the keys/combinations shall be subject to a level of physical security and control.

- 71.38. The Contractor shall ensure that the disclosure of UK OFFICIAL and UK OFFICIAL-SENSITIVE information is strictly controlled in accordance with the "need to know" principle. Except with the written consent of the Authority, the Contractor shall not disclose the Contract or any provision thereof to any person other than to a person directly employed by the Contractor or Sub-Contractor.
- 71.39. Except with the consent in writing of the Authority the Contractor shall not make use of the Contract or any information issued or furnished by or on behalf of the Authority otherwise than for the purpose of the Contract, and, save as provided for in Clause 71.38 the Contractor shall not make use of any article or part thereof similar to the Articles for any other purpose.
- 71.40. Subject to any rights of Third Parties, nothing in this Clause 71 shall restrict the Contractor from using any specifications, plans, drawings and other documents generated outside of the Contract.
- 71.41. Any samples, patterns, specifications, plans, drawings or any other documents issued by or on behalf of the Authority for the purposes of the Contract remain the property of the Authority and must be returned on completion of the Contract or, if directed by the Authority, destroyed in accordance with Clause 71.29.

Access

- 71.42. The Contractor shall ensure that access to UK OFFICIAL and UK OFFICIAL-SENSITIVE information is confined to those individuals who have a "need-to-know", have been made aware of the requirement to protect the information and whose access is essential for the purpose of his or her duties.
- 71.43. The Contractor shall ensure that all individuals requiring access to UK OFFICIAL-SENSITIVE information have undergone basic recruitment checks in accordance with the Government's Baseline Personnel Security Standard. This shall include, but not be limited to, establishing proof of identity; confirming that they satisfy all legal requirements for employment by the Contractor; and verification of their employment record. Criminal record checks shall be undertaken where permissible under national/local laws and regulations.

Hard Copy Distribution

- 71.44. UK OFFICIAL and UK OFFICIAL-SENSITIVE documents shall be distributed, both within and outside company premises in such a way as to ensure that no unauthorised person has access. It may be sent by ordinary post in a single envelope. The words UK OFFICIAL or UK OFFICIAL-SENSITIVE shall not appear on the envelope. The envelope shall bear a stamp or marking that clearly indicates the full address of the office from which it was sent. Commercial Couriers may be used.
- 71.45. Advice on the distribution of UK OFFICIAL-SENSITIVE documents abroad or any other general advice including the distribution of UK OFFICIAL-SENSITIVE hardware shall be sought from the Authority.

Electronic Communication and Telephony and Facsimile Services

- 71.46. UK OFFICIAL information may be emailed unencrypted over the internet. UK OFFICIAL-SENSITIVE information shall normally only be transmitted over the internet encrypted using either a CESG Commercial Product Assurance (CPA) cryptographic product or an Authority approved cryptographic technique such as Transmission Layer Security (TLS). In the case of TLS both the sender and recipient organisations must have TLS enabled. Details of the required TLS implementation are available at:

<https://www.ncsc.gov.uk/guidance/tls-external-facing-services>

Details of the CPA scheme are available at:

<https://www.ncsc.gov.uk/scheme/commercial-product-assurance-cpa>

- 71.47. Exceptionally, in urgent cases UK OFFICIAL-SENSITIVE information may be emailed unencrypted over the internet where there is a strong business need to do so but only with the prior approval of the Authority. However, it shall only be sent when it is known that the recipient has been made aware of and can comply with the requirements of this Clause 71 and subject to any explicit limitations that the Authority shall require. Such limitations including any regarding publication, further circulation or other handling instructions shall be clearly identified in the email sent with the material.
- 71.48. UK OFFICIAL information may be discussed on fixed and mobile telephones with persons located both within the country of the Contractor and overseas. UK OFFICIAL-SENSITIVE information shall be discussed on fixed and mobile telephones only where there is a strong business need to do so and only with the prior approval of the Authority.
- 71.49. UK OFFICIAL information may be faxed to recipients located both within the country of the Contractor and overseas. However, UK OFFICIAL-SENSITIVE information shall be faxed only where there is a strong business need to do so and only with the prior approval of the Authority.

Application of Provisions

- 71.50. The following provisions shall apply to "UK OFFICIAL-SENSITIVE" information and all references therein to "OFFICIAL" and "OFFICIAL-SENSITIVE" in such clause shall be construed for the purposes of this Clause 71.50 as references to "UK OFFICIAL" and "UK OFFICIAL-SENSITIVE" (as applicable):

- 71.50.1. Clause 71.16 to 71.18.12 (Use of Information Systems);
- 71.50.2. Clause 71.19 to 71.22 (Laptops);
- 71.50.3. Clause 71.23 to Clause 71.24 (Loss and Incident Reporting);
- 71.50.4. Clause 71.25 (Sub-Contracts);
- 71.50.5. Clause 71.26 (Publicity Material);
- 71.50.6. Clause 71.27 (Private Venture);
- 71.50.7. Clause 71.28 (Promotions and Potential Export Sales);
- 71.50.8. Clause 71.29 (Destruction);
- 71.50.9. Clause 71.30 and 71.31 (Interpretation/Guidance);
- 71.50.10. Clause 71.32 (Audit); and
- 71.50.11. Clause 71.33 (Security Grading).

72. PROTECTION OF PERSONAL DATA

Definitions

- 72.1. In this Clause 72 the following words and expressions shall have the meanings given to them, except where the context requires a different meaning:
- 72.1.1. 'Contractor Personnel' means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any Sub-Contractor engaged in the performance of its obligations under the Contract;
 - 72.1.2. 'Data Loss Event' means any event that results in unauthorised access to Personal Data held by the Contractor under the Contract, and/or actual loss and/or destruction of Personal Data in breach of the Contract, including any Personal Data Breach;
 - 72.1.3. 'Data Protection Legislation' means
 - 72.1.3.1. the GDPR, the LED and any applicable national implementing Laws as amended from time to time;
 - 72.1.3.2. the DPA 2018 to the extent that it relates to processing of personal data and privacy; and
 - 72.1.3.3. all applicable Law about the processing of personal data and privacy;
 - 72.1.4. 'Data Protection Impact Assessment' means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
 - 72.1.5. 'Data Subject Access Request' means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
 - 72.1.6. 'DPA 2018' means the Data Protection Act 2018;
 - 72.1.7. 'GDPR' means the General Data Protection Regulation (Regulation (EU) 2016/679);
 - 72.1.8. 'Law' means any law, 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, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply;
 - 72.1.9. 'LED' means the Law Enforcement Directive (Directive (EU) 2016/680);
 - 72.1.10. 'Protective Measures' means appropriate technical and organisational measures which includes:
 - 72.1.10.1. pseudonymising and encrypting Personal Data; ensuring confidentiality, integrity, availability and resilience of systems and services;
 - 72.1.10.2. ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident; and
 - 72.1.10.3. regularly assessing and evaluating the effectiveness of the such measures adopted by it;

- 72.1.11. 'Sub-processor' means any third Party appointed to process Personal Data on behalf of the Contractor related to the Contract;
- 72.1.12. The following expressions shall have the same meanings as in Article 4 of the GDPR:
 - 72.1.12.1. Controller;
 - 72.1.12.2. Processor;
 - 72.1.12.3. Data Subject;
 - 72.1.12.4. Personal Data;
 - 72.1.12.5. Personal Data Breach; and
 - 72.1.12.6. Data Protection Officer.

Data Protection

- 72.2. In connection with the Personal Data received under the Contract, each Party undertakes to comply with its obligations under Data Protection Legislation and in particular, but without limitation, each Party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of Personal Data provided to it by the other Party, and against accidental loss, alteration, unauthorised disclosure or destruction of or damage to that Personal Data.
- 72.3. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in Schedule 24 (Personal Data Particulars) by the Authority and may not be determined by the Contractor. The completed Schedule 24 (Personal Data Particulars) shall form part of the Contract.
- 72.4. The Contractor shall notify the Authority without undue delay if it considers that any of the Authority's instructions infringe the Data Protection Legislation. The Authority will not consider such notification to constitute formal legal advice.
- 72.5. The Contractor shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Authority, include:
 - 72.5.1. a systematic description of the envisaged processing operations and the purpose of the processing;
 - 72.5.2. an assessment of the necessity and proportionality of the processing operations in relation to the services provided under the Contract;
 - 72.5.3. an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 72.5.4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 72.6. The Contractor shall, in relation to any Personal Data processed in connection with its obligations under the Contract:
 - 72.6.1. process that Personal Data only in accordance with Schedule 24 (Personal Data Particulars), unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly

- notify the Authority before processing the Personal Data unless prohibited by Law;
- 72.6.2. ensure that it has in place Protective Measures, which have been reviewed and approved by the Authority as appropriate to protect against a Data Loss Event having taken account of the:
 - 72.6.2.1. nature of the data to be protected;
 - 72.6.2.2. harm that might result from a Data Loss Event;
 - 72.6.2.3. state of technological development; and
 - 72.6.2.4. cost of implementing any measures;
- 72.6.3. ensure that:
 - 72.6.3.1. the Contractor Personnel do not process Personal Data except in accordance with the Contract (and in particular Schedule 24 (Personal Data Particulars));
 - 72.6.3.2. it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
- 72.6.4. have the necessary probity by undertaking the Government's Baseline Personnel Security Standard or other standard as specified in the Contract;
- 72.6.5. are aware of and comply with the Contractor's duties under this clause;
- 72.6.6. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Authority or as otherwise permitted by the Contract;
- 72.6.7. have undergone adequate training in the use, care, protection and handling of Personal Data; and
- 72.6.8. not transfer Personal Data outside of the EU unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
 - 72.6.8.1. the Authority or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Authority;
 - 72.6.8.2. the Data Subject has enforceable rights and effective legal remedies;
 - 72.6.8.3. the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and
 - 72.6.8.4. the Contractor complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;

- 72.6.9. at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Contract unless the Contractor is required by Law to retain the Personal Data.
- 72.7. Subject to Clause 72.8, the Contractor shall notify the Authority without undue delay if, in connection with Personal Data processed under the Contract, it:
 - 72.7.1. receives a Data Subject Access Request (or purported Data Subject Access Request);
 - 72.7.2. receives a request to rectify, block or erase any Personal Data;
 - 72.7.3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 72.7.4. receives any communication from the Information Commissioner or any other regulatory authority;
 - 72.7.5. receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - 72.7.6. becomes aware of a Data Loss Event.
- 72.8. The Contractor's obligation to notify under Clause 72.7 shall include the provision of further information to the Authority in phases, as details become available.
- 72.9. Taking into account the nature of the processing, the Contractor shall provide the Authority with assistance, insofar as possible, in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 72.7 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:
 - 72.9.1. the Authority with full details and copies of the complaint, communication or request;
 - 72.9.2. such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - 72.9.3. the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 72.9.4. assistance as requested by the Authority following any Data Loss Event; and
 - 72.9.5. assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.

The Contractor shall maintain complete and accurate records and information as necessary to fulfil its obligations under this Clause 72.9.
- 72.10. The Contractor shall allow for audits of its Data Processing activity by the Authority or the Authority's designated auditor as required to demonstrate the Authority's compliance with its obligations as a Controller. Such audits will be conducted in accordance with general audit conditions contained in the Contract.
- 72.11. The Contractor shall designate a Data Protection Officer if required by the Data Protection Legislation.

- 72.12. Before allowing any Sub-processor to process any Personal Data related to the Contract, the Contractor must:
- 72.12.1. notify the Authority in writing of the intended Sub-processor and processing;
 - 72.12.2. obtain the written consent of the Authority;
 - 72.12.3. enter into a written Contract with the Sub-processor which give effect to the terms set out in this Clause such that they apply to the Sub-processor; and
 - 72.12.4. provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.
- 72.13. The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- 72.14. The Contractor may, at any time on not less than thirty (30) Days' notice, revise this Clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to the Contract).
- 72.15. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than thirty (30) Days' notice to the Contractor amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 72.16. Any Contract amendments resulting from Clause 72.14 and/or 72.15 shall be conducted in accordance with any change control procedure as set out in the Contract.

73. INTELLECTUAL PROPERTY RIGHTS

Rights in Technical Data

In this Clause 73, the following words and expressions have the meanings given to them, except where the context requires a different meaning:

- 73.1. "Article" means part or the whole of any item, component or process which the Contractor is required under the Contract to supply or in connection with which it is required under the Contract to carry out any service and any other article or part thereof to the same design as that article.
- 73.1.1. "Commercial Off The Shelf Item", or "COTS Item" means an item that is freely available on the open market and is provided with sufficient information to enable it to be installed, operated and replaced, without reference to the Contractor or any Sub-Contractor.
- 73.2. "HMG" means Her Majesty's Government of the United Kingdom of Great Britain and Northern Ireland.
- 73.3. "Intellectual Property Rights" or "IPR" means all patents, utility models, or rights (registered and unregistered) in any designs; applications for any of the foregoing; copyright; database rights; semiconductor chip topography rights; confidential information and trade secrets; and all rights and forms of protection of a similar nature to these or having equivalent effect anywhere in the world.
- 73.4. "Interface Data" means Technical Data that describes the overall physical, functional and performance characteristics (for example, "form, fit and function" information) of an Article to the extent necessary to operationally replace the Article

with interchangeable items, components or processes, or to interoperate with other items, components or processes.

- 73.5. "Limited Rights" means rights to copy, use, modify, reproduce, release, perform, display, or disclose Technical Data, in whole or in part, within HMG for any purpose.
- 73.6. "Limited Rights Technical Data" means Technical Data in which the Authority has Limited Rights.
- 73.7. "Technical Data" means information of a scientific, technical or programme/project management nature which is recorded or documented in any medium and whether or not in human readable format, but excluding unrecorded information communicated solely by oral communications and excluding software as otherwise licensed to the Authority.
- 73.8. "Unlimited Rights" means rights to copy, use, modify, reproduce, perform, display, release, or disclose Technical Data in whole or in part, and to authorise third parties to do so, in any manner, and for any purpose; but such purposes shall not extend to commercial sales of Articles except for disposal of outworn or surplus items, nor to licensing of Contractor-owned IPR for revenue generation.
- 73.9. "Unlimited Rights Technical Data" means Technical Data in which the Authority has Unlimited Rights.

Ownership of IPR

- 73.10. Subject to any existing rights of the Authority or any third party, the ownership of IPR in Technical Data and any other IPR generated by the Contractor in the course of work under the Contract shall, as between the Authority and the Contractor, belong to the Contractor.

Rights in Technical Data

73.11. Unlimited Rights

- 73.11.1. The Authority shall have a royalty-free, worldwide, non-exclusive, perpetual and irrevocable Unlimited Rights licence for all Technical Data, and all IPR in respect of that Technical Data, which has been generated under the Contract or which is otherwise subject to Unlimited Rights under this Clause 73.11.
- 73.11.2. Notwithstanding the provisions of Clause 73.11.1 or any other provisions of this Clause, the Authority shall have Unlimited Rights in the following Technical Data:
 - 73.11.2.1. Interface Data;
 - 73.11.2.2. corrections or minor amendments to Technical Data supplied as Government Furnished Equipment;
 - 73.11.2.3. Technical Data in which the Authority has obtained Unlimited Rights under another contract;
 - 73.11.2.4. Technical Data that has been made publicly available otherwise than in breach of obligations of confidence or that the Contractor has released or disclosed without restrictions on further release, use or disclosure; and
 - 73.11.2.5. any other Technical Data stated in the Contract to be Unlimited Rights Technical Data, or as otherwise agreed

between the Contractor and the Authority to be Unlimited Rights Technical Data;

73.11.3. The Authority shall have Unlimited Rights of use in the following Technical Data, including any Limited Rights Technical Data included in or associated with it, notwithstanding the provisions of Clause 73.12:

73.11.3.1. studies, analyses, test data or similar data generated for the Contract, or for a response by the Contractor to an invitation to tender for the Contract, when the study, analysis, test or similar work is a Contractor Deliverable, but excluding test methodology to the extent that it consists of Limited Rights Technical Data;

73.11.3.2. Technical Data in data packs which are Contractor Deliverables; and

73.11.3.3. Technical Data for installation, operation, routine maintenance or training purposes;

but the Authority's Unlimited Rights of use in any such Limited Rights Technical Data shall only be to the extent necessary to exercise its Unlimited Rights of use in the Unlimited Rights Technical Data. The provisions of this Clause 73.11.3 shall not apply to any Limited Rights Technical Data in self-standing proprietary background products, processes and materials that have been notified to the Authority in accordance with the provisions of Clause 73.21 and identified in an attachment (hereinafter "the Attachment") to the Contract.

73.12. Limited Rights

73.12.1. The Authority shall have a royalty-free, worldwide, non-exclusive, perpetual and irrevocable Limited Rights licence for all Technical Data that is a Contractor Deliverable, and all IPR in respect of that Technical Data, where the Technical Data has not been generated under the Contract.

73.12.2. The Authority shall retain any rights that it has obtained in Technical Data by virtue of the provisions of another contract or other arrangement.

73.12.3. Except as may be required or permitted by law or as otherwise permitted elsewhere in the Contract or by the provisions of another contract or other arrangement, the Authority shall not release or disclose Limited Rights Technical Data outside of HMG unless it has obtained the written permission of the Contractor or as permitted by the provisions of Clause 73.14.

73.13. Specific Disclosure Rights of the Authority in Limited Rights Technical Data

73.13.1. Notwithstanding any restrictions on disclosure in Clause 73.12, the Authority shall be permitted to release or disclose, and authorise the use of, Technical Data with Limited Rights, but only under obligations of confidence:

73.13.1.1. to an independent support contractor, solely for the purposes of the provision of a service to the Authority which, unless otherwise identified in the Contract, shall be limited to managing, monitoring, evaluating, assessing or auditing the work under the Contract;

- 73.13.1.2. where the Contract is for the supply of Services and the Limited Rights Technical Data concerns the processes and procedures concerned with the delivery of the Services, to a follow-on contractor only for the continued supply of the Services following termination or expiry of the Contract, or during any transitional period as may be specified in the Contract, and only to the extent necessary for the delivery of the follow-on Services; and
- 73.13.1.3. where the Technical Data is necessary for repair, maintenance or overhaul where necessary for urgent operational or safety reasons, subject to the recipient agreeing that the Technical Data may only be used, copied or reproduced for those purposes, and the recipient being required to return the Technical Data to the Authority immediately on completion of the urgent operational or safety need.

73.13.2. The Authority will have the right to disclose Limited Rights Technical Data to a foreign government only with the permission of the Contractor, which permission shall not be unreasonably withheld.

73.14. Modifications

- 73.14.1. The Contractor shall be entitled, on request, to a licence from the Authority, on willing licensor/willing licensee terms, to use Technical Data that is a modification of the design of an Article produced under the Contract, where such Technical Data has been generated by a third party under an Authority contract and the IPR in the Technical Data vests in the Authority, for the purposes of manufacture, sales and support of items made to the modified design for customers other than the Authority.

73.15. Contractor Background Patents

- 73.15.1. Subject to the rights of the Crown arising otherwise than under this Clause, and provided that the Contractor has met in a timely manner any obligations included in the Contract to inform the Authority of the existence of any relevant United Kingdom patent or registered design, the Contractor shall be entitled to claim payment under the provisions of Sections 55-59 of the Patents Act 1977 or the First Schedule to the Registered Designs Act 1949 in respect of any patented invention or registered design owned or controlled by the Contractor, with respect to use by third parties in the exercise of the rights granted to the Authority under Clauses 73.11 to 73.17 of this Clause. The terms to be agreed or settled for the use of any such patented invention or registered design shall not include payment of compensation under Section 57A of the Patents Act 1977 or paragraph 2A of the First Schedule to the Registered Designs Act 1949 in respect of any invention or design covering the Articles, or described in any Technical Data that is a Contractor Deliverable, and is subject to this Clause.

73.16. Authority's Quiet Enjoyment; and Embedded Software

- 73.16.1. Nothing in this Clause shall act to prevent the Authority's quiet enjoyment of any Articles delivered to it under the Contract, including the right to operate, maintain, use and dispose of the Articles, and the

Contractor shall not act to enforce rights in relation to any software that is provided as an integral part of such Articles to prevent the Authority's quiet enjoyment of the Articles. Nothing in this Clause shall prevent the Authority from exercising its statutory rights, currently in force or hereinafter enacted, in respect of such software. This Clause 73.16 shall not require the Contractor to deliver software to the Authority separate from the Article beyond other provisions or requirements of the Contract. No trade mark right or right against passing off shall be exercised against any deliverable Article, or any article made to a design incorporating a trade mark, recorded in deliverable Technical Data or embodied within any deliverable model, die or mould.

73.17. COTS Items

- 73.17.1. Notwithstanding the requirements of Clause 73.40, where the Contractor has, consistent with its obligations under the Contract, utilised a COTS Item supplied by a third party in its Contractor Deliverables, the Contractor shall not be required to secure licence rights in accordance with Clauses 73.11 to 73.17 from the third party in Technical Data concerning the COTS Item, provided the Contractor notifies the Authority of the source of the COTS Item (including Original Manufacturer Part Numbers, NATO Stock Numbers or NCAGE Codes, as appropriate). The Contractor shall secure for the Authority any standard licence rights that the supplier of the COTS Item provides in relation to Technical Data concerning the COTS Item.
- 73.17.2. As soon as the Contractor becomes aware of the intention to utilise a COTS item in performance of the Contract, the Contractor shall notify the Authority in writing and give details of the licence rights which shall apply.

Restrictions on Authority's Use, Release and Disclosure of Technical Data – Prior Identification by the Contractor

- 73.18. All Technical Data to be delivered to the Authority under the Contract with restrictions on use, release or disclosure that are more restrictive than Unlimited Rights, shall be identified in the Attachment.
- 73.19. The Contractor shall not deliver to the Authority any Technical Data with any restrictive marking if that Technical Data is not identified in the Attachment. The Attachment shall only be modified by the Contractor with the Authority's written permission not to be unreasonably withheld. Any Technical Data delivered to the Authority without first being identified in the Attachment may be used by the Authority as if it was Unlimited Rights Technical Data, in accordance with the provisions of Clause 73.11.1, but subject to the provisions of Clause 73.14.
- 73.20. The Contractor may notify the Authority of restrictions on the use or disclosure of Technical Data, supplied by a third party other than a Sub-Contractor, after its delivery to the Authority where the identification of any such restrictions is based on information not available to the Contractor at the date of delivery, or where the Technical Data is identified in the Attachment and the omission of any restrictive marking was inadvertent. The Authority shall give prompt and reasonable consideration to any such notification and shall allow the Contractor to apply the appropriate restrictive marking to the Technical Data retrospectively if it is clear, in the circumstances, that the restrictive marking correctly reflects the Authority's

rights in the relevant Technical Data as detailed in Clauses 73.11 to 73.17 of this Clause. The Authority may continue any use of the Technical Data begun prior to the notification made in accordance with this Clause 73.20 notwithstanding that any such use may be contrary to any restrictive marking retrospectively applied to the Technical Data.

Marking of Technical Data

- 73.21. The Contractor shall mark any covering, packaging or cover page of Technical Data delivered to the Authority with Unlimited Rights with the following legend:

“This Technical Data is delivered to the Authority by [**state Contractor’s name**] under Contract CSS/0113. The Authority has Unlimited Rights of Use in the Technical Data in accordance with the provisions of said Contract.

- 73.22. The Contractor shall mark any covering, packaging or cover page of Technical Data delivered with Limited Rights with the following legend:

“This Technical Data is delivered to the Authority by [**state Contractor’s name**] under Contract CSS/0113. The Authority has Limited Rights of Use in the Technical Data as marked in accordance with the provisions of said Contract.

- 73.23. Any pages of documents including Technical Data subject to Limited Rights shall include the legend from Clause 73.22 at the top of the page and shall be clearly marked by the Contractor to identify the portions of those pages that are subject to those rights. The Technical Data shall be identified by marking, underlining, shading or other appropriate identifier. The Authority shall have the right to remove any Technical Data subject to Limited Rights from a document and copy, use or disclose the edited document in accordance with the resulting restrictions on use.
- 73.24. Unless necessary for the purposes of coherence the Contractor shall not provide to the Authority (or cause to be provided to the Authority) Unlimited Rights Technical Data and Limited Rights Technical Data in the same deliverable.
- 73.25. The Contractor may apply a copyright mark to any Technical Data delivered to the Authority to identify the owner of the copyright, but shall not apply any markings to the Technical Data in relation to the Authority’s rights other than those set out in Clauses 73.21 to 73.25.

Effect and Removal of Nonconforming and Incorrect Markings

- 73.26. The Authority shall notify the Contractor in writing of any incorrect markings on Technical Data and any markings that do not conform to the provisions of Clauses 73.21 to 73.25. The Contractor shall remove or correct the markings within thirty (30) Days of notification. Failure to remove or correct the markings may be a ground for non-acceptance of the Technical Data and withholding of Contract payment until resolved.
- 73.27. If the Contractor fails to remove or correct a marking within thirty (30) Days of notification, the Authority shall be entitled to ignore the marking and use the Technical Data as if it had an Unlimited Rights licence in accordance with Clause 73.11.1 and, if the Authority considers it appropriate, remove or correct the marking.

Technical Data Provided By Subcontractors

- 73.28. The Contractor shall ensure that the Authority’s rights in Technical Data which is supplied by the Contractor’s subcontractors, and which will be included in Technical Data that is a Contractor Deliverable, shall be in accordance with those set out in

Clauses 73.11 to 73.17, and any other rights of the Authority as set out in this Clause. The Contractor and Sub-Contractor shall determine between them the appropriate contractual arrangements, as between the Contractor and Sub-Contractor, to provide the required Authority user rights in such Technical Data.

- 73.29. If the Contractor becomes aware that it will be unable to meet its Clause 73.28 obligations to the Authority in respect of Technical Data that will be generated or delivered by a potential Sub-Contractor to the Authority (regardless of whether that delivery is directly from the subcontractor to the Authority or through the Contractor to the Authority), then the Contractor shall immediately notify the Authority, providing a clear demonstration that the Sub-Contractor is unwilling to provide the necessary rights to the Authority, and instruct the potential Sub-Contractor to negotiate directly with the Authority regarding the Authority's user rights in Technical Data arising from a potential Sub-Contract. The Contractor shall not enter into a Sub-Contract with that the potential Sub-Contractor in respect of that Contract requirement of the Authority unless the Authority notifies the Contractor that the potential Sub-Contractor has entered into a direct agreement with the Authority to provide the necessary rights for the Authority in Technical Data generated or delivered by the Sub-Contractor.
- 73.30. If the Contractor enters into a Sub-Contract that fails to secure the rights for the Authority as required by the provisions of Clause 73.28, and has not received prior written authorisation from the Authority to place the Sub-Contract in accordance with the provisions of Clause 73.29, the Authority shall be entitled, using such powers as allowed by law and without prejudice to any other contractual remedy, to use the Technical Data as if the Contractor had secured such rights for the Authority and obligations from the Sub-Contractor; and the Contractor shall indemnify the Authority and be liable for any damages or costs incurred by the Authority.

Contractor Retention of Records

- 73.31. The Contractor shall retain, for the duration of the Contract and for a period of six years thereafter, or such alternative period as may be specified in the Schedule of Requirements, a record of the work performed under the Contract and of the results obtained, and the Technical Data generated, delivered or to be delivered to the Authority.
- 73.32. The Authority shall have the right to inspect the records maintained by the Contractor in accordance with Clause 73.31, within the period specified in that Clause and on reasonable notice. The Authority shall further have the right to require additional deliveries, within forty-five (45) Days, of any Technical Data that was generated in the performance of work under the Contract whether or not contained in the Contractor Deliverables for so long as this Technical Data exists. This right shall be exercisable by separate order and on agreement of a fair and reasonable price based solely on the costs of compiling and delivering the Technical Data.
- 73.33. The Contractor shall maintain one copy of all Technical Data that is a Contractor Deliverable (hereinafter called the "Control Copy"). The Control Copy shall be the property of the Authority, and shall be marked accordingly, and the Authority may take possession of it notwithstanding any administration, receivership, winding-up or liquidation of the Contractor or any transfer of its assets to any third party; and copies of any Technical Data from the Control Copy shall be supplied as required

from time to time by the Authority at the Authority's expense, the cost of which shall be based solely on the cost of delivering the Control Copy.

Technical Assistance

- 73.34. Subject to the availability of the relevant expertise and on a request made by the Authority within the period specified in Clause 73.31, the Contractor shall provide assistance in understanding any Technical Data to the Authority or any other person to whom the Authority may provide it in accordance with its rights under Clauses 73.11 to 73.17. The degree of assistance shall be limited to that required for a person competent in the relevant area of technology to interpret the results of the Contract. The assistance shall be made available within sixty (60) Days of the request and on fair and reasonable terms and conditions, including the costs of providing the assistance, but shall not require any payment in respect of the use of Technical Data.
- 73.35. The Contractor shall ensure that the Authority's rights to technical assistance which is supplied by the Contractor's subcontractors shall be in accordance with the provisions set out in Clause 73.34. The Contractor and Sub-Contractor shall determine between them the appropriate contractual arrangements to provide the Authority such rights.

Liability

- 73.36. In the event that Technical Data to which this Clause 73 applies is used by or for the Authority otherwise than for the purpose for which it was supplied in accordance with the relevant Contract, the Contractor shall have no liability whatsoever for any direct or indirect consequences, including losses, damages or injuries caused to the Authority or any third party, arising from its use.

General

- 73.37. For the avoidance of doubt, nothing in this Clause 73 shall:
- 73.37.1. restrict the entitlement of either party to make use of Technical Data once it enters the public domain otherwise than as a result of the Authority or any person supplied with the Technical Data by the Authority disclosing it in breach of any obligations of confidence relating to such Technical Data; or
 - 73.37.2. extinguish or diminish any statutory rights or common law rights of the Authority to use any Technical Data that is a Contractor Deliverable or any IPR covering such Technical Data or any rights of the Authority acquired under any separate contract or agreement.
- 73.38. Nothing in this Clause shall affect the Authority's rights under Section 48(2) of the Copyright, Designs and Patents Act 1988.
- 73.39. The terms of this Clause shall survive the termination or expiry of the Contract.

Commercial Exploitation Levy

- 73.40. The Contractor shall not sell any Articles developed under the Contract, otherwise than for the purposes of the United Kingdom Government, or grant any licence to manufacture such Articles or any materials or processes the design or development of which was called for in the Schedule of Requirements of the Contract without first agreeing with the Authority the sum or sums (if any) which should reasonably be paid to the Authority by the Contractor in respect of such sale or grant having

regard, among other things, to the amounts paid or payable to the Contractor by the Authority under the Contract.

Security of Supply

73.41. Without prejudice to the rights of the Authority otherwise secured under or outside the Contract, in the event that:

73.41.1. the Authority decides to place a follow-on contract with the Contractor for the continuing provision of the Articles and/or Services which are the same as or similar to those provided under the Contract and the Contractor is unwilling or unable to accept, on fair and reasonable terms a follow-on contract from the Authority; and/or

73.41.2. The Contractor permanently discontinuing its business for whatever reason and such business is not continued by a successor in interest to the Contractor to whom the relevant Intellectual Property Rights have been transferred,

then the Authority shall have the right to use or to have used by an alternative contractor under obligations of confidence, all necessary Technical Data, including that which may be identified in the Attachment, to the extent that it is required for the purposes of provision of the Articles and/or Services or of similar Articles and/or Services.

Assignment

73.42. The Contractor shall not assign or otherwise dispose of ownership of any IPR that they own in respect of Technical Data generated under the Contract without ensuring the continuity of the Authority rights granted herein and shall further provide that any new owner takes on any obligations set out in this Intellectual Property Rights condition. The requirement set out in this clause shall transfer to any new owner.

74. INVENTIONS AND DESIGNS - CROWN RIGHTS AND OWNERSHIP OF PATENTS AND REGISTERED DESIGNS

74.1. The provisions of either of Part A and B hereof or of Part B only as applicable to the Security Grading of the Contract shall apply in relation to any invention or design made in the course of or resulting from work carried out by the Contractor under the Contract (hereinafter respectively referred to as 'the invention' and the 'design').

Part A - Contracts For Work Classified As 'OFFICIAL-SENSITIVE' Or Higher

74.2.

74.2.1. The Contractor shall ensure that they and any Patent Agent or Attorney engaged by them shall treat the invention or design as bearing a Security Classification at least as high as the work to which it relates pending formal determination of its appropriate classification.

74.2.2. The preparation and filing of applications to which this Clause 74.2 relates shall be handled by the Contractor's own Patent Department under the conditions of security applicable under the Contract. If the Contractor does not have their own Patent Department they shall, before initiating the preparation of any application, secure the written Agreement of the Authority (1) as to the Patent Agent or Attorney that they propose to employ for the preparation and filing of such an application.

- 74.2.3. Every application to which this Clause 74.2 relates, whether filed by the Contractor or by a Patent Agent or Attorney engaged by them, shall be filed direct with the Security Section of the UK Patent Office, who shall be notified at the time of filing that the invention or design forming the subject of the application is related to classified Government work. The notification shall also quote the number of the Contract and the name and address of the Authority.

Part B - All Contracts

- 74.3. The Contractor shall ensure, to the extent they are legally able to do so, that any invention to which this Clause 74 relates and made by an employee of the Contractor in the course of duties as defined in Section 39(1) of the Patents Act 1977 and any design to which this Clause relates and made by an employee of the Contractor shall vest in the Contractor.

74.4.

- 74.4.1. The Contractor shall, within sixty (60) Days of filing a first patent application or any subsequent patent application claiming priority from a first patent application and directed towards obtaining protection in the UK (including a European Patent Application or an International Patent Application designating the UK) for the invention or any application for registration of the design, provide the Authority (1) (2) with a copy of that application together with the number of the Contract.

- 74.4.2. The Contractor shall promptly notify the Authority if they become aware of any application as aforesaid by any person who is, or has been an employee or agent of the Contractor or a Sub-Contractor and provide the Authority with relevant particulars insofar as they can obtain them and has the right to provide them.

- 74.5. If an employee of the Crown is a joint inventor of the invention or part author of the design to which any application as is referred to in Clause 74.4 relates and the portion of or share in the invention or design made by that employee belongs to the Crown and neither the Crown nor that employee is the person, or one of the persons, making the application, the Contractor shall if so requested by the Authority take all such steps and do all such things as are in their power and as may be necessary to ensure either that the Authority or the employee concerned joins in the application or, at the option of the Contractor, and if the application is one for a patent, that it is either withdrawn or amended by the deletion from the application of any reference to that part of the invention made by the employee of the Crown, or, if the application is one for a Registered Design, that it is withdrawn.

- 74.6. If an employee of the Crown is a party to any such application as is mentioned in Clauses 74.4 and 74.5 and the Authority so requests, the Contractor shall at the expense of the Authority take such reasonable steps as are in their power and may from time to time be necessary to ensure that the Authority is substituted for the employee of the Crown as co-applicant and shall give all such consents and do all such things as may from time to time be necessary to enable:

- 74.6.1. the employee of the Crown to assign to the Authority his interest in the application and in any Patent or Registered Design granted pursuant thereto; and

74.6.2. the Authority to assign its own interest therein to the National Research Development Corporation,

provided that the Contractor is not required by this Clause to consent to any assignment other than that specifically referred to herein.

- 74.7. Subject to the provisions of Clauses 74.5 and 74.6 and to the rights of the Authority as set out in Clause 74.8 the invention or design shall belong to the Contractor.
- 74.8. Any Government Department and any person authorised by a Government Department may in any part of the world do in relation to the invention any act as defined in Section 55(1) (a) to (e) of the Patents Act 1977 or use the design for the services of the Government of the United Kingdom.
- 74.9. Subject to Clause 74.16 the Contractor shall not be entitled to any payment whatsoever in respect of anything done in accordance with Clause 74.8 (whether by the Authority, a Government Department or any person whomsoever) and if any directions relating to the invention are given under Section 22(1) or 22(2) of the Patents Act 1977 the Contractor shall not have any claim for any such compensation as is mentioned in Section 22(7)(b).
- 74.10. If any question under this Clause shall arise between the Contractor and the Authority as to whether an employee of the Crown is a joint inventor of the invention or a part author of the design or as to whether the invention or design was made in the course of or resulted from work carried out by the Contractor under the Contract, that question shall be referred for decision to such person as may be agreed upon between the Contractor and the Authority or in default of such agreement as may be appointed by the President for the time being of the Chartered Institute of Patent Agents, and the decision of any such person on that question shall be final and conclusive.
- 74.11. The Contractor shall at the request and expense of the Authority take all such reasonable steps as are within his power and may from time to time be necessary to enable the Authority to register in the UK Patent Office or elsewhere its interest in the invention or design. (3)
- 74.12. The rights conferred by this Clause shall be in addition to and not in derogation of the rights exercisable by virtue of Sections 55 to 59 of the Patents Act 1977 and Section 12 of the Registered Designs Act 1949.
- 74.13. In this Clause references to a Government Department are references to a Department of Her Majesty's Government in the United Kingdom.
- 74.14. The foregoing provisions of this Clause shall have effect both during the period the Contractor is carrying out the other provisions of the contract and at all times thereafter.
- 74.15. The Contractor shall include, in any Sub-Contract which he may enter into for the purpose of the Contract, provisions as in this Clause, but with the substitution therein of references to the Sub-Contractor for references to the Contractor, and of references to the Sub-Contract for references to the Contract, and the Contractor shall at all times use all reasonable endeavours to secure the full and effectual observance by the Sub-Contractor of those provisions and that the Authority and all Government Departments obtain the benefit thereof, and to advise the Authority if they become aware of any breach of the provisions. Provided that this Clause shall only apply to any Sub-Contract for the carrying out of any work for research, design or development under the Contract.

74.16. Nothing herein shall prejudice the rights of either party arising otherwise than by virtue of this Clause.

Notes

(1) The agreement of the Authority is to be sought from and the information addressed to:
DCD-DIPR-AS2

Directorate of Intellectual Property Rights

Poplar 2 #2218

MOD Abbey Wood

BRISTOL BS34 8JH

(2) If an extra copy of the Patent Application or the application for registration of the design has been provided to the Patent Office for onward transmission to the Authority then that copy will be regarded as having been provided for the purpose of this Clause and no separate copy need be sent to the Authority direct provided that the Contractor indicates on the copy sent to the Patent Office for onward transmission to the Authority the number of the Contract.

(3) Any communication from the Authority to the Contractor on the subject of Clause 12 is to be addressed to the Contractor's address for service for the application.

75. THIRD PARTY INTELLECTUAL PROPERTY – RIGHTS AND RESTRICTIONS

Notifications

75.1. As he becomes aware, the Contractor shall promptly notify the Authority of:

- 75.1.1. any invention or design the subject of Patent or Registered Design rights (or application therefor) owned by a third party which appears to be relevant to the performance of the Contract or to use by the Authority of anything required to be done or delivered under the Contract;
- 75.1.2. any restriction as to disclosure or use, or obligation to make payments in respect of any other intellectual property (including technical information) required for the purposes of the Contract or subsequent use by the Authority of anything delivered under the Contract and, where appropriate, the notification shall include such information as is required by Section 2 of the Defence Contracts Act 1958; and
- 75.1.3. any allegation of infringement of intellectual property rights made against the Contractor and which pertains to the performance of the Contract or subsequent use by the Authority of anything required to be done or delivered under the Contract.

This Clause 75.1 does not apply in respect of Contractor Deliverables or Services normally available from the Contractor as a Commercial Off the Shelf (COTS) item or service.

75.2. If the information required under this Clause 75 has been notified previously, the Contractor may meet his obligations by giving details of the previous notification.

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

75.3. In respect of any question arising (by way of an allegation made to the Authority or Contractor, or otherwise) that the manufacture or supply under the Contract of any

Contractor Deliverable or Service normally available from the Contractor as a COTS item or service is an infringement of a United Kingdom Patent or Registered Design not owned or controlled by the Contractor or the Authority, the Contractor shall, subject to the agreement of the third party owning such Patent or Registered Design, be given exclusive conduct of any and all negotiations for the settlement of any claim or the conduct of any litigation arising out of such question. The Contractor shall indemnify the Authority, its officers, agents and employees against any liability and cost arising from such allegation. This Clause will not apply if:

- 75.3.1. the Authority has made or makes an admission of any sort relevant to such question;
 - 75.3.2. the Authority has entered or enters into any discussions on such question with any third party without the prior written agreement of the Contractor;
 - 75.3.3. the Authority has entered or enters into negotiations in respect of any relevant claim for compensation in respect of Crown Use under Section 55 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1977; and
 - 75.3.4. legal proceedings have been commenced against the Authority or the Contractor in respect of Crown Use, but only to the extent of such Crown Use that has been properly authorised.
- 75.4. The indemnity in Clause 75.3 does not extend to use by the Authority of anything supplied under the Contract where that use was not reasonably foreseeable at the time of the Contract.
- 75.5. In the event that the Authority has entered into negotiation in respect of a claim for compensation, or legal proceedings in respect of the Crown Use have commenced, the Authority will forthwith authorise the Contractor for the purposes of performing the Contract (but not otherwise) to utilise a relevant invention or design in accordance with Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949 and to use any model, document or information relating to any such invention or design which may be required for that purpose.

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

- 75.6. If a relevant invention or design has been notified to the Authority by the Contractor prior to the date of the Contract, then unless it has been otherwise agreed, under the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, the Contractor is hereby authorised to utilise that invention or design, notwithstanding the fact that it is the subject of a United Kingdom Patent or United Kingdom Registered Design, for the purpose of performing the Contract.
- 75.7. If, under Clause 75.1, a relevant invention or design is notified to the Authority by the Contractor after the date of Contract, then:
- 75.7.1. if the owner (or his exclusive licensee) takes or threatens in writing to take any relevant action against the Contractor, the Authority will issue to the Contractor a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, and
 - 75.7.2. in any event, unless the Contractor and the Authority can agree an alternative course of action, the Authority shall not unreasonably delay

the issue of a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949.

Patents, Utility Models and Registered Designs outside the UK

- 75.8. The Authority shall assume all liability and shall indemnify the Contractor, its officers, agents and employees against liability, including the Contractor's costs, as a result of infringement by the Contractor or his suppliers of any Patent, Utility Model, Registered Design or like protection outside the United Kingdom in the performance of the Contract when such infringement arises from or is incurred by reason of the Contractor following any specification, statement of work or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.
- 75.9. The Contractor shall assume all liability and shall indemnify the Authority, its officers, agents and employees against liability, including the Authority's costs, as a result of infringement by the Contractor or his suppliers of any Patent, Utility Model, Registered Design or like protection outside the United Kingdom in the performance of the Contract when such infringement arises from or is incurred otherwise than by reason of the Contractor following any specification, statement of work or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.

Royalties and Other Licence Fees

- 75.10. The Contractor shall not be entitled to any reimbursement of any royalty, licence fee or similar expense incurred in respect of anything to be done under the Contract, where:
- 75.10.1. a relevant discharge has been given under Section 2 of the Defence Contracts Act 1958, or relevant authorisation in accordance with Sections 55 or 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988 in respect of any intellectual property, or
 - 75.10.2. any obligation to make payments for intellectual property has not been promptly notified to the Authority under Clause 75.1 of this Clause.
- 75.11. Where an authorisation is given by the Authority under Clause 75.5, Clause 75.6 or Clause 75.7, to the extent permitted by Section 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988, the Contractor shall also be:
- 75.11.1. released from payment whether by way of royalties, licence fees or similar expenses in respect of the Contractor's use of the relevant invention or design, or the use of any relevant model, document or information for the purpose of performing the Contract, and
 - 75.11.2. authorised to use any model, document or information relating to any such invention or design which may be required for that purpose.

Copyright, Design Rights etc.

- 75.12. The Contractor shall assume all liability and indemnify the Authority and its officers, agents and employees against liability, including costs as a result of:
- 75.12.1. infringement or alleged infringement by the Contractor or his suppliers of any copyright, database right, design right or the like protection in

- any part of the world in respect of any item to be supplied under the Contract or otherwise in the performance of the Contract;
 - 75.12.2. misuse of any confidential information, trade secret or the like by the Contractor in performing the Contract; and
 - 75.12.3. provision to the Authority of any information or material which the Contractor does not have the right to provide for the purpose of the Contract.
- 75.13. The Authority shall assume all liability and indemnify the Contractor, its officers, agents and employees against liability, including costs as a result of:
- 75.13.1. infringement or alleged infringement by the Contractor or his suppliers of any copyright, database right, design right or the like protection in any part of the world in respect of any item provided by the Authority for the purpose of the Contract but only to the extent that the item is used for the purpose of the Contract; and
 - 75.13.2. alleged misuse of any confidential information, trade secret or the like by the Contractor as a result of use of information provided by the Authority for the purposes of the Contract, but only to the extent that Contractor's use of that information is for the purposes intended when it was disclosed by the Authority.

Authorisation and Indemnity - General

- 75.14.
- 75.14.1. The above represents the total liability of each Party to the other under the Contract in respect of any infringement or alleged infringement of Patent or other Intellectual Property Right owned by a third party
 - 75.14.2. Neither Party shall be liable, one to the other, for any consequential loss or damage arising as a result, directly or indirectly, of a claim for infringement or alleged infringement of any Patent or other Intellectual Property Right owned by a third party.
 - 75.14.3. A party against whom a claim is made or action brought, shall promptly notify the other party in writing if such claim or action appears to relate to an infringement which is the subject of an indemnity or authorisation given under this Clause by such other party. The notification shall include particulars of the demands, damages and liabilities claimed or made of which the notifying party has notice.
 - 75.14.4. The party benefiting from the indemnity or authorisation shall allow the other party, at its own expense, to conduct any negotiations for the settlement of the same, and any litigation that may arise therefrom and shall provide such information as the other party may reasonably require.
 - 75.14.5. Following a notification under Clause 75.14.3., the party notified shall advise the other party in writing within thirty (30) Days whether or not it is assuming conduct of the negotiations or litigation. In that case the party against whom a claim is made or action brought shall not make any statement which might be prejudicial to the settlement or defence of such a claim without the written consent of the other party.

- 75.14.6. The Party conducting negotiations for the settlement of a claim or any related litigation shall, if requested, keep the other Party fully informed of the conduct and progress of such negotiations.

75.15.

- 75.15.1. If at any time a claim or allegation of infringement arises in respect of copyright, database right, design right or breach of confidence as a result of the provision of any item by the Contractor to the Authority, the Contractor may at its own expense replace the item with an item of equivalent functionality and performance so as to avoid infringement or breach;
- 75.15.2. The Parties will co-operate with one another to mitigate any claim or damage which may arise from use of third party Intellectual Property Rights.

Sub-Contracts

- 75.16. The Contractor shall secure from any Sub-Contractor, the prompt notification to the Authority of the information required by Clause 75.1 of this Clause. On receipt of any such notification the Authority will issue a written authorisation to the Sub-Contractor in accordance with Clause 75.7 of this Clause. Any such authorisation will be subject always to Clauses 75.10, and 75.11. as though the Sub-Contractor was the Contractor. If any claim or action relevant to such authorisation arises, it shall be promptly notified to the Authority. The Contractor is not authorised to enter into any substantive correspondence in such matter nor in any way to act on behalf of the Authority in such claim or action. Any arrangement between the Contractor and Sub-Contractor to enable the Contractor to underwrite his indemnities to the Authority under this Clause is a matter between the Contractor and the Sub-Contractor.

General

- 75.17. In this Clause:

- 75.17.1. 'design right' has the meaning ascribed to it by Section 213 of the Copyright, Designs and Patents Act 1988;
- 75.17.2. 'Crown Use' in relation to a patent means the doing of anything by virtue of Sections 55 to 57 of the Patents Act 1977 which otherwise would be an infringement of the patent and in relation to a Registered Design has the meaning given in paragraph 2A(6) of the First Schedule to the Registered Designs Act 1949.

- 75.18. Nothing in this Clause shall be taken as an authorisation or promise of an authorisation under Section 240 of the Copyright, Designs and Patents Act 1988.

76. CYBER

Authority Obligations

- 76.1. The Authority shall:

- 76.1.1. determine the Cyber Risk Level appropriate to the Contract and, where the Contractor has not already been notified of the Cyber Risk level prior to the date of the Contract, shall provide notification of the relevant Cyber Risk Level and the appropriate Cyber Security Instructions to the Contractor as soon as is reasonably practicable; and

- 76.1.2. notify the Contractor as soon as reasonably practicable where the Authority reassesses the Cyber Risk Level relating to the Contract.

Contractor Obligations

76.2. The Contractor shall, and shall procure that its Sub-contractors shall:

- 76.2.1. comply with DEFSTAN 05-138;
- 76.2.2. complete the CSM Risk Assessment Process in accordance with the Authority's instructions, ensuring that any change in the Cyber Risk Level is notified to any affected Sub-contractor, and complete a further CSM Risk Assessment or CSM Supplier Assurance Questionnaire where a change is proposed to the Contractor's supply chain which has or may have an impact on the Cyber Risk Level of the Contract or on receipt of any reasonable request by the Authority;
- 76.2.3. carry out the CSM Supplier Assurance Questionnaire no less than once in each year of the Contract commencing on the first anniversary of completion of the CSM Supplier Assurance Questionnaire;
- 76.2.4. having regard to the state of technological development, implement and maintain all appropriate technical and organisational security measures to discharge its obligations under this Clause in accordance with Good Industry Practice provided always that where there is a conflict between the Contractor's obligations under 76.2.1 and this 76.2.4 the Contractor shall notify the Authority in accordance with the notification provisions in DEFSTAN 05-138 as soon as it becomes aware of the conflict and the Authority shall determine which standard or measure shall take precedence;
- 76.2.5. comply with all Cyber Security Instructions notified to it by the Authority as soon as reasonably practicable;
- 76.2.6. notify the JSyCC WARP in accordance with ISN 2014/02 as amended or updated from time to time and the Contractors NSA/DSA, and in the case of a Sub-contractor also notify the Contractor, immediately in writing as soon as they know or believe that a Cyber Security Incident has or may have taken place providing full details of the circumstances of the incident and any mitigation measures already taken or intended to be taken;
- 76.2.7. in coordination with its NSA/DSA, investigate any Cyber Security Incidents fully and promptly and co-operate with the Authority and its agents and representatives and its NSA/DSA to take all steps to mitigate the impact of the Cyber Security Incident and minimise the likelihood of any further similar Cyber Security Incidents. For the avoidance of doubt, this shall include complying with any reasonable technical or organisational security measures deemed appropriate by the Contractors NSA/DSA in the circumstances and taking into account the Cyber Risk Level;
- 76.2.8. consent to the Authority recording and using information obtained in relation to the Contract for the purposes of the Cyber Security Model whether on the Supplier Cyber Protection Service or elsewhere. For the avoidance of doubt such information shall include the cyber security accreditation of the Contractor and / or Sub-contractor as appropriate; and

76.2.9. include provisions equivalent to 76.14 of this Clause in all Sub-contracts imposing provisions equivalent to this Clause 76.2 (the “equivalent provisions”) and, where a Sub-contractor breaches terms implementing this Clause in a Sub-contract, the Contractor shall, and shall procure that its Sub-contractors shall, in exercising their rights or remedies under the relevant Sub-contract:

76.2.9.1. notify the Authority of any such breach and consult with the Authority regarding any remedial or other measures which are proposed as a consequence of such breach, taking the Authority’s views into consideration; and

76.2.9.2. have regard to the equivalent provisions.

PROVIDED ALWAYS THAT where the Contractor has notified the Authority that it or one or more of its Sub-contractors cannot comply with 76.2.1 to 76.2.9 the Authority and Contractor will seek to agree a Cyber Security Implementation Plan and where the Authority has agreed a Cyber Security Implementation Plan with the Contractor, the Contractor shall, and shall procure that its Sub-Contractors shall, comply with such Cyber Security Implementation Plan until implementation is agreed to have been achieved whereupon 76.2.1 to 76.2.9 shall apply in full. In the event that a Cyber Security Implementation Plan cannot be agreed the provisions of Clause 86 (Disputes) or any agreed alternative dispute resolution procedure shall apply.

Management Of Sub-Contractors

76.3. The Authority agrees that the Contractor shall be entitled to rely upon the self-certification by a Sub-contractor of its compliance with its obligations pursuant to Clause 76.2. In the event that a Sub-Contractor is found to be in breach of its obligations in Clause 76.2, and where the Contractor has relied upon the Sub-Contractor’s self-certification, the Contractor shall not be held to be in breach of this Clause.

76.4. Where the Contractor becomes aware that a Sub-Contractor is not complying with its obligations, the Contractor shall notify the Authority and provide full details of the Sub-Contractor’s non-compliance as soon as reasonably practicable and shall consult with the Authority as to the appropriate course of action which may include but not be limited to the agreement of a remedial plan or termination of the Sub-Contract having regard to Clause 76.2.9.

76.5. Having regard to the Authority’s views, the Contractor shall take all reasonable measures to address any non-compliance of a Sub-contractor in accordance with the reasonable timescales required by the Authority. Where the Contractor fails to do so, this shall amount to a breach of this Clause and the provisions of 76.15 or 76.16 as appropriate shall apply.

76.6. The Contractor shall, and shall procure that its Sub-Contractors shall, include provisions equivalent to Clauses 76.3 to 76.6 in all Sub-Contracts which flow down the obligations set out in Clause 76.2 of the Contract.

Records

76.7. The Contractor shall keep and maintain, and shall ensure that any Sub-Contractor shall keep and maintain, until 6 years after termination or expiry of the Contract, or as long a period as may be agreed between the Parties, full and accurate records including but not limited to:

- 76.7.1. details of all MOD Identifiable Information relating to the Contractor Deliverables provided under the Contract; and
 - 76.7.2. copies of all documents required to demonstrate compliance with DEFSTAN 05-138 and this Clause, including but not limited to any information used to inform the CSM Risk Assessment Process and to carry out the CSM Supplier Assurance Questionnaire, together with any certificates issued to the Contractor and/or Sub-Contractor.
- 76.8. The Contractor shall, and shall ensure that any Sub-Contractor shall on request provide the Authority, the Authority's representatives and/or the Contractors NSA/DSA such access to those records as may be required in connection with the Contract.

Audit

- 76.9. Except where an audit is imposed on the Authority by a regulatory body or there is a Cyber Security Incident in which case the Contractor agrees, and shall procure that its Sub-contractors agree, that the Authority and its representatives, in coordination with the Contractors NSA/DSA or the NSA/DSA on behalf of the Authority, may conduct such audits as it considers in its absolute opinion necessary, the Authority, its representatives and/or the Contractors NSA/DSA may, not more than twice in any calendar year and for a period of six (6) years following the termination or expiry of the Contract, whichever is the later, conduct an audit for the following purposes:
 - 76.9.1. to review and verify the integrity, confidentiality and security of any MOD Identifiable Information;
 - 76.9.2. to review the Contractor's and/or any Sub-contractor's compliance with its obligations under this Clause; and
 - 76.9.3. to review any records created during the provision of the Contractor Deliverables, including but not limited to any documents, reports and minutes which refer or relate to the Contractor Deliverables for the purposes of Clauses 76.9.1 and 76.9.2.
- 76.10. The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor and/or Sub-contractor or delay the provision of the Contractor Deliverables and supplier information received by the Authority in connection with the audit shall be treated as confidential information.
- 76.11. The Contractor shall, and shall ensure that any Sub-contractor shall on demand provide the Authority and any relevant regulatory body, including the Contractor's NSA/DSA, (and/or their agents or representatives), together "the Auditors", with all reasonable co-operation and assistance in relation to each audit, including but not limited to:
 - 76.11.1. all information requested by the Authority within the permitted scope of the audit;
 - 76.11.2. reasonable access to any Sites controlled by the Contractor or any Associated Company and any Sub-contractor and to any equipment used (whether exclusively or non-exclusively) in the performance of the Contract and, where such Sites and/or equipment are outwith the control of the Contractor, shall secure sufficient rights of access for the Auditors as shall be necessary to allow audits to take place; and

- 76.11.3. access to any relevant staff.
- 76.12. The Authority shall endeavour to (but is not obliged to) provide at least (fifteen) 15 Days' notice of its intention to conduct an audit.
- 76.13. The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause, unless the audit identifies a material breach of the terms of this Clause by the Contractor and/or Sub-contractor in which case the Contractor shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.

Breach of Obligations

- 76.14. In exercising its rights or remedies under this Clause, the Authority shall:
 - 76.14.1. act in a reasonable and proportionate manner having regard to such matters as the gravity of any breach or potential breach and the Cyber Risk Level of the Contract; and
 - 76.14.2. give all due consideration, where appropriate, to action other than termination of the Contract, including but not limited to a remedial period if this is appropriate in all the circumstances.
- 76.15. Where the Cyber Risk Level of the Contract is assessed to be a moderate or high, and the Contractor breaches the terms of this Clause, the Authority shall be entitled:
 - 76.15.1. to terminate the Contract (whether in whole or in part) and to claim damages in accordance with Clause 66 (Termination for Contractor Default) as though such breach is a material breach; and
 - 76.15.2. where the Contract has not been terminated, to recover from the Contractor any other loss sustained in consequence of any breach of this Clause, subject to any provision which is agreed elsewhere in the Contract.
- 76.16. Where the Cyber Risk Level of the Contract is assessed to be very low or low, and the Contractor breaches the terms of this Clause, the Authority shall be entitled:
 - 76.16.1. to recover from the Contractor the amount of any loss sustained in consequence of any breach of this Clause, subject to any provision which is agreed elsewhere in the Contract; and
 - 76.16.2. where the Contractor does not comply with any reasonable instructions issued by the Authority or the Contractors NSA/DSA within the time period specified to remedy such breach or prevent further breaches, the Authority shall be entitled to terminate the Contract (whether in whole or in part) and to claim damages in accordance with Clause 66 (Termination for Contractor Default) as though such breach is a material breach.
- 76.17. Where the Contractor commits an act of fraud, negligence or wilful misconduct in respect of its obligations under this Clause the Authority shall be entitled to terminate the Contract (whether in whole or in part) and to claim damages in accordance with Clause 66 (Termination for Contractor Default) as though such breach is a material breach.

General

- 76.18. On termination or expiry of the Contract the provisions of this Clause excepting 76.2.2 and 76.2.3 shall continue in force so long as the Contractor and/or and Sub-contractor holds any MOD Identifiable Information relating to the Contract.
- 76.19. Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the Parties under this Clause that have accrued up to the date of termination or expiry, including but not limited to the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 76.20. The Contractor agrees that the Authority has absolute discretion to determine changes to DEFSTAN 05-138 and/or the Cyber Risk Level. In the event that there is such a change to DEFSTAN 05-138 or the Cyber Risk Level, then either Party may seek an adjustment to the Contract Price for any associated increase or decrease in costs and the Contractor may request an extension of time for compliance with such revised or amended DEFSTAN 05-138 or Cyber Risk Level provided always that the Contractor shall seek to mitigate the impact on time and cost to the extent which it is reasonably practicable to do so and further provided that such costs shall not be allowed unless they are considered to be appropriate, attributable to the Contract and reasonable in all the circumstances.
- 76.21. Subject to Clause 76.20, where the Contractor seeks such adjustment or extension, the Authority will proceed in accordance with Clause 54 (Authority Change Procedure) or any agreed alternative change control procedure to determine the request for adjustment or extension. The Contractor must deliver a Contractor Change Proposal to the Authority within eight (8) weeks of the occurrence of the change in DEFSTAN 05-138 or Cyber Risk Level or such longer period as may be agreed by the Parties, identifying the impact of that change and accompanied by full details of the request for adjustment. For the avoidance of doubt, the Authority shall not be required to withdraw any Authority Notice of Change which may have been issued insofar as it relates to DEFSTAN 05-138 or the Cyber Risk Level whether or not the Contractor Change Proposal is rejected. In the event that the Contractor does not agree with the Authority's determination, then the provisions of Clause 86 (Disputes) or any agreed alternative dispute resolution procedure shall apply.
- 76.22. The Contractor shall not recover any costs and/or other losses under or in connection with this Clause 76 where such costs and/or other losses are recoverable or have been recovered by the Contractor elsewhere in the Contract or otherwise. For the avoidance of doubt this shall include but not be limited to the cost of implementing any upgrades or changes to any information system or electronic communications network whether in response to a Cyber Security Incident or otherwise, where the Contractor is able to or has recovered such sums in any other provision of the Contract or has recovered such costs and/or losses in other contracts between the Contractor and the Authority or with other bodies.

77. CHILD LABOUR AND EMPLOYMENT LAW

- 77.1. In this Clause 77, "Child Labour Legislation" means those International Labour Law Conventions concerning economic exploitation of children through the performance of work which is likely to be hazardous or to interfere with a child's health or development, including but not limited to slavery, trafficking, debt bondage or forced labour, which are ratified and enacted into domestic law and directly applicable to the Contractor in the jurisdiction(s) in which it performs the Contract.

77.2. The Contractor shall comply in all material respects with Child Labour Legislation and applicable employment legislation of those jurisdiction(s) where the Contract is being performed.

77.3. The Contractor agrees to take reasonable efforts to reflect this Clause in any subcontract that it enters into to satisfy the requirements of the Contract and to require its subcontractors to reflect this Clause 77 in their subcontracts that they enter into to satisfy the requirements of the Contract.

78. CONTINUING OBLIGATIONS

78.1. Save as otherwise expressly provided in the Contract or as already taken into account in the calculation of any payment on termination pursuant to the Contract:

78.1.1. termination of the Contract shall be without prejudice to any accrued rights or obligations under the Contract prior to termination; and

78.1.2. termination of the Contract shall not affect the continuing rights and obligations of the Contractor and the Authority under:

78.1.2.1. Clauses 2 (Specification and Precedence of Documents), 87 (Governing Law and Jurisdiction), 86 (Disputes), 78 (Continuing Obligations), 88 (Disclosure of Information), 79 (Severability), 80 (Waiver), 71 (Protection of UK Material) and 64 (Recovery of Sums Due); or:

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

79. SEVERABILITY

79.1. If any clause or provision of the Contract is held to be invalid, illegal or unenforceable to any extent then:

79.1.1. such clause or provision shall (to the extent it is invalid, illegal or unenforceable) be given no effect and shall be deemed not to be included in the Contract but without invalidating any of the remaining provisions of the Contract; and

79.1.2. the Parties shall use all reasonable endeavours to replace the invalid, illegal or unenforceable clause or provision by a valid, legal and enforceable substitute clause or provision the effect of which is as close as possible to the intended effect of the invalid, illegal or unenforceable clause or provision.

80. WAIVER

80.1. No act or omission of either Party shall by itself amount to a waiver of any right or remedy unless expressly stated by that Party in writing. In particular, no reasonable delay in exercising any right or remedy shall by itself constitute a waiver of that right or remedy.

80.2. No waiver in respect of any right or remedy shall operate as a waiver in respect of any other right or remedy and nor shall it amend, delete or add to the terms, conditions or provisions of the Contract unless (and then only to the extent) expressly stated in that waiver.

80.3. The rights and remedies provided in the Contract are cumulative and not exclusive of any rights and remedies provided at law.

81. ASSIGNMENT

- 81.1. Except as detailed under Clause 81.2, neither Party to the Contract shall give, bargain, sell, assign, or otherwise dispose of the Contract or any part thereof, or the benefit or advantage of the Contract or any part thereof, without the previous consent in writing of the other Party.
- 81.2. The Authority shall be entitled to assign, transfer, novate or otherwise dispose of any of its rights and obligations under the Contract to any person that is:
- 81.2.1. a Minister of the Crown pursuant to an order under the Ministers of the Crown Act 1975; or
 - 81.2.2. any other public body whose obligations under the Contract are unconditionally and irrevocably guaranteed by the Authority or a Minister of the Crown having the legal capacity, power and authority to perform the obligations under that guarantee and the obligations under that guarantee and the obligations of the Authority under the Contract.

82. RIGHTS OF THIRD PARTIES

- 82.1. Except as provided in Clause 82.2 and notwithstanding anything to the contrary elsewhere in the Contract, no right is granted to any person who is not a party to the Contract to enforce any term of the Contract in his own right and the parties to the Contract declare that they have no intention to grant any such right.
- 82.2. Where, and only where, either by a term in a clause which has been expressly included in the Contract or by another term which specifically refers to this Clause 82, the Contract expressly states that a third party shall be entitled to enforce a term of the Contract:
- 82.2.1. the said third party shall be entitled to enforce that term in his own right;
 - 82.2.2. the Contractor shall inform the said third party as soon as is reasonably practicable of the existence of the relevant right together with any other terms (including the terms of this Clause 82) relevant to the exercise of that right; and
 - 82.2.3. the third party's rights shall be subject to any provision in the Contract:
 - 82.2.3.1. that provides for the submission of disputes under the Contract generally or the said rights in particular to arbitration (such as Clause 86 (Disputes)); and
 - 82.2.3.2. that stipulates the law and jurisdiction that will govern the Contract (such as Clause 87 (Governing Law and Jurisdiction)).

83. NOTICES

- 83.1. All Notices shall be:
- 83.1.1. in writing;
 - 83.1.2. in the English language;
 - 83.1.3. authenticated by signature or by such other method as agreed between the Parties;
 - 83.1.4. marked for the attention of the appropriate department or officer; and
 - 83.1.5. marked in a prominent position with the relevant Contract number.

- 83.2. Notices should be delivered by:
- 83.2.1. hand;
 - 83.2.2. first-class prepaid post (or airmail, in the case of Notices to or from overseas); or
 - 83.2.3. electronic mail, where such means of communication has been agreed for the purposes of the Contract, and any requirement for a document to be signed or references to signatures shall be construed to include electronic signature.
- 83.3. Notices shall be deemed to have been received:
- 83.3.1. if delivered by hand, on the day of delivery if it is a Business Day and otherwise on the first Business Day immediately following the day of delivery;
 - 83.3.2. if sent by first-class prepaid post (or airmail, if appropriate), on the third Business Day (or on the tenth Business Day in the case of airmail) after the day of posting; or
 - 83.3.3. if sent by other electronic means;
 - 83.3.3.1. if transmitted between 09.00 and 17:00 hours on a Business Day (recipient's time) on completion of receipt by the sender of verification of the transmission from the receiving instrument; or
 - 83.3.3.2. if transmitted at any other time, at 09.00 on the first Business Day (recipient's time) following the completion of receipt by the sender of verification of the transmission from the receiving instrument.
- 83.4. The addresses (including electronic addresses) of each Party to which all Notices shall be sent are those specified in Schedule 18 (Addresses and Other Information)¹, or such other address as either Party may by written Notice specify to the other for the purpose of this Clause.
- 83.5. Where either Party requests written confirmation of any communication which does not constitute a Notice such request shall not unreasonably be refused.

84. ENTIRE AGREEMENT

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

85. MAJOR INCIDENT INQUIRIES

- 85.1. If any Major Incident occurs prior to the Delivery Voyage the Contractor shall, as soon as possible and upon notice to the Authority, convene and conduct a formal enquiry in the English language under the chairmanship of a director of the Contractor to establish the causes of the incident and, where appropriate, recommend remedial action to prevent any recurrence of the Major Incident.

- 85.2. The requirement of Clause 85.1 shall be without prejudice to any inquiry by the relevant national health and safety regulatory body, as required by law, and in the event that any such Inquiry is convened the Contractor shall:
- 85.2.1. give notice of the inquiry to the Authority as soon as reasonably practicable;
 - 85.2.2. to the extent lawful and practicable secure for the Authority the right to attend and to be represented at the inquiry; and
 - 85.2.3. provide at the Contractor's cost, for the benefit of the Authority, translation services acceptable to the Authority in relation to the conduct of the inquiry and any written report that may be produced.
- 85.3. The Authority will have the right to appoint representatives to attend the Major Incident Inquiry in any of the following capacities:
- 85.3.1. as members of the Major Incident Inquiry board;
 - 85.3.2. in an advisory capacity; and
 - 85.3.3. to question witnesses (and to the extent that any witness evidence will be given in a language other than English the Contractor shall provide at its own cost the services of a translator acceptable to the Authority).
- 85.4. The presence of such representatives of the Authority shall be without prejudice to the Authority's right to accept or reject the findings and recommendations of the Major Incident Inquiry board.
- 85.5. A full report of the Major Incident Inquiry in English and signed by all members of the board shall be forwarded to the Authority and shall include:
- 85.5.1. a summary of the proceedings;
 - 85.5.2. evidence of any witnesses, together with copies of any sketches or diagrams which may have been produced;
 - 85.5.3. details of any difference of opinion between the board members on any material point; and
 - 85.5.4. the conclusions and recommendations of the board.
- 85.6. Any Major Incident Inquiry shall not deliberate on adjustments to the Contract and shall be without prejudice to the rights and remedies of the Parties, under the Contract or otherwise, in respect of any loss or damage arising from any such incident.
- 85.7. Notwithstanding anything in this Clause 85, in certain circumstances the Authority may wish to conduct an inquiry itself; in which case the Authority shall have the right to require the Contractor, or any person in his employ, to attend the inquiry in any capacity.
- 85.8. If the Contractor proposes to call Ship Staff to the Major Incident Inquiry either to give evidence or for any other purpose, prior written approval shall be sought from the On Site Representative.
- 86. DISPUTES**
- 86.1. The Parties will attempt in good faith to resolve any dispute or claim arising out of or relating to the Contract, the Ships and/or Contractor Deliverables through negotiations between the respective representatives of the Parties having authority

to settle the matter, these attempts shall include the use of any Alternative Dispute Resolution (ADR) procedure on which the Parties may agree as appropriate.

- 86.2. In the event that the dispute or claim is not resolved by negotiation, or where the Parties have agreed to use an ADR procedure, by the use of such procedure, the dispute shall be referred to arbitration.
- 86.3. The Party initiating the arbitration shall give a written Notice of Arbitration to the other Party. The Notice of Arbitration shall specifically state:
 - 86.3.1. that the dispute is referred to arbitration; and
 - 86.3.2. the particulars of the Contract out of or in relation to which the dispute arises.
- 86.4. Unless otherwise agreed in writing by the Parties, the arbitration and this Clause 86 shall be governed by the provisions of the Arbitration Act 1996.
- 86.5. It is agreed between the Parties that for the purposes of the arbitration, the arbitrator shall have the power to make provisional awards as provided for in Section 39 of the Arbitration Act 1996.
- 86.6. For the avoidance of doubt it is agreed between the Parties that the arbitration process and anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential as between the Parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise. No report relating to anything said, done or produced in or in relation to the arbitration process may be made beyond the tribunal, the Parties, their legal representatives and any person necessary to the conduct of the proceedings, without the concurrence of all the Parties to the arbitration.

87. GOVERNING LAW AND JURISDICTION

- 87.1. The Contract shall be governed by and interpreted in accordance with English law.
- 87.2. The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with the Contract (including a dispute relating to the existence, validity or termination of the Contract or any non-contractual obligation arising out of or in connection with the Contract (a "**Dispute**").
- 87.3. The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no party will argue to the contrary.
- 87.4. Clauses 87.2 and 87.3 are for the benefit of the Authority only. As a result, the Authority shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Authority may take concurrent proceedings in any number of jurisdictions.
- 87.5. Each Party hereby warrants to each other that entry into the Contract does not and performance thereof will not in any way violate or conflict with any provision of law, statute, rule, regulation, judgement, writ, injunction, decree or order applicable to it; and that the Contract does not conflict with or result in a breach or termination of any provision of, or constitute a default under any mortgage, contract or other liability, charge or encumbrance upon any of its properties or other assets.
- 87.6. The Contractor irrevocably:
 - 87.6.1. consents generally in accordance with the State Immunity Act 1978 to relief being given against it in England or any other jurisdiction by way

of injunction or order for specific performance or for the recovery of any property whatsoever or other provisional or protective measures and to its property being subject to any process for the enforcement of a judgment or any process effected in the course or as a result of any action in rem; and

- 87.6.2. waives and agrees not to claim any immunity from suits and proceedings (including actions in rem) in England or any other jurisdiction and from all forms of execution, enforcement or attachment to which it or its property is now or may hereafter become entitled under the laws of any jurisdiction and declares that such waiver shall be effective to the fullest extent permitted by such laws.

87.7. Each Party hereby agrees with each other Party that the provisions of this Clause 87 shall survive any termination of the Contract for any reason whatsoever and shall remain fully enforceable as between the Parties notwithstanding such a termination.

87.8. The Contractor irrevocably appoints [♦] or other persons in England and Wales, specified in the Contract as its agents to accept on its behalf service of all process and other documents of whatever description to be served on the Contractor in connection with any litigation or arbitration within the English jurisdiction arising out of or relating to the Contract or any issue connected therewith.

88. DISCLOSURE OF INFORMATION

88.1. For the purposes of this Clause 88 'Information' means any information in any written or other tangible form disclosed to one party by or on behalf of the other party under or in connection with the Contract, including information provided in the tender or negotiations which preceded the award of the Contract.

88.2. Subject to Clauses 88.5 to 88.9 each party:

- 88.2.1. shall treat in confidence all Information it receives from the other;
- 88.2.2. shall not disclose any of that Information to any third party without the prior written consent of the other party, which consent shall not unreasonably be withheld, except that the Contractor may disclose Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of the Contract;
- 88.2.3. shall not use any of that Information otherwise than for the purpose of the Contract; and
- 88.2.4. shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under the Contract.

88.3. The Contractor shall take all reasonable precautions necessary to ensure that all Information disclosed to the Contractor by or on behalf of the Authority under or in connection with the Contract:

- 88.3.1. is disclosed to its employees and Sub-Contractors, only to the extent necessary for the performance of the Contract; and
- 88.3.2. is treated in confidence by them and not disclosed except with prior written consent or used otherwise than for the purpose of performing

work or having work performed for the Authority under the Contract or any sub-contract under it.

88.4. The Contractor shall ensure that his employees are aware of their arrangements for discharging the obligations at Clauses 88.2 and 88.3 before they receive Information and take such steps as may be reasonably practical to enforce such arrangements.

88.5. Clauses 88.2 and 88.3 shall not apply to any Information to the extent that either Party:

88.5.1. exercises rights of use or disclosure granted otherwise than in consequence of, or under, the Contract;

88.5.2. has the right to use or disclose the Information in accordance with other conditions of the Contract; or

88.5.3. can show:

88.5.3.1. that the Information was or has become published or publicly available for use otherwise than in breach of any provision of the Contract or any other agreement between the Parties;

88.5.3.2. that the Information was already known to it (without restrictions on disclosure or use) prior to it receiving it under or in connection with the Contract;

88.5.3.3. that the Information was received without restriction on further disclosure from a third party who lawfully acquired it and who is himself under no obligation restricting its disclosure; or

88.5.3.4. from its records that the same information was derived independently of that received under or in connection with the Contract,

provided the relationship to any other Information is not revealed.

88.6. Neither Party shall be in breach of this Clause 88 where it can show that any disclosure of Information was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the party making the disclosure shall ensure that the recipient of the Information is made aware of and asked to respect its confidentiality. Such disclosure shall in no way diminish the obligations of the Parties under this Clause.

88.7. The Authority may disclose the Information:

88.7.1. on a confidential basis to any central government body for any proper purpose of the Authority or of the relevant central government body, which shall include: disclosure to the UK Cabinet Office and / or HM Treasury for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes;

88.7.2. to UK Parliament and UK Parliamentary Committees or if required by any UK Parliamentary reporting requirement;

88.7.3. to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

- 88.7.4. on a confidential basis to a professional adviser, consultant or other person engaged by any of the entities for any purpose relating to or connected with the Contract;
- 88.7.5. on a confidential basis for the purpose of the exercise of its rights under the Contract; or
- 88.7.6. on a confidential basis to a proposed body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under the Contract,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause.

- 88.8. Before sharing any Information in accordance with Clause 88.7, the Authority may redact the Information. Any decision to redact information made by the Authority shall be final.
- 88.9. The Authority shall not be in breach of the Contract where it can show that any disclosure of Information is made solely and to the extent necessary to comply with the Freedom of Information Act 2000 ("**the Act**") or the Environmental Information Regulations 2004 ("**the Regulations**"). To the extent permitted by the time for compliance under the Act or the Regulations, the Authority shall consult the Contractor where the Authority is considering the disclosure of Information under the Act or the Regulations and, in any event, shall provide prior notification to the Contractor of any decision to disclose the Information. The Contractor acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose Information in order to comply with the Act or the Regulations is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Act or the Regulations. For the avoidance of doubt, nothing in this Clause 88 shall affect the Contractor's rights at law.
- 88.10. Nothing in this Clause 88 shall affect the Parties' obligations of confidentiality where information is disclosed orally in confidence.

89. COMPATIBILITY WITH AUTHORITY SYSTEMS

- 89.1. The Contractor shall ensure that all documents required for the Contract including but not limited to plans, drawings, reports, forms and logs are supplied in the English language (UK) using both the Oxford English Dictionary and the principles of the Simplified Technical English (STE) Dictionary.
- 89.2. The Contractor shall ensure that all Notices and Deliverable Drawings and Documents are provided in, or shall be fully compatible with, the following applications:
 - 89.2.1. MS Office 2016 applications (MS Word, MS Excel, MS PowerPoint, MS Outlook, MS Project);
 - 89.2.2. Microsoft Office SharePoint portal Server 2016;
 - 89.2.3. Adobe Acrobat Reader v11;
 - 89.2.4. Drawings (both formats to be provided for all drawings);
 - 89.2.4.1. Autodesk AutoCAD Drawing (*.dwg), DWF (available on AutoCAD v2004+); and

89.2.4.2. PDF format that permits a word-based search function.

89.2.5. Active Risk Manager by Active Risk Ltd, Release 8.0.5044; (or an alternative agreed with the Authority);

89.2.6. Telelogic DOORS® Client Version 9.5.0.0, Server Version 9.6.1.0 (or an alternative agreed with the Authority);

89.3. In transferring information to the Authority, the Contractor shall:

89.3.1. ensure that all information is marked/classified in accordance with the Contract terms and conditions for data security and the security aspects letter;

89.3.2. ensure that all electronic information is free from viruses and malware;

89.3.3. ensure that emails do not exceed 8Mb in size (electronic files larger than 8Mb or MS Access files shall be sent to the Authority on CD or DVD); and

89.3.4. not use memory sticks.

90. COUNTERPARTS

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