DATED 2021

THE SECRETARY OF STATE FOR DEFENCE (1)

and

BABCOCK INTEGRATED TECHNOLOGY LIMITED (2)

BATCM/0294
LOGISTICS SUPPORT CONTRACT

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THIS CONTRACT is made on 2021

BETWEEN:

(1) **THE SECRETARY OF STATE FOR DEFENCE** (the "**Authority**"); and

(2) **BABCOCK INTEGRATED TECHNOLOGY LIMITED**, registered in England (number 06717269), whose registered office is at 33 Wigmore Street, London W1U 1QX (the "**Contractor**").

BACKGROUND:

(A) The Contractor Deliverables provided by the Contractor in accordance with this Contract will support the movement of and the repair of certain components of the LE TacCIS Equipment Portfolio.

(B) On **REDACTED,** the Authority advertised the Contract Notice inviting prospective suppliers to submit proposals for communications system maintenance services, tactical command, control and communications systems, storage and warehousing services and data management services.

(C) On the basis of the Contractor's response to the advertisement and a subsequent tender process, the Authority selected the Contractor as its preferred supplier.

(D) The Parties have agreed to contract with each other in accordance with the terms and conditions set out below.

(E) The Contractor has agreed to procure the provision of the Parent Company Guarantee in support of the Contractor's obligations to the Authority.

PART 1 - DEFINITIONS AND INTERPRETATION

1 Definitions and Interpretation

1.1 In this Contract (unless the context otherwise requires):

1.1.1 the terms and phrases defined in Schedule 1 (*Definitions and Acronyms*) shall have the meanings given to them in that Schedule;

1.1.2 the acronyms set out in Schedule 1 (*Definitions and Acronyms*) shall have the meanings given to them in that Schedule;

1.1.3 the masculine includes the feminine and vice versa, and words importing the neuter include the masculine and the feminine and vice versa;

1.1.4 the singular includes the plural and vice versa;

1.1.5 the words "include", "includes", "including" and "included" shall be construed as if they were immediately followed by the words "without limitation" except where explicitly stated otherwise;

1.1.6 the expression "person" means any individual, firm, body corporate, unincorporated association or partnership, government, state or agency of a state or joint venture and includes their successors and permitted assignees or transferees;

1.1.7 unless stated to the contrary, any reference to this Contract or to any other document shall include any variation, amendment or supplement to such document;

1.1.8 references to any enactment, order, regulation, or other similar instrument (including any EU instrument) shall be construed as a reference to the enactment, order, regulation or instrument (including any EU instrument) as amended, supplemented, replaced or consolidated by any subsequent enactment, order, regulation or instrument (including any EU instrument);

1.1.9 the heading to any provision in this Contract shall not affect the interpretation of that provision;

1.1.10 any decision, act, or thing which the Authority is required or authorised to take or do under this 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 as set out in the table contained in Part 2 of Schedule 8 (*Governance and Management*);

1.1.11 unless excluded within the terms of this Contract or where otherwise required by law:

(i) references to submission of documents in writing shall include electronic submission; and

(ii) any requirement for a document to be signed or references to signatures shall be construed to include electronic signature, provided that a formal method of authentication as previously agreed between the Parties is employed and such agreed method is recorded in this Contract; and

(iii) a reference in this Contract to any Clause, part, paragraph, Schedule, Appendix or Annex is, except where expressly stated to the contrary, a reference to such Clause, part, paragraph or Schedule of or Appendix or Annex to this Contract; and

1.1.12 references to a document being in the “Agreed Form” means (unless otherwise stated) in the form of a draft of such document contained on a disc initialled for the purpose of identification by or on behalf of the Parties; and

1.1.13 references to a "holding company" "or "parent undertaking" shall have the meanings and be construed in accordance with section 1159 and section 1162 of the Companies Act 2006 and for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), a company shall be treated as a member of another company even if its shares in that other company are registered in the name of:

(i) another person (or its nominee), by way of security or in connection with the taking of security; or

(ii) its nominee.

2 Precedence

2.1 If there is any inconsistency between the provisions of the main body of this Contract and the Schedules, the Appendices and/or the Annexes, or between any of the Schedules, the Appendices and/or the Annexes, the conflict shall be resolved according to the following descending order of priority:

2.1.1 the main body of this Contract, Schedule 1 (*Definitions and Acronyms*), Schedule 4 (*Assurance and Acceptance Process*), Schedule 5 (*MADS Process for Catalogue, Critical Items List and/or Le TacCIS Equipment Portfolio Amendments*), Schedule 6 (*Incentivisation),* Schedule 9 (*Pricing and Payment*), Schedule 10 (*Transition*), Schedule 11 (*Change Procedure*), Schedule 14 (*IPR*) and Schedule 20 (*Directed Purchases and Repairs*);

2.1.2 Schedule 2 (*Statement of Requirements*) and its Annex and Appendices; and

2.1.3 the remaining Schedules and their respective Appendices and Annexes.

2.2 If there is any conflict or inconsistency between the provisions of this Contract and the provisions of any document referred to in this Contract (including any other document referred to in that or any subsequent document), then the provisions of this Contract shall prevail.

2.3 If a Party becomes aware of any conflict or inconsistency within or between the documents referred to in Clauses 2.1 and/or 2.2 (*Precedence*), such Party's Representative shall notify the other Party's Representative forthwith and the Parties will seek to resolve such inconsistency and if either Party considers the inconsistency to be material, then the matter shall be determined in accordance with the Dispute Resolution Procedure.

PART 2 - CORE OBLIGATIONS

3 The Contractor's Obligations

3.1 The Contractor:

3.1.1 shall provide and/or shall ensure that the Contractor Deliverables which are Transition Deliverables (as more particularly referred to in paragraph 1.1 of Schedule 10 (*Transition*) and Serials 2.5.1 and 3.1.1 of Annex 1 to Schedule 2 (*Statement of Requirements*) are fully provided commencing with the Transition Deliverables referred to in paragraph 1.1.1 of Schedule 10 (*Transition*) with the aim of fully satisfying the Contractor's obligations as set out or referred to in Schedule 10 (*Transition*) and;

3.1.2 when the Authority has notified the Contractor that the Authority is content that the Contractor has satisfied the Transition FOC Completion Requirements (as may be amended in accordance with a Transition FOC Remediation Plan), by issuing the MAC FOC Certificate, the Contractor shall provide and/or shall ensure that all of the Contractor Deliverables (which are not Transition Deliverables) are fully provided from FOC.

3.2A In the event that the Actual FOC Date is later than the FOC Date, the Contractor shall not be entitled to any extension of the Contract Period and the Expiry Date shall be the same date as at the date of this Contract, and the Contractor shall not be entitled to

any payment in respect of the period between the FOC Date and the Actual FOC Date and the relevant Monthly Payment shall be adjusted as agreed in a Transition FOC Remediation Plan and/or in accordance with a Change pursuant to Schedule 11 (*Change Procedure*) or by a pro rata reduction calculated by the Authority in accordance with paragraph 7 of Schedule 10 (*Transition*).

3.2 Without prejudice to its obligations in Clause 3.1 (*The Contractor's Obligations*), the Contractor shall:

3.2.1 provide and/or shall ensure that all of the Contractor Deliverables (including the Transition Deliverables) are provided in accordance with and, in each case, having due regard to:

(i) Good Industry Practice;

(ii) all Necessary Consents;

(iii) Legislation;

(iv) British Standards which are appropriate and relevant to the provision of the Contractor Deliverables;

(v) the Contractor's approved quality assurance systems in accordance with Clause 68 (*Quality Assurance*); and

(vi) the documents referred to in Schedule 15 (*Ancillary Documents*) and the Statement of Requirements;

3.2.2 deliver all of the Contractor Deliverables (including the Transition Deliverables) using efficient business processes and ways of working having regard to the Authority's obligation to ensure value for money; and

3.2.3 continue to perform all of its obligations under this Contract and shall not suspend the performance of the Contractor Deliverables (including the Transition Deliverables), notwithstanding:

(i) any withholding by the Authority in accordance with this Contract and/or the application of any Deductions pursuant to Schedule 6 (*Incentivisation*) and paragraph 5 of Part 1 of Schedule 9 (*Pricing and Payment*);

(ii) the existence of an unresolved Dispute; and/or

(iii) any failure by the Authority to pay any sums due.

3.3 The Contractor shall perform the Contractor Deliverables (including the Transition Deliverables):

3.3.1 so as to procure satisfaction of the Statement of Requirements;

3.3.2 Not Used;

3.3.3 in accordance with the Contractor's Proposals; and

3.3.4 in accordance with this Contract.

To avoid doubt, the obligations in Clauses 3.3.1, 3.3.3 and 3.3.4 (*The Contractor's Obligations*) are independent obligations. In particular:

(i) the fact that the Contractor has complied with the Contractor's Proposals shall not be a defence to an allegation that the Contractor has not satisfied the Statement of Requirements; and

(ii) the fact that the Contractor has satisfied the Statement of Requirements shall not be a defence to an allegation that the Contractor has failed to comply with the Contractor's Proposals.

3.4 Without prejudice to Clause 3.3.1 (*The Contractor's Obligations*), if it shall be found that the Contractor's Proposals as at the Effective Date do not fulfil the Statement of Requirements, the Contractor shall (at its own expense) amend the Contractor's Proposals and rectify the Contractor Deliverables to ensure that they meet the Statement of Requirements.

3.5 Notwithstanding any other provisions of this Contract, nothing in Schedule 3 (*Contractor's Proposals*) shall in any way limit or reduce any of the Contractor's obligations under this Contract nor shall the provisions of Schedule 3 (*Contractor's Proposals*):

3.5.1 impose upon the Authority any obligation or any other requirement which is greater than the obligations and/or requirements contained in the remaining provisions of this Contract;

3.5.2 limit or reduce the Authority's rights and remedies contained in the remaining provisions of this Contract; and/or

3.5.3 otherwise have an adverse impact on the Authority.

3.6 The Contractor acknowledges that the Statement of Requirements requires a number of outputs and that the tasks and activities that are required to be carried out by the Contractor to achieve the outputs are described to be "as a minimum" and/or utilising similar wording and that such wording signifies that the relevant tasks and activities are non-exclusive and that other related and/or additional tasks and activities are likely to be required to be carried out in order to achieve completion of the required obligations and/or the full required output of the Statement of Requirements.

3.6A The Contractor further acknowledges that during the Contract Period the Authority is relying on the Contractor's expertise, experience and skill in identifying any such related and/or additional tasks and activities (as referred to in Clause 3.6) in order that the Contractor is able to carry out the relevant required tasks and activities and achieve the full required outputs of the Statement of Requirements.

3.6B In recognition of the Contractor's acknowledgements in Clauses 3.6 and 3.6A, during the Contract Period the Contractor shall, having due regard to the provisions of Clauses 3.3 to 3.6A (inclusive), use its expertise, experience and skill to identify and carry out and perform any such related and/or additional tasks and activities to achieve the successful and timely completion of all of the obligations and tasks and other matters referred to in the Statement of Requirements and elsewhere in this Contract and the Contractor hereby acknowledges and confirms that it shall not be entitled to any increase in the Contract Price and/or any Monthly Payment in connection with the carrying out of such related and/or additional tasks and activities and the costs to the Contractor in carrying out such tasks and/or activities will not be Accepted Costs.

Competition/alternative sourcing

3.7 The Contractor accepts that:

3.7.1 the Authority may invite competitive quotations from the Contractor and/or others and, as appropriate, place orders elsewhere, appointing Third Parties or carrying out work itself in respect of any or all of the Contractor Deliverables during the Contract Period, any Contractor Deliverables which are the subject of an Exercised Option; and

3.7.2 nothing in this Clause 3.7 shall prevent the Authority (at any time) from reducing the amount of and/or amending the scope of any of the Contractor Deliverables through a Change:

(i) in order that the Authority can carry out itself work which is the subject of the Contractor Deliverable; and/or

(ii) to end work which is the subject of a Contractor Deliverable which the Authority has determined (in its absolute discretion) is no longer required to be carried out.

Delivery of Parent Company Guarantee

3.8 The Parties acknowledge that on the date of this Contract the Contractor has delivered to the Authority an original, duly executed Parent Company Guarantee in the form set out in Schedule 18 (*Parent Company Guarantee*) together with a certified copy of the board minutes under which the Parent Company Guarantee is executed.

3A Third Party/Authority to provide the Contractor Deliverables when breach

3A.1 The Authority may appoint a Third Party and/or the Authority to provide the whole or any part of the Contractor Deliverables, where the Contractor is in breach of any of its obligations under this Contract and/or where the Authority has not issued to the Contractor a MAC IOC Certificate and a MAC FOC Certificate in each case before the FOC Date (as may have been amended in accordance with a Transition FOC Remediation Plan).

3A.2 The Contractor shall not be entitled to any payment, compensation, damages, costs, losses and/or expenses arising out of or in connection with the circumstances set out in Clause 3.7 and/or 3A.1 (*Third Party/Authority to provide the Contractor Deliverables*).

Consequences of appointing a Third Party

3A.3 Where the Authority exercises its rights pursuant to Clause 3A.1 (*Third Party/Authority to provide the Contractor Deliverables*), then:

3A.3.1 the Contractor shall, at its own cost, comply with the provisions of Clause 3A.3 (*Consequences of appointing a Third Party*); and

3A.3.2 the Contractor shall indemnify the Authority against all of the Authority's Losses arising out of or in connection with the exercise of such rights (including all internal costs and all additional costs, liabilities, Losses and/or expenses over and above those which the Authority would reasonably have incurred under this Contract (in respect of the delivery of the whole or the

relevant part (as the case may be) of the Contractor Deliverables) and against the costs and Losses incurred by or suffered by the Authority (including the costs and Losses of the Authority referred to in paragraphs 4.2 and 6.2 of Schedule 10 (*Transition*) had the Contractor complied with its obligations under this Contract).

3A.4 Where the Authority exercises its rights pursuant to Clause 3A.1 (*Third Party to provide the Contractor Deliverables*), then the Authority shall notify the Contractor in writing of the following:

3A.4.1 the action it wishes to take;

3A.4.2 the reason for such action;

3A.4.3 the date it wishes to commence such action; and

3A.4.4 to the extent practicable, the effect on the Contractor and its obligation to provide the whole or part of the Contractor Deliverables.

3A.5 Following service of notice pursuant to Clause 3A.4 (*Consequences of appointing a Third Party*), the Authority shall, either by itself and/or by engaging others, take such action as notified under Clause 3A.4 (*Consequences of appointing a Third Party*), and any consequential additional action as it reasonably believes is necessary and the Contractor shall give all reasonable assistance to the Authority or such others identified by the Authority (as the case may be) and the Contractor shall not be entitled to claim a GFA Failure and/or shall not be entitled to any increase in the Contract Firm Price and/ or the Option Firm Price and/or any additional payment and/or compensation of whatever nature and whosever arising in connection with the giving of such assistance.

4 Contract Period and Options

Contract Period

4.1 Subject to Clauses 4.2 to 4.12 (inclusive) (*Exercise of Options*), this Contract and the rights and obligations of the Parties shall take effect on the Effective Date and, except as set out in Clause 73 (*Continuing Obligations*), shall terminate on the earlier of:

4.1.1 the Expiry Date, as the same may be extended following the exercise by the Authority of any of the Options; and

4.1.2 the Termination Date; and

4.1.3 if the Contractor fails to comply with any of its obligations in accordance with Schedule 10 (*Transition*) on or before the FOC Date there shall be no extension to the Contract Period, whether or not the Authority elects to permit the Contractor to provide the Contractor Deliverables from a date later than the FOC Date.

Exercise of Options

4.2 In consideration of the Authority agreeing to enter into this Contract, the Contractor hereby grants to the Authority the right to exercise the Options.

4.3 If the Authority elects to exercise one or more of the Options, the following provisions of this Clause 4 shall apply.

4.4 The Authority shall issue a notice to the Contractor (such notice confirming that the Authority is considering exercising the relevant identified Option, subject to the Authority and the Contractor confirming the Option Firm Price and other matters relating to such Option) (an "**Option Notice**") and such Option Notice may be issued by the Authority:

4.4.1 in the case of the Option numbered 1 (One Year Contract **REDACTED**) on or before **REDACTED** (or such later date as the Parties may agree);

4.4.2 (where Option numbered 1 has not become an Exercised Option on or before **REDACTED**) in the case of the Option numbered 2 (Six (6) Contract Months Contract Extension **REDACTED**), on or before **REDACTED** (or such later date as the Parties may agree); and

4.4.3 (where Option numbered 2 has become an Exercised Option or **REDACTED**) in the case of the Option numbered 3 (Six (6) Contract Months Contract Extension **REDACTED**), on or before **REDACTED** (or such later date as the Parties may agree),

provided always that the date on which the Authority issues the relevant Option Notice occurs prior to the Original Expiry Date (or such later date as the Parties may agree) and provided further that in the event that Option numbered 2 becomes an Exercised Option and this Contract is terminated during the subsistence of Option numbered 2, any Option Notice that the Authority has served in respect of Option numbered 3 shall automatically become void and of no effect.

4.5 The terms which the Parties intend shall govern each Option are those set out in Part 1 of Schedule 23 (*Scope of Options*) and the Parties agree that where an Option is exercised by the Authority in accordance with this Clause 4 (*Contract Period and Options*), the following provisions in Clauses 4.6 to 4.12 (inclusive) (*Exercise of Options*) shall apply.

4.6 The proposed Option Firm Price is set out in Part 2 of Schedule 23 (*Scope of Options*) and the Parties agree that such proposed Option Firm Price can only be increased or decreased in the event that:

4.6.1 prior to exercise of the relevant Option, there is a material change to the scope of the Contractor Deliverables, Articles and/or services and, in the case of an increase to the proposed Option Firm Price, where the Contractor can demonstrate a causal increase in the proposed Option Firm Price arising as a result of such material change and where a Change is subsequently agreed in accordance with the procedures in Clauses 4.7 to 4.12 (inclusive) (*Exercise of Options*) and as set out in Schedule 11 (*Change Procedure*), to vary the proposed Option Firm Price before it then forms part of the Option Firm Price; or

4.6.2 in relation to an Exercised Option, where a Change is agreed in accordance with Schedule 11 (*Change Procedure*) which changes the amount of the proposed Option Firm Price which relates to such Exercised Option.

4.7 Within ten (10) Working Days (or such other period as the Parties may agree) from the date of receipt of the Option Notice from the Authority in accordance with Clause 4.4, the Contractor shall notify the Authority's Representative (together with all supporting detail as is deemed necessary by the Authority):

4.7.1 that the proposed Option Firm Price, the Milestones and Milestone Payments Schedule relevant to the applicable Option are confirmed (there being no material changes to the scope of the Contractor Deliverables, Articles and/or services relating to the applicable Option set out in Part 1 of Schedule 23 (*Scope of Options*));

4.7.2 of any proposed adjustment to the proposed Option Firm Price set out in Part 2 of Schedule 23 (*Scope of Options*) as a result of identified changes to the scope of the Contractor Deliverables, Articles and/or services resulting in a proposed Option Firm Price (which is different to the original proposed Option Firm Price) for the applicable Option;

4.7.3 of any changes to the proposed Milestones and/or the Milestone Payments Schedule relating to the applicable Option as a result of identified material changes to the scope of the Contractor Deliverables, Articles and/or services set out in Schedule 23 (*Scope of Options*); and/or

4.7.4 of any other proposed changes that the Contractor considers are necessary to enable the applicable Option to form part of this Contract which arise as a direct result of any change to the scope of the Contractor Deliverables, Articles and/or services for the applicable Option; and/or

4.7.5 of any changes to the Contract Programme resulting from the exercise of the applicable Options; and

4.7.6 of any other information which the Contractor considers is relevant relating to the relevant Option.

4.8 In calculating the confirmed Option Firm Price in accordance with Clause 4.7.1 or the proposed Option Firm Price in Clause 4.7.2 above, the Contractor shall:

4.8.1 apply the same logic and approach as used to calculate an Option Adjustment Firm Price, such logic and approach being adjusted only to the extent necessary to take account of any material changes to the scope of the Option as agreed by the Parties;

4.8.2 work with the Authority's Representative to seek to agree the proposed Option Firm Price (and any consequential adjustment to this Contract respectively); and

4.8.3 act reasonably and in good faith to ensure that such proposed Option Firm Price is fair and reasonable.

4.9 If the Authority's Representative does not accept the proposed Option Firm Price and/or the Milestones and/or the Milestone Payments Schedule and/or other changes to this Contract, the Authority's Representative shall give details of the reasons as to why it does not accept such proposed Option Firm Price and/or Milestones and/or Milestone Payments Schedule and/or proposed changes and the Authority's Representative may request that the Contractor:

4.9.1 provides such further information as the Authority's Representative may require to verify such proposed Option Firm Price and/or Milestones and/or the Milestone Payments Schedule and/or proposed changes; and/or

4.9.2 carries out a further calculation of such proposed Option Firm Price and/or revises such Milestones and/or the Milestone Payments Schedule and/or proposed changes and provides details of such calculation and/or revisions to the Authority's Representative,

in each case in writing and to be provided within a reasonable time period, such time period as specified by the Authority's Representative (by notice in writing) to the Contractor.

4.10 In the event of any Dispute in relation to any Option which is the subject of an Option Notice, either Party shall be entitled to refer the matter for resolution in accordance with the Dispute Resolution Procedure.

4.11 Following the agreement (including agreement to the terms of any Option as set out in Schedule 23 *(Scope of Options)* at the Effective Date, without amendment) or determination of the Option Firm Price and/or Milestones and/or the Milestone Payments Schedule and/or other proposed changes:

4.11.1 the Parties shall proceed as if the agreed (or determined) terms of the relevant Option were an Estimate confirmed by the Authority in accordance with paragraph 8.1.1 of Schedule 11 (*Change Procedure*) and the Parties shall enter into any documents required to give effect to the relevant Option and commence the implementation of the relevant Option as set out in paragraph 2.1 of Schedule 11 (*Change Procedure*); and

4.11.2 the rights and obligations of the Parties in respect of the relevant Option, shall take effect from the date specified in the documents referred to in sub-clause 4.11.1 above (when such documents have been duly executed by the Parties and consequently the Option then becomes an Exercised Option) and shall form rights and obligations under this Contract.

4.12 Following the exercise of any of the Options pursuant to this Clause 4 (*Contract Period and Options*), any rights and obligations of the Parties existing under this Contract prior to the exercise of such Option shall continue to apply.

5 <u>Contractor Warranties and Undertakings</u>

Contractor warranties

5.1 The Contractor warrants and represents to the Authority that:

5.1.1 it has the corporate power to enter into and to exercise its rights and perform its obligations under this Contract and any Sub-Contracts;

5.1.2 it is validly incorporated, organised and subsisting in accordance with the law of its place of incorporation;

5.1.3 this Contract is executed by its duly authorised representative;

5.1.4 it has all necessary consents and regulatory approvals to enter into this Contract;

5.1.5 at the date of the Contract the entire share capital in the Contractor is legally and beneficially owned by Babcock Marine Holdings (UK) Limited, a company incorporated in England and Wales (with registered number

05265569) whose registered office is situated at 33 Wigmore Street, London W1U 1QX (whose immediate parent company is Babcock Holdings Limited, a company registered in England and Wales with registered number 02955502 and whose ultimate parent undertaking and controlling party is the Parent Company) so that the ultimate parent company of each of the Contractor, Babcock Marine Holdings (UK) Limited and Babcock Holdings Limited is the Parent Company and that no arrangements are in place or are contemplated 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;

5.1.6 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunals pending or to its knowledge, threatened against it or any of its Contractor Related Parties that might affect its ability to perform its obligations under this Contract;

5.1.7 its execution, delivery and performance of its obligations under this Contract will not constitute a breach of any Legislation, other law (in any jurisdiction), or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;

5.1.8 its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar law affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);

5.1.9 all written statements and representations in any written submissions made by the Contractor as part of the procurement process, including without limitation its response to the Contract Notice and Tender Documentation (if applicable), its tender and any other documents submitted, remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Contract or to the extent that the Contractor has otherwise disclosed to the Authority in writing prior to the date of this Contract;

5.1.10 it is not subject to any contractual obligation, compliance with which shall or is likely to have a material adverse effect on the ability of the Contractor to perform its obligations under this Contract;

5.1.11 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;

5.1.12 it shall not commit, and in entering into this Contract it has not committed, any Prohibited Act and for this purpose only the words "or without" in the introduction of the definition of Prohibited Act shall be deleted;

5.1.13 it, nor to the best of its knowledge any Contractor Related Party nor any of the Contractor's employees, consultants, contractors, sub-contractors or agents, have at any time prior to the Effective Date:

(i) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

(ii) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act;

5.1.14 it shall:

(i) establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and

(ii) keep appropriate records of its compliance with its obligations under Clause 5.1.14(i) and make such records available to the Authority on request;

5.1.15 it shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 5.1.13, or has reason to believe that it has or any of the Contractor Related Party or any of the Contractor's employees, consultants, contractors, sub-contractors or agents have:

(i) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

(ii) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or

(iii) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act;

5.1.16 so far as it is aware, there is not, nor has there been, any infringement or alleged infringement of any Third Party's Intellectual Property Rights in connection with this Contract;

5.1.17 it has all necessary rights in and to the Contractor Background IPR, the Vesting IPR and any other materials (including the Third Party IPR) made available by the Contractor (and/or any Sub-Contractor) to the Authority which are necessary for the performance of the Contractor's obligations under this Contract and/or the receipt of the Contractor Deliverables by the Authority;

5.1.18 it has used and will continue to use the degree of skill, care, diligence, best up-to-date practice and foresight in the performance of each of the Contractor Deliverables that would reasonably be expected of a fully qualified and competent professional contractor experienced in carrying out

activities of a similar nature, scope, size, timescale and complexity to those comprised in the Contractor Deliverables;

5.1.19 without prejudice to Clauses 31.7 to 31.13 (inclusive) (*Discretionary GFA*), it has identified and listed in Schedule 7 (*Authority Obligations*) all GFA that it requires the Authority to provide and/or make available (including any and all information, data, documents and/or physical items that it requires the Authority to procure from any Other Contractor) to ensure the full and proper performance by the Contractor of the Contractor Deliverables;

5.1.20 Not Used; and

5.1.21 where the Contractor and/or any Contractor Related Party receives any benefit or other advantage (whether financial or otherwise) of any kind (for example receiving a discount in price or other benefit or advance), directly or indirectly, from any supplier of goods and/or equipment and/or services in relation to any Items in the Catalogues or any other Item relating to the Contractor Deliverables, the Contractor shall notify the Authority immediately of such matter and shall ensure that such benefit or other advantage is passed to the Authority in full and any consequential changes to the Contract (including reductions to relevant prices in the Catalogues and any relevant changes to the Contract Price) are made as soon as possible following receipt by the Contractor of the relevant benefit or advantage provided always that, notwithstanding the foregoing provisions of this Clause 5.1.21, where the Contractor identifies that any benefit or other advantage may be achieved in relation to any Items in the Catalogues or any other Item relating to the Contractor Deliverables, the Contractor may notify such potential benefit or advantage to the Authority together with any proposal for sharing such benefit or advantage with the Authority and the Authority may, without obligation, consider sharing such potential benefit or other advantage with the Contractor,

and the Authority relies upon each of the individual warranties and individual representations in Clause 5 (*Contractor Warranties and Undertakings*).

Contractor undertakings

5.2 The Contractor undertakes that for so long as this Contract remains in full force the Contractor shall:

5.2.1 give the Authority notice of any litigation, arbitration, administrative or adjudication or mediation proceedings before or of any court, arbitrator, administrator or adjudicator or mediator or Relevant Authority ("**Dispute Forum**") against itself or a Sub-Contractor which would adversely affect, to an extent which is material in the context of this Contract, the Contractor's ability to perform its obligations under this Contract, unless such notice is precluded by the rules of the Dispute Forum, provided that notice shall be given within twenty (20) Working Days of the Contractor becoming aware such proceedings may be threatened or pending, and immediately after the commencement thereof;

5.2.2 not undertake the performance of its obligations under this Contract otherwise than through itself or a Sub-Contractor;

5.2.3 at all times allocate sufficient resources with the appropriate technical expertise to supply the Contractor Deliverables in accordance with this Contract;

5.2.4 save to the extent that obtaining and maintaining the same are Authority responsibilities and subject to Clause 75 (*Change*), obtain, and maintain throughout the duration of this Contract, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Contract Deliverables;

5.2.5 ensure that:

(i) it shall continue to have all necessary rights in and to the Contractor Background IPR, the Vesting IPR and any other materials (including the Third Party IPR) made available by the Contractor (and/or any Sub-Contractor) to the Authority which are necessary for the performance of the Contractor's obligations under this Contract and/or the receipt of the Contractor Deliverables by the Authority;

(ii) any products or services recommended or otherwise specified by the Contractor for use by the Authority in conjunction with the Contractor Deliverables shall enable the Contractor Deliverables to meet the requirements of the Authority; and

(iii) without prejudice to Clause 3.2.1(i) (*The Contractor's Obligations*), any documentation and training provided by the Contractor to the Authority are comprehensive, accurate and prepared in accordance with Good Industry Practice;

5.2.6 co-operate with the Authority or any Third Party (including any Other Contractor) designated by the Authority and provide such Information (as defined in Schedule 14 (*IPR*)), licences, data, documents and/or physical items and any advice and/or assistance in connection with the Contractor Deliverables, in each case, as may be reasonably required by the Authority and/or such Third Party (including any Other Contractor) to enable:

(i) the Authority and/or any such Third Party (including any Other Contractor) to create and maintain technical or organisational interfaces with any of the Contractor Deliverables and, on the expiry or termination of this Contract for any reason, to enable the timely transition of the Contractor Deliverables to the Authority and/or to any Follow-On Contractor;

(ii) where the Authority or such Third Party (including any Other Contractor) is the System Integrator, the proper performance of the System Integrator Activities to the extent the performance of the System Integrator Activities relies on or otherwise needs to have regard to the Contractor Deliverables,

provided always that the Contractor shall not, without the previous approval of the Authority, whether directly or indirectly, contact any such Other Contractor or any Third Party notified to the Contractor from time to time, other than the LCS(T) Contractor;

5.2.7 to the extent it is legally able to do so, hold on trust for the sole benefit of the Authority, all warranties and indemnities provided by Third Parties (including any Other Contractors) or any Sub-Contractor in respect of any Contractor Deliverables and, where any such warranties are held on trust, at its cost enforce such warranties in accordance with any reasonable directions that the Authority may notify from time to time to the Contractor;

5.2.8 unless it is unable to do so, assign to the Authority on the Authority Representative's written request and at the cost of the Contractor any such warranties and/or indemnities as are referred to in Clause 5.2.7;

5.2.9 provide the Authority with such assistance as the Authority may reasonably require during the Contract Period in respect of the supply of the Contractor Deliverables;

5.2.10 gather, collate and provide such information and co-operation as the Authority's Representative may reasonably request for the purposes of ascertaining the Contractor's compliance with its obligations under this Contract; and

5.2.11 ensure that neither it, nor any of its Affiliates, embarrasses the Authority or otherwise brings the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Contractor's obligations under this Contract.

Status of Contractor warranties and undertakings

5.3 None of the warranties, representations, undertakings, indemnities and other obligations made, given or undertaken by the Contractor in this Contract shall be given a limited construction by reference to any other.

6 MORPHEUS Contracts

6.1 If the Contractor enters into or has entered into any other contract with the Authority where such contract is a MORPHEUS Contract and where the Authority is in breach of any of its obligations under such MORPHEUS Contract, such breach shall not (regardless of any negligence by the Authority or any Authority Related Party giving rise to such breach):

6.1.1 give the Contractor any right under this Contract to an extension of time or additional payment or damages or any other relief or remedy whatsoever against the Authority;

6.1.2 affect, modify, reduce or extinguish either the obligations of the Contractor under this Contract or the rights or remedies of the Authority under this Contract; or

6.1.3 be taken to amend, add to, delete or waive any term or condition of this Contract.

6.2 This Clause 6 (*MORPHEUS Contracts*) shall not affect the rights of the Contractor under Clause 31 (*Authority Performance Failure*s) or Schedule 7 (*Authority Obligations*).

7 Interdependent Contracts

7.1 If, as a result of any default, negligence and/or breach by the Contractor or any Contractor Related Party of any of its or their obligations under or pursuant to any direct contracts between the Authority and the Contractor, the Authority is unable to comply with any or all of its obligations under Schedule 7 (*Authority Obligations*) then, notwithstanding any other provision of this Contract:

7.1.1 such failure by the Authority to comply with those obligations shall not be treated as a GFA Failure for the purposes of this Contract, provided that the Authority has used its reasonable endeavours to mitigate such failure;

7.1.2 the Contractor shall not be entitled to any relief and/or compensation of whatever nature (including any adjustment to the Contract Price) and howsoever arising in respect of such failure by the Authority to comply; and

7.1.3 nothing shall affect the Authority's rights under Schedule 9 (*Pricing and Payment*).

8 Co-operation and Partnering

8.1 Each Party agrees to co-operate with the other Party in the fulfilment of the purposes and intent of this Contract. Neither Party shall be under any obligation to perform any of the other's obligations under this Contract.

8.2 The Parties shall work together in an open and honest environment with the aim of achieving successful partnering and continuous improvement in:

8.2.1 value for money for the Authority; and

8.2.2 the quality and standard of service to the Authority,

in relation to this Contract.

Value for money

8.3 The Contractor shall support the Authority in demonstrating that any proposed Changes in accordance with Clause 75 (*Change*) will provide value for money and shall, in demonstrating to the Authority value for money in relation to any proposed Change, provide evidence including:

8.3.1 competition;

8.3.2 aggregation of any proposed Change with any other Contractor Deliverable;

8.3.3 batch pricing;

8.3.4 reduction of costs;

8.3.5 reduction of risks;

8.3.6 improvement in performance; and/or

8.3.7 any other reasonable information in support of demonstrating value for money as requested by the Authority in relation to any Change.

9 Contract Management and Meetings

9.1 The Parties shall give effect to the provisions of Schedule 6 (*Incentivisation*) and Schedule 8 (*Governance and Management*) throughout the Contract Period.

Compliance with the Contract Programme

9.2 The Contractor shall ensure that each Contractor Deliverable which is:

9.2.1 subject to the provisions of a GAR Review and is a Programmed Contractor Deliverable, achieves Acceptance by the corresponding date specified for Acceptance of that Contractor Deliverable in the Contract Programme; and

9.2.2 subject to the provisions of a GAR Review and is an Unprogrammed Contractor Deliverable, achieves Acceptance by the date notified by the Authority for Acceptance of that Contractor Deliverable.

9.3 Any Contract Programme submitted in accordance with the provisions set out below shall be prepared in accordance with Good Industry Practice and shall be in sufficient detail so as to enable the Authority's Representative to monitor (as a minimum):

9.3.1 the Contractor's progress against the delivery of the Contractor Deliverables (including the proposed timing for and sequence of the carrying out and completion of all testing and/or other activities to assess whether the Contractor has achieved Acceptance in respect of the relevant Contractor Deliverable, as contemplated by Schedule 4 (*Assurance and Acceptance Process*) and/or satisfaction of the relevant Transition Deliverables as contemplated by Schedule 10 (*Transition*); and

9.3.2 the likely future progress of the delivery of the Contractor Deliverables,

in each case, including its or their interface with the Authority's obligations set out in Schedule 7 (*Authority Obligations*) and/or its or their impact on any contract with any Third Party entered into (or proposed to be entered into) by the Authority and/or any procurements being undertaken by or on behalf of the Authority, in connection with this Contract, the LE TacCIS Equipment Portfolio, the MORPHEUS Programme and/or the MORPHEUS System.

9.4 The initial Contract Programme is set out at Schedule 22 (*Contract Programme*). Any change to the Contract Programme shall only be made where expressly permitted in accordance with this Contract (including this Clause 9 (*Compliance with the Contract Programme*)).

9.5 The Contractor shall promptly submit to the Authority's Representative a copy of any version of the Contract Programme varied in accordance with this Clause 9 (*Compliance with the Contract Programme*).

9.6 If it appears to the Authority's Representative at any time that the actual progress of the delivery of the whole or any part of the Contractor Deliverables has fallen behind the Contract Programme or the Contract Programme is otherwise delayed, then the Authority's Representative shall be entitled to require the Contractor to submit to the Authority's Representative a report identifying the reasons for the delay and, unless the event causing the delay is still subsisting and it is not possible to predict with any certainty when the delay might come to an end, require the Contractor (at the Authority's option):

9.6.1 to produce and submit to the Authority's Representative for approval a revised Contract Programme showing the manner and the periods in which the Contractor Deliverables will be carried out to ensure:

(i) Acceptance of each such Contractor Deliverable by the corresponding date specified for Acceptance of that Contractor Deliverable in Schedule 2 (*Statement of Requirements*) or the relevant Option; and/or

(ii) that the relevant part of the Contractor Deliverables to be delivered is delivered by its corresponding date for delivery; and/or

9.6.2 to produce and submit to the Authority's Representative for approval a revised Contract Programme showing the steps which are to be taken to eliminate or reduce the delay.

9.7 During the Transition Period, the Contractor shall notify the Authority's Representative if at any time the actual progress of the whole or any part of the Contractor Deliverables is significantly ahead of the Contract Programme so that the Contractor anticipates:

9.7.1 that satisfaction of all of the Transition IOC Completion Requirements and/or Transition FOC Completion Requirements (as the case may be) may be capable of being achieved earlier than the corresponding date specified for satisfaction of such Transition IOC Completion Requirements and/or Transition FOC Completion Requirements (as the case may be); and/or

9.7.2 delivery of the relevant part of the Transition Deliverables may be capable of being achieved earlier than the corresponding date for such delivery.

9.8 If the Contractor notifies the Authority's Representative pursuant to Clause 9.7 (*Compliance with the Contract Programme*) that the actual progress of the whole or any part of the Transition Deliverables is significantly ahead of the Contract Programme, the Authority's Representative shall be entitled to require the Contractor to produce and submit to the Authority's Representative for approval a revised Contract Programme showing the manner and the periods in which the Transition Deliverables will be carried out and what the revised anticipated dates for satisfaction of the Transition IOC Completion Requirements and/or the Transition FOC Completion Requirements (as the case may be) and/or delivery would be (including any resulting adjustment required to any associated dates, to enable the Authority to consider (in its absolute discretion):

9.8.1 whether to agree a change to the Contract Programme to accommodate such earlier date for satisfaction of all of the Transition IOC Completion Requirements and/or Transition FOC Completion Requirements (as the case may be) and/or delivery; and

9.8.2 what modifications (if any) will be required to this Contract in order to accommodate such earlier date for satisfaction of all of the Transition IOC Completion Requirements and/or Transition FOC Completion Requirements (as the case may be) and/or delivery.

9.9 For the avoidance of doubt, the Contractor confirms that:

9.9.1 it shall be responsible for the consequences of any change to the Contract Programme (including any Losses of the Authority arising directly or

indirectly from such change) unless such change is as the result of any failure by the Authority to perform its obligations under this Contract giving rise to the requirement for the Authority to give relief, including a change to the Contract Programme pursuant to Clause 31 (*Authority Performance Failures*); and

9.9.2 it shall be responsible for complying with the Contract Programme as at the date of this Contract (or as varied in accordance with Schedule 11 (*Change Procedure*)) subject to any variations to such Contract Programme as may be permitted by the Authority in accordance with this Clause 9 (*Contract Management and Meetings*) or otherwise as expressly permitted in this Contract.

10 Necessary Consents

10.1 The Contractor shall, without prejudice to its obligations under Clause 18 (*Import and Export Licences*):

10.1.1 obtain, maintain, renew and amend (in each case, as required) all Necessary Consents which may be required for the provision of the Contractor Deliverables under this Contract, including the entering into of any legally binding agreements necessary for the grant of the Necessary Consents;

10.1.2 use all reasonable endeavours to assist the Authority to obtain all Necessary Consents:

(i) that as a matter of law, only the Authority is eligible to obtain; and

(ii) in connection with:

(A) an Authority GFA obligation to provide an item to the Contractor and where such GFA obligation is expressly set out in Schedule 7 (*Authority Obligations*); and

(B) an item of Discretionary GFA which the Authority has agreed to provide to the Contractor subject to and in accordance with Clauses 31.7 to 31.13 (inclusive) (*Discretionary GFA*);

10.1.3 be responsible for implementing each Necessary Consent (save to the extent that only the Authority is, as a matter of law, able to implement the whole or the relevant part of such Necessary Consent) within the period of its validity in accordance with its terms and relevant law;

10.1.4 provide to the Authority, when required, a copy of:

(i) any application for a Necessary Consent or any variation, relaxation or waiver (with a copy of all accompanying drawings and other documents);

(ii) any Necessary Consent; and

(iii) any legally binding agreement entered in to for the purposes of obtaining a Necessary Consent,

where such agreement permits such disclosure;

10.1.5 comply with the conditions attached to any Necessary Consents and the terms of any associated legally binding agreement and procure that no such Necessary Consent or associated legally binding agreement is breached by it or any Contractor Related Party; and

10.1.6 use all reasonable endeavours to preserve the Necessary Consents, and procure, where it is able to do so, that such Necessary Consents are not revoked or quashed and that all Necessary Consents continue in full force and effect for such time as is necessary for the Contractor to provide the Contractor Deliverables to the Authority.

10.2 References in this Contract to Necessary Consents shall be construed as referring to the Necessary Consents as from time to time varied, relaxed or waived.

10.3 The Authority shall, subject to the Contractor's compliance with Clause 10.1.2 (*Necessary Consents*), use all reasonable endeavours to obtain all Necessary Consents:

10.3.1 that as a matter of law, only the Authority is eligible to obtain; and

10.3.2 in connection with:

(i) an Authority GFA obligation to provide an item to the Contractor and where such GFA obligation is expressly set out in Schedule 7 (*Authority Obligations*); and

(ii) an item of Discretionary GFA which the Authority has agreed to provide to the Contractor subject to and in accordance with Clauses 31.7 to 31.13 (inclusive) (*Discretionary GFA*).

10.4 The Contractor shall indemnify and keep indemnified the Authority against all Losses, claims, damages, liabilities, costs and expenses (including reasonable legal costs) incurred by the Authority in respect of any breach of Clause 10.1 (*Necessary Consents*) by the Contractor and/or any act or omission of any Sub-Contractor that results in such breach.

11 Contractor Related Parties

Responsibility for Contractor Related Parties

11.1 Subject to Clauses 7 (*Interdependent Contracts*), 31 (*Authority Performance Failures*) and 52 (*The Contractor's Property and Personnel at Government Establishments*), the Contractor shall be responsible and liable for the acts and omissions of the Contractor Related Parties as if they were the acts and omissions of the Contractor.

11.2 The Contractor shall ensure and/or procure that all Contractor Related Parties employed and/or engaged in connection with this Contract are appropriately qualified, trained and experienced.

12 Approval by the Authority

12.1 Except for a confirmation of a Change pursuant to Clause 75 (*Change*) which expressly changes the Contractor's obligations or liabilities or the Authority's rights under this

Contract and/or save as expressly stated in this Contract, no review, comment or approval by the Authority shall operate to exclude or limit the Contractor obligations or liabilities or the Authority's rights under this Contract.

PART 3 - SUB-CONTRACTING

13 Sub-Contracting

13.1 Sub-Contracting any part of this Contract shall not relieve the Contractor of any obligation or duty attributable to the Contractor under this Contract.

13.2 The Contractor shall exercise due skill and care in the selection and appointment of any Sub-Contractors to ensure that the Contractor is able to:

13.2.1 manage any Sub-Contractors in accordance with Good Industry Practice;

13.2.2 comply with its obligations under this Contract in the delivery of the Contractor Deliverables; and

13.2.3 assign, novate or otherwise transfer to the Authority or any Follow-On Contractor any of its rights and/or obligations under each Sub-Contract that relates exclusively to this Contract.

Termination of Sub-Contracts

13.3 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 Clause 45B (*Cyber*), Clause 47.7 (*Security – Secret Matters*), Clause 57.9 (*Supply of Hazard Data*), Clause 69 (*Termination for Contractor Default*) (as it applies to Prohibited Acts (including any breach of (and/or the occurrence of the circumstances contemplated in) Clauses 5.1.13, 5.1.14 and/or 5.1.15 (*Contractor Warranties*)), Clause 80 (*Change of Ownership*) and/or Clause 86 (*Tax Compliance*) and (without prejudice to any other rights of the Authority under this Contract) if requested to do so by the Authority, shall terminate the relevant Sub-Contract.

13.4 The Authority may, at its sole discretion, require the Contractor to terminate the provision by a Sub-Contractor of the whole or part (as the case may be) of the Contractor Deliverables:

13.4.1 where:

(i) the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to the Authority's right of termination pursuant to Clause 69 (*Termination for Contractor Default*) or Clause 70 (*Termination for Convenience*);

(ii) the relevant Sub-Contractor and/or any of its Affiliates have embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-Contractor's obligations in relation to the Contractor Deliverables or otherwise;

(iii) the relevant Sub-Contractor fails to comply in the performance of its Sub-Contract with legal obligations in the fields of environmental, social or labour law; and/or

(iv) the Authority has found grounds for exclusion of the Sub-Contractor in accordance with Clause 13.5 (*Exclusion of Sub-Contractors*); and

13.4.2 where there is a Change of Ownership of the relevant Sub-Contractor, unless:

(i) the Authority has given its prior written consent to the particular Change of Ownership, which subsequently takes place as proposed; or

(ii) the Authority has not served its notice of objection within six (6) months of the later of the date the Change of Ownership took place or the date on which the Authority was given notice of the Change of Ownership.

Exclusion of Sub-Contractors

13.5 Where the Authority considers that circumstances apply that would have constituted grounds for the exclusion of a Sub-Contractor under Regulation 37 of the Defence and Security Public Contracts Regulations 2011 having regard to Regulation 23 of the Defence and Security Public Contracts Regulations 2011, then:

13.5.1 if the Authority finds there are compulsory grounds for exclusion, the Contractor shall replace or shall not appoint the Sub-Contractor; or

13.5.2 if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Contractor to replace or not to appoint the Sub-Contractor, providing the reasoning for their decision, and the Contractor shall comply with such a requirement. Sub-Contracting any part of this Contract shall not relieve the Contractor of any obligation or duty attributable to the Contractor under this Contract.

14 Matters to be included in Sub-Contracts

14.1 Without prejudice to the provisions of Clause 17 (*Competition in Sub-Contracts*), the Contractor shall ensure that all Sub-Contracts which it enters into after the Effective Date shall at all times include:

14.1.1 provisions that the Authority's rights referred to in this Clause 14 (*Matters to be included in Sub-Contracts*), which are otherwise enforceable under the Contracts (Rights of Third Parties) Act 1999, are not rendered unenforceable;

14.1.2 a provision requiring the Sub-Contractor to include a clause to the same effect as this Clause 14.1 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract;

14.1.3 provisions which will enable the Contractor to discharge its obligations under this Contract;

14.1.4 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 14 (*Matters to be included in Sub-Contracts*) and that any such release shall not amount to a breach of any provision of confidentiality contained within the Sub-Contract;

14.1.5 a provision restricting the ability of the Sub-Contractor to sub-contract all or any part of the Contractor Deliverables provided to the Contractor under the Sub-Contract without first seeking the written consent of the Authority;

14.1.6 a provision requiring the Sub-Contractor to provide or obtain information equivalent to the information the Contractor is required to provide under Clause 17.4 (*Competition in Sub-Contracts*);

14.1.7 a provision enabling the Contractor, the Authority or any other person on behalf of the Authority to step-in on substantially the same terms as are set out in Clause 36 (*Authority Step-in*);

14.1.8 a provision that where any Sub-Contractor submits an invoice to the Contractor, the Contractor will consider and verify that invoice in a timely fashion with any decision of acceptance or rejection communicated to the Sub-Contractor with any rejection being provided with a fully detailed description of the reasons for the rejection and the actions required to rectify any issue causing the rejection;

14.1.9 a provision which requires payment to be made to the Sub-Contractor by the Contractor within a specified period not exceeding thirty (30) days from Contractor acceptance of a valid, undisputed invoice as defined by the Sub-Contract requirements;

14.1.10 a provision giving the Authority a right to publish the Contractor's compliance with its obligation to pay undisputed invoices within the specified payment period;

14.1.11 a provision enabling the Authority or any other person on behalf of the Authority and the Contractor to exercise the same rights in relation to the Sub-Contractors and their Employees as the Authority is entitled to exercise pursuant to Clause 48 (*Personnel Security*);

14.1.12 a provision enabling the Contractor to assign, novate or otherwise transfer any of its rights and/or obligations under the Sub-Contract to the Authority or any Follow-On Contractor without restriction (including any need to obtain any consent or approval) or payment by the Authority;

14.1.13 the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute as set out in Clause 5.2.11 (*Contractor Warranties and Undertakings*);

14.1.14 a provision giving the Contractor a right to terminate the Sub-Contract if the Sub-Contractor fails to comply in the performance of the Sub-Contract with legal obligations in the fields of environmental, social or labour law;

14.1.15 a provision giving the Contractor a right to exclude the Sub-Contract or where the circumstances in Clause 13.5 (*Exclusion of Sub-Contractors*) exist; and

14.1.16 where relevant to the deliverables under the particular Sub-Contract, the provisions of:

(i) Not Used;

(ii) Clause 16 (*Sub-Contracting to Supported Businesses and SMEs*);

(iii) Clause 18 (*Import and Export Licences*);

(iv) Not Used;

(v) Clause 37 (*Authority Data*);

(vi) Clause 38 (*Authority Disclosed Data*);

(vii) Clause 39 (*The Contractor's Records*);

(viii) Clause 40 (*Financial Management Information*);

(ix) Clause 41 (*Disclosure of Information*);

(x) Not Used;

(xi) Clause 43 (*Transparency*);

(xii) Clause 45 (*Protection of Personal Data (Where Personal Data is not being processed on behalf of the Authority*));

(xiii) Clause 45A (*Official-Sensitive Security Requirements*);

(xiv) Clause 45B (*Cyber*);

(xv) Clause 46 (*Intellectual Property Rights*);

(xvi) Clause 47 (*Security – Secret Matters*);

(xvii) Clause 48 (*Personnel Security*);

(xviii) Clause 49 (*Co-operation for Security Investigation*);

(xix) Clause 50 (*Access to the Contractor's Premises*);

(xx) Clause 51 (*The Contractor's Conduct on Authority Sites and/or Other Contractor's Premises*);

(xxi) Clause 52 (*The Contractor's Property and Personnel at Government Establishments*);

(xxii) Clause 54 (*Child Labour and Employment Law*);

(xxiii) Clause 55 (*Equality*);

(xxiv) Clause 56A (*Supply of Information for NATO Codification and Defence Inventory Introduction*);

(xxv) Clause 56B (*Codification Requirements for Item Identification*);

(xxvi) Clause 57 (*Supply of Hazard Data*);

(xxvii) Clause 57A (*Use of Asbestos*);

(xxviii) Clause 59 (*Issued Property*);

(xxix) Clause 60 (*Accounting for property of the Authority*);

(xxx) Clause 63 (*Special Jigs, Tooling and Test Equipment*);

(xxxi) Clause 68 (*Quality Assurance*);

(xxxii) Clause 69 (*Termination for Contractor Default*);

(xxxiii) Clause 70 (*Termination for Convenience*);

(xxxiv) Clause 71 (*Financial Consequences of Termination*);

(xxxv) Clause 80 (*Change of Ownership*);

(xxxvi) Clause 81 (*Disruption*);

(xxxvii) Clause 86 (*Tax Compliance*);

(xxxviii) Clause 91 (*Conflicts of Interest and Impartiality*); and

(xxxix) such provisions as are required to enable the Contractor to perform its obligations under Schedule 2 (*Statement of Requirements*) and Schedule 21 (*Transfer Regulations*) and to acquire the rights, benefits and obligations set out in Schedule 14 (*IPR*).

14.2 The Contractor shall ensure that all Sub-Contracts include the power to determine the Sub-Contract in accordance with the terms which apply to any termination of this Contract, pursuant to Clause 70 (*Termination for Convenience*), provided that:

14.2.1 references in the provisions of Clause 70 (*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;

14.2.2 the period of notice to determine such Sub-Contract shall be such period as is specified in this Contract as the appropriate period of notice to determine a Sub-Contract, or, if no period is specified, twenty (20) Working Days; and

14.2.3 the Contractor shall not exercise the power taken in those Sub-Contracts until the Authority has exercised its power under Clause 70 (*Termination for Convenience*) and each such Sub-Contract shall restrict the Contractor's right to exercise that power in the manner described in this Clause 14.2.3 (*Matters to be included in Sub-Contracts*) by including in such provision the

words “Provided that this power shall not be exercised unless the main contract shall have been determined by the Secretary of Defence pursuant to the provisions of clause 70 of that contract”.

14.3 If any Sub-Contractor refuses to accept the requirements of Clauses 14.1 and/or 14.2 (*Matters to be included in Sub-Contracts*) then the Contractor shall forthwith report the matter to the Authority and, without prejudice to the Contractor’s obligations to deliver the Contract Deliverables, the Contractor shall not enter into the relevant Sub-Contract until the Authority confirms in writing to the Contractor that the matter has been resolved.

14.4 Notwithstanding any other provisions of this Contract, if the Contractor notifies the Authority that the Contractor has failed to pay a Sub-Contractor’s undisputed invoice within the period specified in accordance with Clause 14.1.9 (*Matters to be included in Sub-Contracts*), or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

15 Not Used

16 Subcontracting to Supported Businesses and SMEs

Supported Businesses

16.1 When placing Sub-Contracts, the Contractor is asked to give consideration, as far as possible, to placing work on a competitive basis with Sub-Contractors that are Supported Businesses.

16.2 The Contractor can find details of Supported Businesses in the United Kingdom on the Supported Business Directory that is prepared by British Association for Supported Employment at Unit 4, 200 Bury Road, Tottington, Lancashire BL8 3DX (Telephone: 01204 880733) or https://www.base-uk.org/supported-business-directory

SMEs

16.3 The Contractor shall maximise the use of SMEs in the performance of the Contractor Deliverables, where doing so will not adversely affect cost, technical performance or programme timescales.

16.4 The Contractor shall aim to make open to competition by SMEs at least twenty five percent (25%) of Sub-Contract spend where deemed appropriate by the Contractor in accordance with Clause 16.3.

16.5 If the Contractor reasonably believes that the use of an SME would adversely affect cost, technical performance or programme timescales, the Contractor shall seek advice from the Authority.

16.6 The Contractor shall undertake activities which encourage SME involvement (either individually or collectively), including SME supplier days and advertising of possible requirements in the appropriate publications (e.g. MoD Contracts Bulletin).

16.7 The Contractor shall provide to the Authority details of spend with SMEs on an annual basis, the first such spend details to be provided on or before the last day of the thirteenth (13th) month following the Effective Date and then in each subsequent year during the Contract Period on or before the anniversary of such date.

17 Competition in Sub-Contracts

17.1 The Parties acknowledge that:

17.1.1 the Contractor has selected Sub-Contractors for the provision of the Contractor Deliverables in accordance with a sub-contracting plan (in this Clause 17 (*Competition in Sub-Contracts*) the "**Sub-Contracting Plan**") in the Agreed Form; and

17.1.2 the provisions contained in the Sub–Contracting Plan do not limit or otherwise effect the Contractor's other obligations contained in this Contract (including Clause 14 (*Matters to be included in Sub-Contracts*) and this Clause 17 (*Competition in Sub-Contracts*)).

17.2 Where the Contractor (and/or any Sub-Contractor) proposes to change a Sub-Contractor, engage an additional Sub-Contractor, change, modify, vary and/or extend a current Sub-Contract and/or let an additional Sub-Contract, the Contractor shall, without prejudice to and in addition to its obligations under Clauses 17.7 and 17.8 (*Competition in Sub-Contracts*), submit to the Authority's Representative its proposed plan for the work to be performed or for the supplies to be provided under that Sub-Contract (or proposed Sub-Contract (as the case may be)), including, in the case of an additional Sub-Contract, information about the proposed Sub-Contractor equivalent to the information the Contractor is required to provide under Clause 17.4 (*Competition in Sub-Contracts*). Where the Sub-Contract is intended to be placed on a fixed or firm price basis agreed at the outset following single tender action the plan shall be that information submitted in support of the Contractor's price proposals and referenced in a contract pricing statement.

17.3 Where the Sub-Contracting Plan identified a requirement to compete, the Sub-Contracting Plan should identify each sub-system, package of work, service and/or purchase of components and/or raw materials etc. for which the Contractor intends to seek (or require the relevant Sub-Contractor to seek) competitive tenders which are expected to lead to an order, or orders, in excess of **REDACTED** under that Sub-Contract (or proposed Sub-Contract (as the case may be)) (each a "**Tender Requirement**"). The Contractor shall provide to the Authority's Representative details of the approximate value of each Tender Requirement, together with the proposed list of tenderers involved in each case and information about each of the proposed tenderers equivalent to the information the Contractor is required to provide under Clause 17.4 (*Competition in Sub-Contracts*), for approval before any Sub-Contract is entered into by the Contractor and/or any Sub-Contractor (as the case may be) and/or any order or orders are issued by the Contractor and/or any Sub-Contractor (as the case may be). Within ten (10) Working Days of receipt of this element of the plan, or as otherwise agreed, the Authority's Representative will notify the Contractor whether there are any special circumstances which might require, for example, the employment of a wider or narrower field of tenderers or for the Authority to oversee the conduct of the competitive tender and to approve the selection of the Sub-Contractor concerned.

17.4 The Sub-Contracting Plan should also identify each sub-system, package of work, service and/or purchase of components and/or raw materials etc. for which the Contractor does not intend to seek competitive tenders or for which the Contractor does intend to seek competitive tenders but the value of the Sub-Contract or order is not expected to be in excess of **REDACTED** (including work and supplies etc. it intends to undertake or provide). In each of these cases, the Sub-Contracting Plan shall provide the following information:

17.4.1 the name and address of the proposed Sub-Contractor or own facility concerned;

17.4.2 the country of origin of the Sub-Contractor;

17.4.3 whether the Sub-Contractor is an SME;

17.4.4 the sub-system, package of work, services, components and/or raw materials being purchased under the Sub-Contract or order;

17.4.5 the approximate value of the Sub-Contract or order;

17.4.6 the means by which prices are to be determined as fair and reasonable;

17.4.7 the delivery programme;

17.4.8 other relevant factors; and

17.4.9 where the Contractor does intend to seek competitive tenders but the value of the Sub-Contract or orders is not expected to be in excess of **REDACTED**, an indication of its reasons for not seeking competition (i.e. competition is not practicable or not reasonable for other reasons which must be stated).

17.5 Within twenty (20) Working Days of receipt of the information referred to in Clause 17.4 (*Competition in Sub-Contracts*) or Clause 17.8 (*Competition in Sub-Contracts*), or as otherwise agreed, the Authority's Representative will advise whether the Contractor's proposals are accepted. Where the proposals are not accepted, further consultation will take place so as to enable the Contractor to elaborate further but in the event of continued disagreement, the Authority's decision on whether the relevant sub-system, package of work, service and/or purchase of components and/or raw materials etc. is to be placed with a Sub-Contractor shall be final. The Authority's Representative will also notify the Contractor whether and in what manner it wishes to be associated with the pricing of the Sub-Contract or order.

17.6 Not Used.

17.7 The Contractor shall notify the Authority in writing if it wishes to replace a Sub-Contractor or contract with additional Sub-Contractors after the Effective Date by submitting an updated version of the Sub-Contracting Plan (as contemplated by Clause 17.2 (*Competition in Sub-Contracts*)) showing the proposed changes, such updated Sub-Contracting Plan shall provide the information and details referred to in 17.4.1 to 17.4.8 (inclusive) (*Competition in Sub-Contracts*) in relation to the proposed replacement Sub-Contractor or additional Sub-Contractors to the Authority for approval, and the Contractor shall not replace such Sub-Contractor and/or contract with additional Sub-Contractors without the prior written approval of the Authority.

17.8 If requested by the Authority within ten (10) Working Days of receipt of the Contractor's notice issued pursuant to Clause 17.7 (*Competition in Sub-Contracts*), the Contractor shall also provide any further information reasonably requested by the Authority.

Security of supply

17.9 The Contractor is required to and shall notify the Authority in writing where, for the purposes of performing this Contract, the Contractor proposes to acquire on behalf of

the Authority or for delivery to the Authority any hardware, software, system and/or equipment which has or is to be acquired or procured for the purposes of this Contract and/or the performance of the Contractor Deliverables or otherwise for integration, either physically or otherwise, on a single source basis (the "**Single Source Item**"). The Contractor

17.9.1 has on or prior to the Effective Date, provided details of each Single Source Item known at the time of the Effective Date, and the source from which each Single Source Item was acquired including the company (or relevant entity) name and contact details to the Authority Representative; and

17.9.2 shall provide details of each Single Source Item proposed to be acquired following the Effective Date and the source from such Single Source Item is proposed to be acquired including the company (or relevant entity) name and contact details to the Authority's Representative, not less than thirty (30) Working Days before such Single Source Item is proposed to be acquired.

17.10 In respect of any Single Source Item notified to the Authority under Clause 17.9 (*Security of supply*) above, the Contractor has, on or prior to the Effective Date (in the case of Single Source Items regulated by Clause 17.9.1 (*Security of supply*)) and not less than thirty (30) Working Days prior to proposed acquisition (in the case of Single Source Items regulated by Clause 17.9.2 (*Security of supply*)), also notified or shall notify (as the case may be) the Authority:

17.10.1 if there are any suitable alternative items readily available within the supply market at a reasonable cost of which the Contractor has become, or should have reasonably become, aware of as part of their supply chain procurement process, that would achieve similar levels of performance and functionality to the Single Source Item together with details on source of supply and relevant suppliers;

17.10.2 if the alternative item requires modification and/or equipment to comply with the design and achieve performance and functionality consistent with the Single Source Item;

17.10.3 if the alternative item requires a modification to the design; and

17.10.4 if Clauses 17.10.2 and/or 17.10.3 (*Security of supply*) apply, the Contractor shall provide details of the nature and extent of modification as they know or reasonably believe might be required to achieve the equivalent functionality and performance to the Single Source Item to the extent that the Contractor has become, or should have reasonably become, aware of as part of their supply chain procurement process.

17.11 The Contractor shall use all reasonable endeavours, in respect of any Single Source Item as is described in Clause 17.9 (*Security of supply*), to provide all relevant information relating to such Single Source Item which could impact on the Authority's ability to have the full benefit and use of the Contractor Deliverables (including, obtaining a similar product to the Single Source Item from alternative suppliers) and performance information together with a non-exclusive, royalty-free licence to use and have used the same such that a competent Third Party could develop or source an alternative item which achieves similar levels of performance and functionality to the Single Source Item.

17.12 In the event that the Contractor is unable to secure the rights for the Authority set out in Clause 17.11 (*Security of supply*), the Contractor shall notify the Authority of the issue(s) preventing the Contractor securing those rights set out in Clause 17.11 (*Security of supply*) and the Contractor, or where applicable any Third Party shall await further instruction before acquiring the Single Source Item. The Authority will provide a response to the Contractor within twenty (20) Working Days of such notification and both Parties will work together to resolve the issue(s) and to mitigate any adverse impact on the Contract Programme.

17.13 The Contractor shall promptly notify the Authority as soon as it is aware of any intention of any party to cease manufacture of any Single Source Item. Where the relevant Single Source Item is sourced from a Third Party, then the Contractor shall place an obligation upon the Third Party to provide notification to the Contractor of any intention to cease production as soon as the Third Party reasonably can.

17.14 The Contractor shall develop a technical data pack (an "**SSTDP**") in respect of each Single Source Item for which the associated intellectual property is owned or controlled by the Contractor.

17.15 The SSTDP shall contain sufficient information to enable a reasonably competent Third Party to manufacture the Single Source Item and provide all relevant support in respect of the Single Source Item. The SSTDP shall be maintained by the Contractor and updated from time to time to represent the proposed build standard for the Single Source Item and shall be promptly updated by the Contractor should the build standard or any other relevant impact on the Single Source Item change during the course of this Contract. The SSTDP and any such updates shall be issued to the Authority's Representative promptly following production and/or updating.

17.16 The Authority and Authority Related Parties may inspect the SSTDP developed under Clause 17.14 (*Security of supply*) above in order to verify its content and suitability for the purposes of manufacture and support of the Single Source Item. The Contractor shall use all reasonable endeavours to remedy any defects or omissions in the SSTDP within twenty (20) Working Days. The Contractor may request the agent or contractor to enter into a direct confidentiality agreement on reasonable terms prior to such inspection in the event of any such reasonable concerns.

17.17 In the event of the Contractor being unable or unwilling on fair and reasonable terms to continue to supply or support a Single Source Item, then the Authority shall have the right, free of charge, to access the associated SSTDP and to have the SSTDP used with or without modification by a Third Party for manufacture and/or support of the Single Source Item.

18 <u>Import and Export Licences</u>

18.1 If, in the performance of this 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

18.2 When an export licence or import licence or authorisation either singularly or in combination is required from a foreign government for the performance of this Contract, the Contractor shall as soon as reasonably practicable consult with the Authority on the licence requirements and, where the Contractor or any Contractor Related Party is the applicant for the licence or authorisation the Contractor shall:

18.2.1 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 18 (*Import and Export Licences*) shall also include information, technical data and software), unless otherwise agreed with the Authority, identify in the application:

(i) the end user as: Her Britannic Majesty's Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter "**HM Government**"); and

(ii) the end use as: For the Purposes of HM Government; and

18.2.2 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".

18.3 If the Contractor or any Sub-Contractor in the performance of this Contract needs to export materiel 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, provided always that for the purposes of this Clause 18 (*Import and Export Licences)* "materiel" shall mean information, technical data and items, including Articles and Items, components of Articles and software.

18.4 Where this Contract performance requires the export of materiel for which a foreign export licence or import licence or authorisation is required, the Contractor shall notify the Authority of dependencies for the export licence or import licence or authorisation application, grant and maintenance with appropriate review points. Where there is no requirement under this Contract for a risk management plan the Contractor shall submit this information to the Authority's Representative.

18.5 During the Contract Period and for a period of up to two (2) years from the end of the Contract Period, however extended in accordance with the terms of this 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 circumstances to make the request. Where subsequent to such consultation the Authority notifies the Contractor that the Contractor is best placed to make such request:

18.5.1 the Contractor shall, or procure that the Sub-Contractors 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) Working Days to resolve the issue and, should they fail to resolve the issue, the matter shall be escalated to an appropriate level within both Parties' organisations, to include their respective export licensing, import licensing or authorisation (as the case may be) subject matter experts; and

18.5.2 the Authority shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the application for the requested variation.

18.6 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.

18.7 Where compliance with Clauses 18.5 and 18.6 (*Obtaining a licence or authorisation from a foreign government – Contractor obligations*) requires an amendment to this Contract, such amendment will be made and any subsequent price variation will be determined in accordance with Schedule 11 (*Change Procedure*) as an Authority Change.

18.8 Where the Authority invokes Clauses 18.5 and 18.6 (*Obtaining a licence or authorisation from a foreign government – Contractor obligations*), the Authority will pay the Contractor's fair and reasonable costs for such service based on the cost of providing it, such costs are to form part of the Contract Price.

18.9 Where the Contractor subcontracts work under this 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 Sub-Contract equivalent obligations to those set out in this Clause 18 (*Import and Export Licences*). Where it is not possible to include equivalent obligations to those set out in this Clause 18 (*Import and Export Licences*), the Contractor shall report that fact and the circumstances to the Authority.

Obtaining a licence or authorisation from a foreign government – Authority obligations

18.10 Without prejudice to HM Government'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 this Contract.

18.11 The Authority shall provide such assistance as the Contractor may reasonably require in obtaining any UK export licences necessary for the performance of this Contract.

Contractor obligation to provide information

18.12 The Contractor shall use reasonable endeavours to identify whether any Contractor Deliverable is subject to:

18.12.1 a non-UK export licence, authorisation or exemption; or

18.12.2 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. For the avoidance of doubt, this does not include the Intellectual Property specific restrictions of the type referred to in Schedule 14 (*IPR*).

18.13 If at any time during the Contract Period the Contractor becomes aware that all or any part of the Contractor Deliverables are subject to Clause 18.12.1 or 18.12.2 (*Contractor obligation to provide information*), it shall notify the Authority of this as soon as reasonably practicable by providing details in the DEFFORM 528 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.

18.14 If the information to be provided under Clause 18.13 (*Contractor obligation to provide information*) has been provided previously to the Authority by the Contractor under this 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 18.13 (*Contractor obligation to provide information*).

18.15 During the Contract Period, the Contractor shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under Clause 18.13 or 18.14 (*Contractor obligation to provide information*) 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 DEFFORM 528 to the Authority.

18.16 For a period of up to two (2) years from the end of the Contract Period however extended in accordance with the terms of this Contract and in response to a specific request by the Authority's Representative, the Contractor shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under Clause 18.13 or 18.14 (*Contractor obligation to provide information*) 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 DEFFORM 528 to the Authority.

18.17 Where following receipt of materiel 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 DEFFORM 528. Within five (5) Working 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 five (5) Working Days of receipt of a proposal whether it is acceptable and where appropriate this Contract shall be modified in accordance with its terms to implement the proposal.

18.18 If the restrictions prevent the Contractor from performing its obligations under this 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 this Contract in accordance with Clause 75 (*Change*) and/or 76 (*Amendments to Contract*) or as otherwise may be provided by this Contract or to terminate this Contract. Except as set out in Clause 18.19 (*Contractor obligation to provide information*), in the event of termination in these circumstances termination shall be on fair and reasonable terms having regard to all the circumstances including payments

already made and payments that would otherwise be due under this Contract for work successfully carried out prior to such termination, costs incurred by the Contractor and benefits received by the Authority. The Parties, acting in good faith, will use all reasonable endeavours to agree such fair and reasonable terms failing which either Party may refer the matter to Dispute Resolution Procedure.

18.19 In the event that the restrictions notified to the Authority pursuant to Clause 18.13 (*Contractor obligation to provide information*) 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 18.15 or 18.17 (*Contractor obligation to provide information*) were known or ought reasonably to have been known by the Contractor at the date of submission of the most recent DEFFORM 528 submitted to the Authority in accordance with Clause 18.13 (*Contractor obligation to provide information*), termination under Clause 18.18 (*Contractor obligation to provide information*) will be in accordance with Clause 69 (*Termination for Contractor Default*) and the provisions of Clause 18.23 (*Interim Position*) will not apply.

Authority obligation to provide information

18.20 The Authority shall use reasonable endeavours to identify any export control restrictions applying to materiel to be provided to the Contractor as GFA. Where the Authority is to provide materiel necessary to enable the Contractor to perform this Contract or in respect of which the Contractor Deliverables are to be provided, and that materiel is subject to a non-UK export licence, authorisation, exemption or other related transfer or export control as described in the provisions of Clause 18.12 (*Contractor obligation to provide information*) above, the Authority shall provide a completed DEFFORM 528 or will provide a new or updated DEFFORM 528 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 materiel to the Contractor.

18.21 In the event that the Authority becomes aware that the DEFFORM 528 disclosure was incomplete or inaccurate or in the event additional such materiel is identified, then the Authority shall provide, as soon as reasonably practicable a new or revised DEFFORM 528. In the event that the Authority becomes aware that a prior disclosure included in DEFFORM 528 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.

18.22 Where:

18.22.1 restrictions are advised by the Authority to the Contractor in a DEFFORM 528 provided pursuant to Clause 18.20 or 18.21 (*Authority obligation to provide information*); or

18.22.2 any of the information provided by the Authority in any DEFFORM 528 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 this Contract, the matter

shall be handled under the terms of Clause 75 (*Change*) and/or 76 (*Amendments to Contract*) or as may otherwise be provided by this Contract as appropriate and if no alternative solution satisfies the essential terms of this Contract and the restrictions have not been removed, modified or otherwise satisfactorily managed within a reasonable time the Authority may terminate this Contract. Termination under these circumstances will be under the terms of Clause 70 (*Termination for Convenience*).

Interim position

18.23 Pending agreement of any amendment of this Contract as set out in Clause 18.18 (*Contractor obligation to provide information*) or 18.22 (*Authority obligation to provide information*), 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 this Contract directly affected by the restrictions or provision of incorrect or incomplete information.

PART 4 - PRICE/COSTS/PAYMENT

19 Not Used

20 Payment under CP&F

20.1 In consideration of the Contractor performing the Contractor Deliverables, the Authority shall pay the Contract Price to the Contractor in accordance with Schedule 9 (*Pricing and Payment*) and the following provisions of this Clause 20 (*Payment under CP&F*).

20.2 Payment under this Contract of the Contract Price will be made by electronic transfer and prior to submitting any invoices under Clause 20.3 (*Payment under CP&F*) the Contractor will be required to register their details (Supplier on-boarding) on the Contracting, Purchasing and Finance Electronic Procurement Tool ("**CP&F**").

20.3 Where the Contractor submits an invoice to the Authority in accordance with Clause 20.2 (*Payment Under CP&F*), the Authority will consider and verify that invoice in a timely fashion.

20.4 The Authority shall, subject to Clause 24 (*Disputed Amounts*), pay the Contractor any sums due under such an invoice no later than a period of thirty (30) days from the date on which the Authority has determined that the invoice is valid and undisputed.

20.5 Where the Authority fails to comply with its obligations in Clause 20.3 (*Payment under CP&F*) and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of Clause 20.4 (*Payment under CP&F*) only (and not further or otherwise) after a reasonable time has passed.

20.6 Neither:

20.6.1 the approval for payment of a valid and undisputed invoice by the Authority; or

20.6.2 a failure by the Authority to comply with its obligations in Clause 20.3 (*Payment under CP&F*) which ultimately results in an invoice being regarded as valid and undisputed (for the purposes of and in the circumstances described in Clause 20.5 (*Payment under CP&F*)),

shall be construed as acceptance by the Authority of the performance of the Contractor's obligations or as a waiver of its rights and remedies either under this Contract or otherwise.

21 Not Used.

22 Unique Identifiers

22.1 Having regard to and subject to Clause 20 (*Payment under CP&F*), the Authority and the Contractor shall comply with the provisions of this Clause 22 (*Unique Identifiers*).

22.2 For CP&F purchase orders, the Contract or an order issued under a framework agreement will reference UOIs or URRIs, or both. The application of UOIs and URRIs is at the line item level. The Contractor must quote the applicable Unique Identifier in any communication concerning a line item.

22.3 For EBC contractor logistic support contracts, the Contractor will generate EUPIs in fulfilling demands raised under a contractor logistic support contract. An EUPI applies for each package and the Contractor must quote it in any communication concerning a package. Where a delivery includes more than one package, each package must have a separate EUPI.

22.4 Confirmation of a receipt of deliveries by Unique Identifiers shall not be construed as an acceptance of the Articles for the purposes of Clause 58 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*) or any other term of this Contract relating to acceptance by the Authority.

23 The Use of the Electronic Business Delivery Form

Form usage

23.1 Having regard to and subject to Clause 20 (*Payment under CP&F*), the Authority and the Contractor shall comply with the provisions of this Clause 23 (*The Use of the Electronic Business Delivery Form*).

23.2 The Contractor must use the electronic business delivery form for all deliveries of Articles and performance of Contractor Deliverables.

23.3 The electronic business delivery form, DEFFORM 129J, must accompany the package or consignment to which it applies. The Contractor must either:

23.3.1 attach the form as a label, directly to the package surface; or

23.3.2 forward the form in a document envelope,

as provided in Clauses 23.4 and 23.5 (*Form Structure*).

Form structure

For the provision of Articles

23.4 Where delivery is for a physical Non-Assured Article, the following criteria apply:

23.4.1 the nominal label size is A6 (102 mm x 152 mm) but A5 (148 mm x 210 mm) is acceptable. If required by package size, the Contractor may use

other label sizes, but only if no degradation to the text, bar code legibility and quality occurs, as referred to in Clause 23.7 (*Bar Code Symbology and Print Quality*);

23.4.2 the Contractor must use the bar coded Unique Identifier as defined in Clause 22 (*Unique Identifiers*), unless specified otherwise in this Contract; and

23.4.3 the Contractor must attach two labels to each package or consignment delivered. One label must be detachable for use in processing the information through the appropriate Authority receipting system.

For the provision of Contractor Deliverables which are not physical Articles

23.5 Where performance is for Contractor Deliverables which are not physical Articles (including Assured Articles), the following criteria apply:

23.5.1 standard size is A4 (210 mm x 297 mm);

23.5.2 the Contractor must use the bar coded Unique Identifier as defined in Clause 22 (*Unique Identifiers*), unless specified otherwise in this Contract; and

23.5.3 the Contractor must provide one form either on completion of the Contractor Deliverables which are not physical Articles (including where Assured Articles form part of such Contractor Deliverables) or on completion of each agreed stage of the Contractor Deliverables which are not physical Articles (including where Assured Articles form part of such stage of the Contractor Deliverables).

Bar code symbology and print quality

23.6 The bar code symbology used shall meet the requirements of STANAG 4329, "NATO Standard Bar Code Symbologies", specifically Code 39 (ISO/IEC 16388), unless otherwise specified.

23.7 The barcode print quality shall be as defined in ISO/IEC 16388 (Information technology - Automatic identification and data capture techniques - Code 39 bar code symbology specification). The Overall Grade shall be at least Grade B at point of printing and not less than Grade C, at final point of receipt.

Methods of printing

23.8 For method of printing the DEFFORM 129J, electronic business delivery form, see Def Stan 81-041 (Part 6). Laser printing is preferred.

24 Disputed Amounts

24.1 The Authority may withhold payment of any amount it believes, acting reasonably, the Contractor is not entitled to pursuant to this Contract ("**Disputed Amount**") pending agreement or determination of the Contractor's entitlement in relation to the Disputed Amount. The Authority shall notify the Contractor of the reasons for withholding the Disputed Amount (together with supporting evidence) on or before the day on which the Disputed Amount would (but for this Clause 24.1 (*Disputed Amounts*)) otherwise fall due.

24.2 The Authority shall pay any undisputed amounts on or before the day on which they fall due.

24.3 Within ten (10) Working Days following receipt by the Contractor of any notice served by the Authority pursuant to Clause 24.1 (*Disputed Amounts*) (or such other notice regarding the existence of a Disputed Amount as may be served by the Authority pursuant to this Contract), the Contractor shall respond by notifying the Authority as to whether or not it agrees with the statements made in that notice and the grounds for such agreement or disagreement. If the Contractor indicates that it does agree, the Authority shall be entitled:

24.3.1 to retain on a permanent basis any amounts withheld pursuant to Clause 24.1 (*Disputed Amounts*); and

24.3.2 to reclaim from the Contractor the amount of any over-payment which may have been made to the Contractor, and reserves the right to claim interest on any such amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which the over-payment was made until that amount has been paid in full and whether before or after judgment.

24.4 If the Contractor responds pursuant to Clause 24.3 (*Disputed Amounts*) that it does not agree with all or any of the statements made in any notice served by the Authority pursuant to Clause 24.1 (*Disputed Amounts*) (or such other notice regarding the existence of a Disputed Amount as may be served by the Authority pursuant to this Contract), the matter or matters in question shall be determined under the Dispute Resolution Procedure.

24.5 If the determination of any Dispute conducted pursuant to Clause 24.4 (*Disputed Amounts*) shows that:

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

24.5.2 the Contractor has claimed under Clause 20 (*Payment under CP&F*) any amount which it was not entitled to be paid,

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

25 Payment of Bills using the Bankers Automated Clearing Service System

25.1 The Authority shall make payment to the Contractor of all valid claims submitted for payment in accordance with Clause 20 (*Payment under CP&F*) by means of the Bankers Automated Clearing Service ("**BACS**") directly into the Contractor's nominated bank account. To facilitate payment by means of the BACS system, the Contractor shall provide the Authority in advance of the submission of valid claims, if he has not already done so, details of the name and address of his bank, the sort code and account number.

26 Not Used

27 Recovery of Sums Due

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

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

28 VAT

28.1 All sums payable under this Contract exclude any UK output VAT and any similar EU (or non-EU) taxes chargeable on the provision of the Contractor Deliverables by the Contractor to the Authority.

28.2 If the Contractor is required by UK VAT law to be registered for UK VAT (or has registered voluntarily for UK VAT purposes) in respect of its business activities at the time of any provision, and the circumstances of any provision 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 provision of the Contractor Deliverables, and all other payments under this Contract according to the law at the relevant tax point.

28.3 The Contractor is responsible for the determination of VAT liability. The Contractor is to consult its client relationship manager or the HMRC enquiries desk (and not the Authority's Representative) in cases of doubt. The Contractor shall notify the Authority's Representative of the Authority's VAT liability under this Contract and any changes to it within twenty (20) Working 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's Representative may require the Contractor to obtain and pass to the Authority a formal ruling from HMRC. The Contractor shall promptly comply with any such Authority requirement. Where the Contractor obtains a ruling from HMRC, it shall supply a copy to the Authority within three (3) Working Days of receiving such ruling unless it proposes to challenge such ruling. Where the Contractor challenges such ruling it shall supply to the Authority a copy of the final decision issued by HMRC on completion of the challenge within three (3) Working Days of receiving such decision.

28.4 Where the provision of the 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 that it takes into account any changes in VAT Legislation and VAT law regarding registration.

28.5 Where the Contractor Deliverables are deemed to be provided to the Authority outside the UK, the Contractor may be required by the laws of the country where the supply takes place to register there for EU (or non-EU) turnover or similar tax. In that event, the Authority shall pay to the Contractor, in addition to the Contract Price (and any

other sum due to the Contractor under this Contract) a sum equal to the tax the Contractor is liable to pay to the tax authorities of the country in question in relation to the Contractor Deliverables within thirty (30) Working Days of a written request for payment of any such sum by the Contractor.

28.6 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 (and/or similar EU and non-EU input taxes). However, these input taxes will be allowed where it is proven to the Authority that, despite the Contractor having taken all reasonable steps to recover them, it has not been possible to do so. Where there is any doubt that the Contractor has complied with this requirement either party may resolve this matter by reference to the Dispute Resolution Procedure.

28.7 Should HMRC decide that the Contractor has incorrectly determined the VAT liability, in accordance with Clause 28.2 (*VAT*), 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 and/or penalties directly to HMRC. Such interest or penalties or both shall not be recoverable from the Authority under this Contract or any other contract. The Contractor shall supply the Authority with a copy of all correspondence between HMRC and the Contractor's advisors regarding the VAT assessment within three (3) Working Days of a written request from the Authority's Representative for such correspondence.

PART 5 - PERFORMANCE AND REMEDIES

29 Key Performance Indicators and Performance Monitoring

29.1 The Parties shall comply with the provisions of Schedule 9 (*Pricing and Payment*), Schedule 6 (*Incentivisation*) and Schedule 8 (*Governance and Management*).

29.2 Without prejudice to Schedule 9 (*Pricing and Payment*), Schedule 6 (*Incentivisation*) and Schedule 8 (*Governance and Management*), the Authority, the Authority's Representative and any agents or consultants of the Authority (such agents and consultants to be subject to the Contractor's consent, not to be unreasonably withheld or delayed) may, between the hours of 8:30 am to 17:30 pm on any Monday to Friday (which is a Working Day (under limb (a) of that definition) and with reasonable prior notice (having regard to any co–location working which the Contractor hereby confirms will require a short notice period of no more than one (1) hour), undertake inspection of any of the Contractor Deliverables, and make any audit or check of any aspect of the Contractor's performance of this Contract as required by the Authority or where the same shall have been requested by the National Audit Office. The Contractor shall promptly provide all reasonable co-operation in relation to any inspection, audit or check.

29.3 Without prejudice to Clause 29.2 (*Key Performance Indicators and Performance Monitoring*), the Authority may undertake its own performance monitoring at any time for any purpose in relation to this Contract (and for any UK Government purposes as requested by the Authority from time to time with the consent of the Contractor (such consent not to be unreasonably withheld or delayed)), including in order to ensure that the Contractor Deliverables are being provided in accordance with this Contract.

30 Technical Assistance to the Authority

30.1 The Contractor acknowledges that the Authority:

30.1.1 may (from time to time) use the services of personnel from other Government Departments to assist with managerial, technical and/or other support in relation to this Contract and/or any MORPHEUS Contract and/or the LE TacCIS Equipment Portfolio; and

30.1.2 may (from time to time) use the services of specialist commercial organisations to provide managerial, technical and/or other support in relation to this Contract and/or the MORPHEUS Programme and/or the LE TacCIS Equipment Portfolio, such specialist organisations being, as at the date of this Contract, those listed in Schedule 12 (*Technical Assistance*) together with any person with whom either or both of the Parties may be required to liaise and/or communicate for the purposes of this Contract and the wider aims of the Authority in connection with the Contractor Deliverables and/or the MORPHEUS Programme,

and the Contractor agrees that, in such circumstances, such personnel and such organisations shall be deemed to be approved representatives of the Authority and the Contractor shall make available such information (and/or consents to such information being made available (as the case may be) to such personnel and such organisations) and/or facilities as are necessary to enable such personnel and/or such organisations to fulfil their obligations to the Authority.

31 Authority Performance Failures

31.1 Subject to the provisions of Clauses 31.7 to 31.13 (inclusive) (*Discretionary GFA*) and Clause 38 (*Authority Disclosed Data*) if and to the extent that a GFA Failure is the direct cause of the Contractor's inability to provide the Contractor Deliverables or perform any of its other obligations under this Contract or of the degradation of the Contractor's performance against the KPI regime set out in Schedule 6 (*Incentivisation*), then subject to Clause 31.2 (*Authority Performance Failures*) the Contractor is entitled, save where the GFA Failure has been caused by any act or omission of the Contractor or any Contractor Related Party under this Contract and/or any default, negligence and/or breach as described in Clause 7 (*Interdependent Contracts*), to apply for relief from those of its obligations that it is unable to perform as a direct result of such GFA Failure. If such act or omission of the Contractor or any Contractor Related Party and/or any default, negligence and/or breach as described in Clause 7 (*Interdependent Contracts*) has contributed to the GFA Failure, the Contractor's entitlement to relief shall be reduced by an amount proportional to such contribution to the GFA Failure.

31.2 To obtain relief pursuant to Clause 31.1 (*Authority Performance Failures*) the Contractor shall:

31.2.1 as soon as practicable, and in any event within twenty (20) Working Days after it became aware that the GFA Failure has adversely affected or is likely to adversely affect the ability of the Contractor to provide the Contractor Deliverables or to perform its obligations, give to the Authority a notice of its claim for relief from its obligations under this Contract;

31.2.2 as soon as practicable and in any event within ten (10) Working Days of service on the Authority of the notice referred to in Clause 31.2.1 (*Authority Performance Failures*) notify the Authority of full details which are available in respect of the GFA Failure and the relief claimed;

31.2.3 comply with the provisions of this Clause 31 (*Authority Performance Failures*), the provisions of Schedule 6 (*Incentivisation*), the provisions of

Schedule 8 (*Governance and Management*) and the provisions of Schedule 9 (*Pricing and Payment*);

31.2.4 demonstrate to the reasonable satisfaction of the Authority that:

(i) the GFA Failure was the direct cause of the Contractor's inability to provide the Contractor Deliverables or perform any of its other obligations under this Contract or of the degradation of the Contractor's performance against the KPI regime set out in in Schedule 6 (*Incentivisation*); and

(ii) the relief claimed could not reasonably be expected to be mitigated or recovered by the Contractor acting in accordance with Good Industry Practice, without incurring material expenditure; and

31.2.5 continue to perform its obligations under this Contract subject to the constraints of the GFA Failure.

31.3 If and to the extent that the Contractor has complied with its obligations under this Clause 31 (*Authority Performance Failures*), then:

31.3.1 the Authority shall not be entitled to exercise its rights arising as a result of the GFA Failure to terminate this Contract; and

31.3.2 the Authority shall give the Contractor such relief from its obligations as the Authority considers is reasonable for such a GFA Failure, in accordance with the procedures described in Schedule 9 (*Pricing and Payment*) and Schedule 6 (*Incentivisation).*

31.4 The Contractor shall notify the Authority if at any time it realises or becomes aware of any information relating to the GFA Failure, giving details of that information, to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.

31.5 If the Parties cannot agree the extent of any relief from the Contractor's obligations under this Contract or the Authority disagrees that any GFA Failure has occurred (or as to its consequences), or that the Contractor is entitled to any relief under this Clause 31 (*Authority Performance Failures*) the Parties shall resolve the matter in accordance with the Dispute Resolution Procedure.

31.6 The Contractor shall not be entitled to any common law or equitable rights (including rights to damages or to any other rights under contract, tort or otherwise) in relation to the occurrence or subsistence of any GFA Failure.

Discretionary GFA

31.7 If the Contractor requests that the Authority provide to the Contractor any Discretionary GFA, it shall do so by written notice to the Authority's Representative and any such notice shall:

31.7.1 provide a detailed description of the proposed Discretionary GFA;

31.7.2 detail the period during which the proposed Discretionary GFA is required to be used by the Contractor and/or any Sub-Contractor;

31.7.3 confirm how the Contractor and/or any Sub-Contractor intends to use such proposed Discretionary GFA;

31.7.4 describe any benefits to the Authority arising as the result of the Authority providing such proposed Discretionary GFA; and

31.7.5 identify any other relevant issues relating to the intended use by the Contractor and/or any Sub-Contractor of the proposed Discretionary GFA (including any impact on the provisions of this Contract and the performance by the Contractor of the Contractor Deliverables which may arise as the result of provision by the Authority of the proposed Discretionary GFA (including any proposed changes to Schedule 6 (*Incentivisation*) and Schedule 7 (*Authority Obligations*) or the relevant Option)).

31.8 If information referred to in this Clause 31 (*Authority Performance Failures*) is provided by the Contractor after the dates referred to in this Clause 31 (*Authority Performance Failures*) then the Contractor shall not be entitled to any relief in respect of the period for which the information is delayed.

31.9 The Authority's Representative may (but shall not be obliged to) consider any Contractor notice issued in accordance with Clause 31.7 (*Discretionary GFA*). If the Authority's Representative does consider such notice, he may (but shall not be obliged to) respond to the Contractor by an Authority notice to be issued to the Contractor at any time following receipt of the relevant Contractor notice, such Authority notice (if issued by the Authority's Representative) shall:

31.9.1 require further information relating to the subject matter of the notice and/or invite the Contractor to discuss the proposal further at a time and place convenient to the Authority's Representative; and

31.9.2 identify any additional contractual and/or other provisions which the Authority requires to be incorporated into the Contract as a condition of providing the proposed Discretionary GFA; or

31.9.3 confirm that the Authority does not wish to provide the proposed Discretionary GFA.

31.10 The Contractor confirms that:

31.10.1 subject to Clause 31.10.2, Clauses 59.1, 59.2, 59.4 59.8 (other than the reference to such Clause being subject to Clause 59.11), 59.9, 59.12, 59.13, 59.14 and 59.15 (*Issued Property*), Clause 60 (*Accounting for property of the Authority*), Clause 62.2 (*Transport*), shall (as a minimum) apply to any Discretionary GFA which is provided by the Authority to the Contractor following a request pursuant to this Clause 31.7 (*Discretionary GFA*) and Clauses 59.3, 59.5, 59.6, 59.7, 59.10, 59.11 (*Issued Property*) shall not apply to any such Discretionary GFA;

31.10.2 prior to providing any proposed Discretionary GFA:

(i) where any amendments to Clauses 59.1, 59.2, 59.4, 59.8 59.9, 59.12, 59.13, 59.14 and 59.15 (*Issued Property*), Clause 60 (*Accounting for property of the Authority*), Clause 62.2 (*Transport*) (each as referred to in Clause 31.10.1 (*Discretionary GFA*)) are

required by the Authority and/or where any additional contractual provisions are required by the Authority following or subsequent to the matters contemplated in Clauses 31.9.1 and 31.9.2 (*Discretionary GFA*), such amendments and/or additional contractual provisions shall be incorporated into this Contract by means of a Contractor Change Notice (provided always that the Authority subsequently agrees to such Contractor Change Notice) to be issued by the Contractor within a reasonable period following receipt of the Authority's notice and/or conclusion of the discussions referred to in Clauses 31.9.1 and 31.9.2 (*Discretionary GFA*) and the provisions of Schedule 11 (*Change Procedure*) shall apply; and

(ii) where no amendments or additional contractual provisions are required by the Authority as contemplated in Clause 31.10.2(i) above or after a Change, when the procedures outlined in Clause 31.10.2(i) above have been followed, the relevant proposed Discretionary GFA shall be set out in the table forming Part 3 (*Discretionary GFA*) to Schedule 7 (*Authority Obligations*) or the relevant Option, identifying:

(A) the nature of the Discretionary GFA;

(B) the date the Discretionary GFA is required by the Contractor and/or the Sub-Contractor;

(C) the period the Contractor and/or the Sub-Contractor requires the Discretionary GFA;

(D) any matters relating to the use by the Contractor and/or the Sub-Contractor of the Discretionary GFA; and

(E) any additional matters relating to the Discretionary GFA as may be agreed by the Parties (including any packaging or delivery instructions),

and the provisions of Clauses 31.12 and 31.13 (*Discretionary GFA*) and Clause 32.1.5(iii) (*Indemnity and Liabilities*) shall apply.

31.11 Notwithstanding any agreement between the Parties as to the period during which the Contractor and/or any Sub-Contractor may have use of any Discretionary GFA, the Authority's Representative may require any Discretionary GFA to be returned to the Authority or delivered to any Third Party at any place within the United Kingdom by notice in writing to the Contractor's Representative and the Contractor shall return or deliver such Discretionary GFA in accordance with any requirements set out in the notice and within three (3) Working Days of receipt of such notice (and the provisions of Clause 59.14 (*Issued Property*) shall apply to the return of the Discretionary GFA).

31.12 The Authority does not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any Discretionary GFA which it makes available to the Contractor and neither the Authority nor any of their agents or employees shall be liable to the Contractor in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of:

31.12.1 any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in any Discretionary GFA which it provides to the Contractor; or

31.12.2 the provision by the Authority of any Discretionary GFA and/or any requirement of the Authority for the Contractor to return any Discretionary GFA earlier than previously agreed by the Parties (in accordance with Clause 31.12 (*Discretionary GFA*)) and/or any failure to make available to the Contractor any Discretionary GFA (whether or not the provision of the Discretionary GFA was the subject of a Change).

31.13 Neither the provision by the Authority of any Discretionary GFA nor failure by the Authority to provide any Discretionary GFA shall:

31.13.1 give the Contractor any right under this Contract to an extension of time or additional payment or damages or any other relief or remedy whatsoever against the Authority;

31.13.2 give rise to a GFA Failure (other than to the extent that the GFA Failure is a direct result of the Authority failing to comply with its obligations in Clause 10.3 (*Necessary Consents*) and where the Contractor has fully satisfied its obligations in Clause 10.1.2 (*Necessary Consents*));

31.13.3 affect, modify, reduce or extinguish either the obligations of the Contractor under this Contract or the rights or remedies of the Authority under this Contract; or

31.13.4 subject to Clauses 31.7.5 and 31.9.2 (*Discretionary GFA*), be taken to amend, add to, delete or waive any term or condition of this Contract.

32 Indemnity and Liabilities

32.1 The Contractor shall, subject to Clauses 32.2 and 32.3 (*Indemnity and Liabilities*), be responsible for and release and indemnify the Authority and its employees, agents and contractors from and against all Losses which are suffered or incurred by the Authority (and/or its employees, agents and/or contractors) arising out of or in connection with:

32.1.1 death or personal injury;

32.1.2 breach of statutory duty applicable to this Contract;

32.1.3 Third Party actions, claims, and/or demands including costs, charges and expenses (including legal expenses on a standard basis),

which arise out of or in consequence of the default or non-performance by the Contractor of any of its obligations under this Contract or the negligent act or omission or wilful misconduct of the Contractor or its Sub-Contractors, or the presence on any Other Contractor's Premises of the Contractor or any Contractor Related Party, save to the extent that such liability arises as a result of the default or non-performance by the Authority of any of its obligations under this Contract or the negligent act or omission or wilful misconduct of the Authority or its employees, agents or contractors (excluding the Contractor and any Contractor Related Party);

32.1.4 any contract with any Third Party entered into (or proposed to be entered into) by the Authority and/or any procurements and/or other activities

undertaken by or on behalf of the Authority, in any case, arising out of or in connection with this Contract, the LE TacCIS Equipment Portfolio and/or the MORPHEUS Programme, in each case during or after the Contract Period, including:

(i) a failure to provide all required and relevant information, advice, data, documents and/or other items and/or to carry out and complete any other required activity by the time specified and/or referred to in this Contract;

(ii) Not Used;

(iii) Not Used;

(iv) any event, matter or circumstance arising out of or in connection with the content and/or performance of any Contractor Deliverable (including in connection with a contract and/or procurement and/or other event, matter and/or circumstance); and/or

(v) any work and/or additional work required to be undertaken by the Authority and/or any Third Party entering into and/or proposing to enter into any such contract and/or procurement,

which arise out of or in consequence of the performance or non-performance by the Contractor of any of its obligations under this Contract or the negligent act or omission or wilful misconduct of the Contractor or its Sub-Contractors, save to the extent that such liability arises as a result of:

(A) the default or non-performance by the Authority of any of its obligations under this Contract or the acts or omissions of any Third Party (which is not at the time of such act or omission a Sub-Contractor); or

(B) the negligent act or omission or wilful misconduct of the Authority or its employees, agents or contractors (excluding the Contractor and any Contractor Related Party),

in each case where such default, non-performance, negligent act or omission or wilful misconduct was not directly or indirectly caused by any failure of the Contractor to comply with its obligations under this Contract;

32.1.5 any:

(i) breach of the warranties and representations contained at Clauses 5.1.13 to 5.1.21 (inclusive) (*Contractor Warranties*) and/or Clauses 5.2.5 and/or 5.2.6 (*Contractor Warranties*);

(ii) failure of the Contractor to comply with its obligations in Clause 72 (*Exit Plan*) and/or Clause 74 (*Continuing Assistance*) and/or Clause 59.8 (*Custody*); and/or

(iii) provision by the Authority to the Contractor of Discretionary GFA; and

32.1.6 any claim made against the Authority by a Third Party for death, personal injury or damage to property arising out of or in connection with defective products, to the extent that the defect in the product is attributable to the acts or omissions of the Contractor, its employees or agents.

32.2 Except where otherwise expressly stated in this Contract, nothing contained in this Contract shall affect any liability the Contractor may have to a Third Party arising out of its default, performance or non-performance or its negligent act or omission or wilful misconduct and shall not be construed as an indemnity by the Authority against any claims originating with Third Parties, provided that if a claim is raised directly against the Authority but in respect of which the Authority is entitled to an indemnity from the Contractor, then the Authority shall, subject to Clauses 32.2.1 to 32.2.4 (*Indemnity and Liabilities*) below, allow the Contractor to have conduct of the claim at its own cost provided that the Contractor:

32.2.1 upon receipt by the Contractor of written notice and details of the claim from the Authority, gives reasonable security to the Authority for any costs or liability arising out of the conduct of the claim by the Contractor;

32.2.2 consults with and keeps the Authority reasonably informed of the conduct of the claim;

32.2.3 does not settle or compromise or prejudice the defence to any such claim without the prior consent of the Authority (not to be unreasonably withheld or delayed); and

32.2.4 does not bring the name of the Authority into disrepute in any way in its conduct of the action,

and provided always that notwithstanding the foregoing the Authority shall at all times have the right to refuse to allow the Contractor to have conduct of the claim if the Authority considers that conduct of the claim should be retained by the Authority on grounds of national interest including national security. In the event that the Authority exercises such right to refuse to refuse to allow the Contractor to have the conduct of the claim, it shall notify the Contractor accordingly.

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

32.4 The Contractor acknowledges that, without prejudice to the provisions of Clause 32.1 (*Indemnity and Liabilities*), the Authority may, amongst other things, recover from the Contractor the following Losses incurred by the Authority to the extent that they arise as a result of the default or non-performance by the Contractor of any of its obligations under this Contract or the negligent act or omission or wilful misconduct of the Contractor or its Sub-Contractors ("**Default**"):

32.4.1 any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;

32.4.2 any wasted expenditure or charges;

32.4.3 the additional cost of procuring Replacement Contractor Deliverables (and/or the whole or part (as the case may be) of such Replacement Contractor Deliverables):

(i) during and for the remainder of what would have been (as at the date of the Termination Notice) the term of this Contract had it not been terminated pursuant to Clause 69 (*Termination for Contractor Default*); and

(ii) during the period after the Termination Date in respect of which the exercise of any Option would have extended the term of this Contract (and assuming for the purposes of this Clause 32.4.3 (*Indemnity and Liabilities*), that the Authority has exercised all of the Options referred to in Clauses 4.2 to 4.12 (inclusive) (*Contract Period and Options*)),

which shall include any incremental costs associated with such Replacement Contractor Deliverables which would have been payable under this Contract;

32.4.4 any compensation or interest paid to a Third Party by the Authority; and

32.4.5 any fine or penalty incurred by the Authority pursuant to law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty, provided that all of the above in this Clause 32.4.5 are substantiated to the satisfaction of the Contractor save, in all cases, to the extent that such liability arises as a result of:

(i) the default or non-performance by the Authority of any of its obligations under the Contract or the acts or omissions of any Third Party (which is not at the time of such act or omission a Sub-Contractor); or

(ii) the negligent act or omission or wilful misconduct of the Authority or its employees, agents or contractors (excluding the Contractor and any Contractor Related Party).

33 Insurances

33.1 Without prejudice to its obligation to indemnify or otherwise be liable to the Authority under this Contract, the Contractor shall for the periods specified in Schedule 13 (*Required Insurances*) take out and maintain, or procure the taking out and maintenance of insurances in accordance with the requirements specified in Schedule 13 (*Required Insurances*) and any other insurances required by law (together the "**Required Insurances**"). The Contractor shall ensure that the Required Insurances are effective in each case not later than the date on which the relevant risk commences.

33.2 The Required Insurances shall be taken out and maintained with insurers who are of good financial standing and of good repute in the international insurance market.

33.3 Where specified in Schedule 13 (*Required Insurances*), the Contractor shall ensure that the relevant policy of insurance shall contain an indemnity to principals clause or additional insureds equivalent, under which the Authority shall be indemnified in respect of claims made against the Authority arising from death or bodily injury or third

party property damage, and for which the Contractor is legally liable in respect of this Contract.

33.4 The Contractor shall not (and the Contractor shall procure that none of its Sub-Contractors of any tier shall not) take any action or fail to take any action or, insofar as is reasonably within its power, permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Required Insurances.

33.5 If the Contractor is in breach of Clause 33.1 (*Insurances*), the Authority may elect, but shall not be obliged, to purchase any insurance which the Contractor is required to maintain pursuant to this Contract but has failed to maintain in full force and effect, and the Authority shall be entitled to recover the premium and other reasonable costs incurred in connection therewith as a debt due from the Contractor.

33.6 The Contractor shall, upon the date of this Contract and within fifteen (15) Working 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 full force and effect and meet the requirements of this Clause 33 (*Insurances*) and Schedule 13 (*Required Insurances*). The supply to the Authority of any evidence of insurance cover in compliance with the requirements of this Clause 33.6 (*Insurances*) shall not imply acceptance by the Authority that the extent of insurance cover is sufficient or that the terms and conditions thereof are satisfactory, in either case, for the purposes of this Contract nor be a waiver of the Contractor's liability under this Contract.

33.7 The Contractor shall notify the Authority at least ten (10) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Required Insurances.

33.8 The Contractor shall promptly notify to insurers any matter arising from, or in relation to, the Contractor Deliverables and/or this Contract for which it may be entitled to claim under any of the Required Insurances. In the event that the Authority receives a claim relating to the Contractor Deliverables or this Contract, the Contractor shall co-operate with the Authority and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.

33.9 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:

33.9.1 incident or circumstances which may give rise to a claim amounting to or in excess of **REDACTED** in connection with this Contract and the Required Insurances; and

33.9.2 if the incident or circumstances may give rise to any claim in connection with this Contract which may be in excess of the limits of Required Insurances in Schedule 13 (*Required Insurances*).

33.10 The Contractor shall maintain a written register of all Losses which result in a claim under the Required Insurances in connection with this Contract and shall allow the Authority to review such register at any time.

33.11 Where any Required Insurance requires payment of a premium, the Contractor shall be liable for such premium.

33.12 Where any Required Insurance referred to in Schedule 13 (*Required Insurances*) is subject to an excess or deductible, below which the indemnity from insurers is excluded, the Contractor shall be liable for such excess or deductible which would otherwise be insured but for the excess or deductible. The Contractor shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Required Insurances whether under the terms of this Contract or otherwise.

33.13 Not Used.

33.14 Without prejudice to its obligations in Clause 3.2.1(iii) (*The Contractor's Obligations*), the Contractor shall discharge in full all duties and obligations in respect of the Insurance Act 2015 (including complying with the duty of fair presentation to insurers and taking the actions needed to protect the Authority's separate interests) at all times, including when placing, renewing, procuring, maintaining or amending any insurances required by the Contract and including in circumstances where the Contractor is required to name the Authority on any such insurances to protect the Authority's separate and distinct interests.

34 States of Emergency, Periods of Tension, Transition to War and Hostilities

34.1 The Contractor shall continue to provide the Contractor Deliverables required in peace, during any state of emergency (whether or not involving hostilities), periods of tension, in transition to war, during hostilities and in any period of surge. The Contractor shall provide all the Contractor Deliverables throughout such period of the state of emergency, tension, transition to war or hostility unless directed otherwise by the Authority. The Authority shall advise the Contractor of any changes or additions to the Contract requirements and the provisions of Clause 75 (*Change*) shall apply, provided that the agreement or determination of any Change pursuant to Clause 75 (*Change*) shall not relieve the Contractor of its obligation to comply with the Authority's directions under this Clause 34 (*States of Emergency, Periods of Tension, Transition to War and Hostilities*) in the period up to the agreement or determination of such Change.

35 Force Majeure

35.1 Neither Party shall be in breach of this Contract, nor liable for late or non-performance of any of its obligations under this Contract, if such delay or failure results from a "Force Majeure Event". For the purposes of this Contract, a Force Majeure Event is defined as one of the following:

35.1.1 war, civil war, armed conflict or terrorism;

35.1.2 nuclear, chemical or biological contamination, unless the source or cause of the contamination is as a result of the acts of or breaches by the Party claiming relief;

35.1.3 pressure waves caused by devices travelling at supersonic speeds;

35.1.4 national strike (subject to the affected Party being able to demonstrate that any such strike is relevant to this Contract, is outside that Party's and that Party is unable to mitigate against it (including, in the case of the Contractor, the Contractor demonstrating the same in respect of any Sub-Contractor (where applicable),

and which directly causes the Party claiming relief to be unable to comply with all or a material part of its obligations under this Contract.

35.2 The affected Party shall immediately notify the other Party in writing on the occurrence of a Force Majeure Event, including details of the Force Majeure Event, its effect on the that Party's obligations under this Contract, and the actions proposed to mitigate its effect.

35.3 Subject to Clause 35.4 (*Force Majeure*) below, the affected Party shall be entitled to an appropriate extension of time for performing such obligations, provided always that such Party has used, to the satisfaction of the other Party, all reasonable endeavours, both to mitigate the effects of the Force Majeure Event, and to facilitate the continued performance of its obligations under this Contract.

35.4 The maximum extension of time granted under this Clause 35.4 (*Force Majeure*) shall be a period of two (2) months after which time the Authority may, on giving written notice to the Contractor, terminate those elements of the Contract so effected by the Force Majeure Event with immediate effect.

35.5 Where Clause 35.4 (*Force Majeure*) applies and the Authority has terminated the Contract, the Authority shall have the option to purchase from the Contractor the items referred to in Clause 71.9A to C (inclusive) (*Termination for Force Majeure*) and/or sufficient additional information, documents and data together with the right to use the same and all relevant IPR (including Contractor Background IPR).

36 Authority Step-In

Grounds for step-in

36.1 Subject to Clause 36.2 (*Grounds for step-in*):

36.1.1 if the Authority reasonably believes that it needs to take action in connection with the Transition Deliverables and/or Contractor Deliverables (as the case may be):

(i) because a serious risk exists to the health or safety of persons or property or to the environment;

(ii) to discharge a statutory duty;

(iii) on the occurrence of an urgent operational requirement;

(iv) because a breach by the Contractor would result in a significant interruption in the delivery of the whole or part of the Contractor Deliverables; or

(v) because a breach by the Contractor and/or the occurrence or subsistence of certain circumstances is reasonably likely to:

(A) cause the Authority to be in breach of its obligations under any MORPHEUS Contract;

(B) result in a delay to the delivery of the MORPHEUS Programme (or any part of the MORPHEUS Programme) and/or the MORPHEUS System; and/or

36.1.2 the occurrence of any of the circumstances set out in paragraphs 15A.1.1(ii), 15A.1.2 or 15A.1.3 of Schedule 6 (*Incentivisation*); or

36.1.3 the occurrence of any of the circumstances set out at paragraphs 4.1.1(ii), 4.1.2, 4.1.3, 6.1.1(ii), 6.1.2 or 6.1.3 of Schedule 10 (*Transition*),

then the Authority shall be entitled to take action in accordance with this Clause 36 (*Authority Step-In*).

36.2 Save in the case of emergency, the Authority shall give the Contractor reasonable prior written notice of its intention to take action pursuant to Clause 36.1 (*Grounds for step-in*), and the Parties shall discuss the relevant circumstances in which the Authority and/or any Third Party acting on the instruction of the Authority, intends to take action and perform the Contractor Deliverables and the level of assistance reasonably required by the Authority from the Contractor.

Procedure for Authority step-in

36.3 If Clause 36.1 (*Grounds for step-in*) applies and the Authority wishes to take action, the Authority's Representative shall notify (the "**Step-In Notice**") the Contractor's Representative in writing of the following:

36.3.1 the action it wishes to take and whether the Authority requires any Third Party may be required to carry out and/or assist the Authority in taking such action;

36.3.2 the reason for such action;

36.3.3 the date it wishes such action to commence;

36.3.4 the time period which it believes shall be necessary for such action; and

36.3.5 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.

Following service of the Step-In Notice and without prejudice to Clause 36.2 (*Grounds for step-in*), the Contractor may make representations to the Authority regarding the contents of such notice. The Authority shall take such action as notified under Clause 36.3 (*Procedure for Authority step-in*) (the "**Required Action**") and the Contractor shall give such reasonable assistance to the Authority while it is taking the Required Action.

Effects of step-in without the Contractor's Breach

36.4 If the Contractor is not in breach of its obligations under this Contract and the Authority exercises its right to take action in connection with the Contractor Deliverables pursuant to Clause 36.1 (*Grounds for step-in*):

36.4.1 then for so long as and to the extent that the Required Action and the actions under the Step-Out Plan (as defined in Clause 36.7.2 (*Authority Step-Out*)) are taken and this prevents the Contractor from providing the Contractor Deliverables, the Contractor shall be relieved from its obligations to provide such part of the Contractor Deliverables as the Authority is undertaking and any element of the Contractor Deliverables which the Contractor is unable to provide as a direct result of the Authority taking the Required Action; and

36.4.2 in respect of the period in which the Authority is taking the Required Action and the actions under the Step-Out Plan, and provided that the Contractor provides the Authority with reasonable assistance (such assistance to be at the expense of the Authority to the extent incremental costs are incurred), the Contract Price due from the Authority to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations and providing the Contractor Deliverables affected by the Required Action in full over that period and in addition the amount of any incremental costs incurred and the Authority shall continue to pay the Contractor in accordance with the payment plan as detailed in Schedule 9 (*Pricing and Payment*).

Effects of step-in following the Contractor's breach

36.5 If the Contractor is in breach of its obligations under this Contract and the Authority exercises its right to take action in connection with the Contractor Deliverables pursuant to Clause 36.1 (*Grounds for step-in*):

36.5.1 then for so long as and to the extent that the Required Action is taken, and this prevents the Contractor from providing the Contractor Deliverables, the Contractor shall be relieved from its obligations to provide such part of the Contractor Deliverables as the Authority is undertaking and any element of the Contractor Deliverables which the Contractor is unable to provide as a direct result of the Authority taking the Required Action; and

36.5.2 in respect of the period in which the Authority is taking the Required Action, the Contract Price due from the Authority to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations and providing the Contractor Deliverables affected by the Required Action in full over that period and the Authority shall continue to pay the Contractor in accordance with the payment plan as detailed in Schedule 9 (*Pricing and Payment*) less an amount equal to the Authority's reasonable and properly incurred costs of taking the Required Action.

Authority step-out

36.6 The Authority's Representative shall provide the Contractor's Representative with reasonable notice of the Authority's intention to cease the performance of the Required Action ("**Step-Out**") and the date on which it intends to do so.

36.7 On receipt of the notice referred to in Clause 36.6 (*Authority step-out*), the Parties shall jointly agree:

36.7.1 the method by which the Authority shall Step-Out; and

36.7.2 a step-out plan (a "**Step-Out Plan**") which shall include the actual date that the Authority shall step out and the Contractor shall resume performance of the Contractor Deliverables.

36.8 Subject to Clause 36.7 (*Authority step-out*), on the date on which the obligations contained in the Step-Out Plan have been achieved:

36.8.1 the Authority will be released from all of its obligations and liabilities in relation to the Required Action and the Step-Out Plan other than its

obligations to pay the Contractor as required in this Clause 36 (*Authority step-in*); and

36.8.2 the Contractor shall resume all or any part of the Contractor Deliverables which was the subject of the Required Action.

PART 6 - INFORMATION PROVISIONS

37 Authority Data

37.1 For the purposes of this Clause 37 (*Authority Data*), "**Authority Data**" means:

37.1.1 the data, text, drawings, diagrams or images (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and:

(i) which are supplied to the Contractor by or on behalf of the Authority; or

(ii) which the Contractor is required to generate, process, store or transmit and which are material to the performance of this Contract; or

37.1.2 any Personal Data for which the Authority is the Controller,

provided that, for the avoidance of doubt, the term Authority Data does not imply any ownership rights in any Authority Data pursuant to this Clause 37 (*Authority Data*).

37.2 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.

37.3 The Contractor shall not store, copy, disclose, modify, adapt or use the Authority Data except as necessary for the performance by the Contractor of its obligations under this Contract (and in accordance with the relevant licence rights set out in Schedule 14 (*IPR*)) or as otherwise expressly authorised in writing by the Authority.

37.4 To the extent that Authority Data is held and/or processed by the Contractor, the Contractor shall supply that Authority Data to the Authority as requested by the Authority in the format reasonably specified by the Authority from time to time and/or specified in the Statement of Requirements (in each case at no additional cost to the Authority).

37.5 The Contractor shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data.

37.6 The Contractor shall perform secure back-ups of all electronic Authority Data held on the Contractor's IT systems and shall ensure that up-to-date back-ups are stored in accordance with Good Industry Practice and the Business Continuity Plans and the Contractor shall procure (as reasonably required by the Authority) that the Sub-Contractors perform secure back-ups of all electronic Authority Data held on the Sub-Contractor's IT systems. The Contractor shall ensure that such back-ups are made available to the Authority (or to such other person as the Authority may direct) at all times upon request and are delivered to the Authority at no less than six (6) monthly intervals (or such other intervals as may be agreed by the Parties in writing).

37.7 The Contractor shall ensure that any electronic system on which the Contractor holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy.

37.8 If the Authority Data is corrupted, lost or sufficiently degraded so as to be unusable as a result of the Contractor's failure to fulfil its obligations under this Contract and/or exercise reasonable skill and care, the Authority may:

37.8.1 require the Contractor (at the Contractor's expense) to restore or procure the restoration of Authority Data and the Contractor shall do so as soon as practicable but not later than five (5) Working Days from the date of receipt of the Authority's notice; and/or

37.8.2 itself restore or procure the restoration of Authority Data in any manner reasonably available to it, and shall be repaid by the Contractor any reasonable expenses incurred directly in doing so.

37.9 If at any time the Contractor suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.

Malicious Software

37.10 The Contractor shall, as an enduring obligation throughout the term of this Contract and without prejudice to its obligations in Schedule 2 (*Statement of Requirements*):

37.10.1 use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus vendor (unless otherwise agreed in writing between the Parties) to check for, contain the spread of, and minimise the impact of any Malicious Software in the Contractor System; and

37.10.2 use all reasonable endeavours to ensure that neither it nor any Contractor Related Party introduces any Malicious Software into the Authority System.

37.11 Notwithstanding Clause 37.10 (*Malicious Software*), if Malicious Software is found, the Parties shall cooperate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any losses.

37.12 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 37.11 (*Malicious Software*) shall be borne by the Parties as follows:

37.12.1 by the Contractor where such Malicious Software has been introduced:

(i) by the Contractor and/or any Contractor Related Party, including where such Malicious Software originates from the Contractor System, any Third Party software supplied by the Contractor or the Authority Data (whilst the Authority Data was under the control of the Contractor) unless the Contractor can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Authority when provided to the Contractor; or

(ii) by a Third Party as a result of a security vulnerability in the Contractor System or any Third Party software supplied by the

Contractor and/or a failure by the Contractor to comply with Clause 37.10 (*Malicious Software*); and

37.12.2 otherwise by the Authority.

38 Authority Disclosed Data

38.1 Subject to Clauses 38.2 and 38.4 (*Authority Disclosed Data*), the Authority does not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any data disclosed by the Authority prior to and/or after the Effective Date and neither the Authority nor any of their agents or employees shall be liable to the Contractor in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of:

38.1.1 any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in any data disclosed by the Authority prior to and/or after the Effective Date; or

38.1.2 any failure to make available to the Contractor prior to and/or after the Effective Date any materials, documents, drawings, plans or other information relating to this Contract.

38.2 The Contractor acknowledges that any data (including all information provided by the Authority to the Contractor for the purposes of assisting the Contractor to carry out the Contractor Deliverables or providing contextual or other information relating to the Contractor Deliverables and/or the MORPHEUS Programme and/or other related contracts and procurements) is data for the purposes of this Clause 38 (*Authority Disclosed Data*) and, for the avoidance of doubt, in addition to the restriction of liability of the Authority as set out in this Clause 38 (*Authority Disclosed Data*), the Contractor shall, subject to Clause 38.4 (*Authority Disclosed Data*), not be entitled to any relief from its obligations under this Contract (including relief otherwise permitted under Clause 31 (*Authority Performance Failures*)) in the event that any of such data disclosed by the Authority is as described in Clause 38.1.1 (*Authority Disclosed Data*) and/or is not made available to the Contractor as described in Clause 38.1.2 (*Authority Disclosed Data*).

38.3 Nothing in this Clause 38 (*Authority Disclosed Data*) 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 and/or after the Effective Date.

38.4 Where any data (as described in Clause 38.2 (*Authority Disclosed Data*)) is to be supplied by the Authority as GFA and where such data is expressly identified in Schedule 7 (*Authority Obligations*) as data which the Contractor is permitted to rely on for the purposes of this Clause 38.4 (*Authority Disclosed Data*), a failure by the Authority to supply such data or any inaccuracy, omission, unfitness for any purpose or inadequacy of such data may be a GFA Failure and the provisions of Clause 31 (*Authority Performance Failures*) shall apply and any remedies of the Contractor which are agreed or determined are due to the Contractor in accordance with Clause 31 (*Authority Performance Failures*) shall be the Contractor's only remedies relating to the provision and/or content of and/or non-provision of such data.

39 The Contractor's Records

39.1 The Contractor shall (and shall procure that its Sub-Contractors shall) at all times, and in accordance with Good Industry Practice, maintain all records in the possession, custody or control of the Contractor (or the Sub-Contractor (as the case may be)) relating to this Contract and the provision of the Contractor Deliverables (without prejudice to any other express provisions in this Contract relating to such information):

39.1.1 of all incidents relating to health, safety, the environment and security which occur during the Contract Period to the extent that the Authority is not legally obliged to do so as owner of the Authority Sites;

39.1.2 of all claims made by a Third Party against either Party that are submitted to the Contractor and/or a Sub-Contractor in connection with this Contract;

39.1.3 of all claims made under any policy of insurance that the Contractor is required to maintain pursuant to Clause 33 (*Insurances*);

39.1.4 of all Disputes dealt with pursuant to the Dispute Resolution Procedure that arise during the Contract Period;

39.1.5 of all certification and/or authorised documentation relating to the attainment of Necessary Consents, Third Party quality standards and/or evidence of compliance with any specified Def Stan requirements;

39.1.6 relating to hazardous substances pursuant to Clause 57 (*Supply of Hazard Data)*; and

39.1.7 any of the Contractor owned Intellectual Property Rights, the Contractor's use of Authority owned Intellectual Property Rights and records relating to applicable Third Party Intellectual Property Rights,

(the "**Records**") and without prejudice to Clause 41 (*Disclosure of Information*) and Clause 46 (*Intellectual Property Rights*) make the Records available to be examined and if necessary, copied, by or on behalf of the Authority, as the Authority may reasonably require when requested upon reasonable notice.

39.2 The Authority shall be entitled to disclose the Records set out in Clause 39.1 (*The Contractor's Records*) to potential Follow-On Contractors as the Authority may reasonably require.

39.3 The Records shall be retained for a period of at least six (6) years from:

39.3.1 the end of the Contract Period; or

39.3.2 the final payment,

whichever occurs latest.

40 Financial Management Information

40.1 The Contractor shall, as a minimum:

40.1.1 report the Financial Management Information to the Authority as detailed in and in the format required in DEFCON 647 (Edition 04/19), Annex A and Annex B;

40.1.2 Not Used;

40.1.3 provide the Financial Management Information to the Authority's Representative:

(i) within twenty (20) Working Days after the Effective Date;

(ii) after a change that exceeds **REDACTED**); and

(iii) on the twenty-fifth (25th) day in each Contract Month or, where the twenty-fifth (25th) day in a Contract Month is not a Working Day, the first Working Day preceding the twenty-fifth (25th) day in such Contract Month; and

40.1.4 retain the Financial Management Information and supporting financial records in accordance with Clause 39.3 (*The Contractor's Records*).

41 Disclosure of Information

41.1 Subject to Clauses 41.4 to 41.8 (*Disclosure of Information*), each Party:

41.1.1 shall treat in confidence all Information it receives from the other;

41.1.2 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 this Contract;

41.1.3 shall not use any of that Information otherwise than for the purpose of this Contract; and

41.1.4 shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under this Contract.

41.2 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 this Contract:

41.2.1 is disclosed to its Employees and Sub-Contractors, only to the extent necessary for the performance of this Contract; and

41.2.2 is treated in confidence by them and not disclosed except with prior written consent or used otherwise than for the purpose of performing work or having work performed for the Authority under this Contract or any Sub-Contract.

41.3 The Contractor shall ensure that its Employees and Sub-Contractors are aware of its arrangements for discharging the obligations at Clauses 41.1 and 41.2 (*Disclosure of Information)* before they receive Information and take such steps as may be reasonably practical to enforce such arrangements.

41.4 Clauses 41.1 and 41.2 (*Disclosure of Information)* shall not apply to any Information to the extent that either Party:

41.4.1 exercises rights of use or disclosure granted otherwise than in consequence of, or under, this Contract;

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

41.4.3 can show:

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

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

(iii) that the Information was received without restriction on further disclosure from a Third Party who lawfully acquired it and who is himself under no obligation restricting its disclosure; or

(iv) from its records that the same information was derived independently of that received under or in connection with this Contract,

provided the relationship to any other Information is not revealed.

41.5 Neither Party shall be in breach of this Clause 41 (*Disclosure of Information)* 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 41 (*Disclosure of Information)*.

41.6 The Authority may disclose the Information:

41.6.1 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 Cabinet Office and/or HM Treasury for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes;

41.6.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

41.6.3 to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate:

(i) in the course of carrying out its public functions; and/or

(ii) in the case of any Contractor Deliverables, to assist any Other Contractor to perform and/or comply with its obligations to the Authority;

41.6.4 on a confidential basis to a professional adviser, consultant or other person engaged by any Central Government Body and/or the Authority (including benchmarking organisation) for any purpose relating to or connected with this Contract;

41.6.5 on a confidential basis for the purpose of the exercise of its rights under this Contract; or

41.6.6 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 this 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 41 (*Disclosure of Information)*.

41.7 Before sharing any Information in accordance with Clause 41.6 (*Disclosure of Information)*, the Authority may redact the Information. Any decision to redact Information made by the Authority shall be final.

41.8 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 FOI Act or the Environmental Information Regulations 2004 ("**the Regulations**"). To the extent permitted by the time for compliance under the FOI Act or the Regulations, the Authority shall consult the Contractor where the Authority is considering the disclosure of Information under the FOI 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 FOI Act or the Regulations is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the FOI Act or the Regulations. For the avoidance of doubt, nothing in this Clause 41.8 (*Disclosure of Information)* shall affect the Contractor's rights at law.

41.9 Nothing in this Clause 41 (*Disclosure of Information)* shall affect the Parties' obligations of confidentiality where information is disclosed orally in confidence.

Controlled Information

41.10 This Clause 41.10 (*Controlled Information*) and Clauses 41.11 to 41.13 (inclusive) (*Controlled Information*) shall apply in respect of any Controlled Information communicated to and/or held by the Contractor, in addition to and notwithstanding Clauses 41.1 to 41.9 (inclusive) (*Disclosure of Information*), or any other confidentiality Clause of this Contract.

41.11 The Contractor shall:

41.11.1 hold the Controlled Information and not use it other than for the purpose of discharging its obligations under this Contract;

41.11.2 not copy the Controlled Information except as strictly necessary for the purpose of discharging its obligations under this Contract;

41.11.3 not disclose the Controlled Information to any Third Party unless so authorised in writing beforehand by the Authority;

41.11.4 protect the Controlled Information diligently against unauthorised access and against loss; and

41.11.5 act diligently to ensure that:

(i) Controlled Information is disclosed to its Employees only to the extent necessary for the purpose of discharging its obligations under this Contract; and

(ii) Employees to whom Controlled Information is disclosed are made aware of and required to comply with the terms of these Clauses 41.10 to 41.13 (inclusive) (*Controlled Information*).

41.12 Where Controlled Information is provided to the Contractor, it shall:

41.12.1 compile a register of that Controlled Information, which shall include an explicit description of the Controlled Information, a record of the number of copies made and a record of all access to the Controlled Information including access to any copies of the Controlled Information;

41.12.2 maintain such register for the duration of this Contract and for two (2) Years following expiry or earlier termination of this Contract in accordance with its terms;

41.12.3 make such register of access available to the Authority upon reasonable notice for inspection and audit for so long as it is required to be maintained under Clause 41.12.2 (*Controlled Information*); and

41.12.4 on expiry or earlier termination of this Contract in accordance with its terms, return to the Authority all original and duplicate copies of the Controlled Information, or else at the Authority's option destroy these copies and provide a certificate of destruction to the Authority.

41.13 Nothing in these Clauses 41.10 to 41.13 (inclusive) (*Controlled Information*) shall diminish or extinguish any right of the Contractor to copy, use or disclose any information that is not Controlled Information to the extent that it can show:

41.13.1 that the information concerned was or has become published or publicly available for use without breach of any provision of this Contract or any other agreement between the Parties;

41.13.2 that such information was already known to it (without restrictions on disclosure or use) prior to receiving it under or in connection with this Contract;

41.13.3 that the information concerned was lawfully provided by a Third Party without restriction on use or further disclosure; or

41.13.4 from its records, that such information was derived independently of the Controlled Information,

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

Publicity and communications with the media

41.14 The Contractor shall not by itself, its Employees or agents (and shall ensure that its Sub-Contractors shall not):

41.14.1 communicate with representatives of the press, television, radio or other communications media on any matter concerning the provision of the Contractor Deliverables or this Contract;

41.14.2 photograph or film in or upon any Authority Sites and/or any Other Contractor's Premises;

41.14.3 erect or exhibit on any part of the Authority Sites and/or any Other Contractor's Premises any signs or trade boards; or

41.14.4 exhibit or attach to any part of the Authority Sites and/or any Other Contractor's Premises any notice or advertisement,

unless:

(i) the Authority has given its prior written consent; or

(ii) as otherwise required to comply with law, provided always that the Contractor shall, to the extent reasonably practicable, notify the Authority in advance (and provide the Authority with a copy) of the relevant communication, sign, notice or material.

42 Not Used

43 Transparency

43.1 Notwithstanding any other term of this Contract, the Contractor understands that the Authority may publish the Transparency Information to the general public. The Contractor shall assist and cooperate with the Authority to enable the Authority to publish the Transparency Information.

43.2 Before publishing the Transparency Information to the general public in accordance with Clause 43.1 (*Transparency*), the Authority shall redact any information that would be exempt from disclosure if it was the subject of a request for information under the FOI Act or the Environmental Information Regulations 2004 ("**the Regulations**"), including the Contractor Commercially Sensitive Information.

43.3 The Authority may consult with the Contractor before redacting any information from the Transparency Information in accordance with Clause 43.2 (*Transparency*). The Contractor acknowledges and accepts that its representations on redactions during consultation may not be determinative and that the decision whether to redact information is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the FOI Act or the Regulations.

43.4 For the avoidance of doubt, nothing in this Clause 42 (*Transparency*) shall affect the Contractor's rights at law.

43.5 Not Used.

44 Accuracy of Information

44.1 The Contractor shall be responsible for the accuracy of all drawings, documentation, information and/or other items supplied to the Authority by the Contractor in connection with the provision of the Contractor Deliverables.

45 Protection of Personal Data

45.1 In this Clause 45, the expressions "**Controller**", "**Data Subject**", "**Personal Data**", "**Personal Data Breach**" and "**Processor**" shall have the same meanings as in Article 4 of the GDPR.

45.2 Data Protection Legislation means:

45.2.1 the General Data Protection Regulation (Regulation (EU) 2016/679);

45.2.2 the Data Protection Act 2018 to the extent that it relates to processing of Personal Data and privacy; and

45.2.3 all applicable laws about the processing of personal data and privacy.

45.3 Both Parties acknowledge that there is no processing of Personal Data associated with or intrinsic to the performance of this Contract. The incidental exchange of Personal Data for the purpose of communication to give effect to this Contract or the business relationship is not considered to be processing of Personal Data by either Party on behalf of the other.

45.4 The Contractor shall notify the Authority promptly if it considers that any of the Authority's instructions obligate the Contractor to take on the role of Processor under the Data Protection Legislation beyond that which is contemplated in Clause 45.3. The Authority agrees that the Contractor shall not be required to provide legal advice to the Authority and that such notification (or absence of notification) by the Contractor will not be construed as legal advice or representation by the Contractor.

45.5 Should this Contract be amended to require the Contractor to process Personal Data as a Processor on behalf of the Authority as a result of Clause 45.4 or otherwise this Contract will be amended to include DEFCON 532B (Edition 04/20) and DEFFORM 532 in accordance with the provisions of Clause 76 (*Amendments to Contract*). Where this Contract is amended to include processing of Personal Data as a Joint Controller, the Parties agree that they shall amend this Contract to include appropriate contractual clauses, including but not limited to clauses dealing with notification in the event of a Personal Data Breach and requests from Data Subjects for access to their Personal Data.

45.6 Notwithstanding Clause 45.3, each Party undertakes to comply with its obligations as Controller under the Data Protection Legislation.

45A Official-Sensitive Security Requirements

45A.1 The Contractor shall protect (including protection from deliberate and/or opportunistic attack) all Information relating to the aspects designated as "OFFICIAL" and "OFFICIAL SENSITIVE" as identified in the Security Aspects Letter in accordance with the security conditions contained at Schedule 25 (*Security Conditions)*.

45A.2 The Contractor shall include the requirements and obligations set out in Clause 45A.1 (*Official-Sensitive Security Requirements*) in any Sub-Contract placed in connection with or for the purposes of this Contract which requires disclosure of OFFICIAL-SENSITIVE Information to the Sub-Contractor or under which any Information relating to aspects designated as OFFICIAL-SENSITIVE is created by the Sub-Contractor. The Contractor shall also include in the Sub-Contract a requirement for the Sub-Contractor to flow the requirements of this Clause 45A (*Official-Sensitive Security Requirements*) to its Sub-Contractors and through all levels of the supply chain to the lowest level where any OFFICIAL-SENSITIVE Information is handled.

45B <u>Cyber</u>

Definitions

45B.1 In this Clause 45B (*Cyber*), the following words and expressions shall have the meanings given to them below, except where the context requires a different meaning:

45B.1.1 "**Associated Company**" means:

(a) any associated company of the Contractor from time to time within the meaning of Section 449 of the Corporate Tax Act 2010 or any subordinate legislation; and

(b) any parent undertaking or subsidiary undertaking of the Contractor from time to time within the meaning of section 1162 Companies Act 2006 and it is further agreed that where the ownership of shares in any such undertaking have been pledged or transferred to a Third Party by way of security, the original parent shall still be considered a member of the subsidiary undertaking;

45B.1.2 "**Cyber Risk Level**" means the level of Cyber Risk relating to this Contract and/or any Sub-Contract assessed in accordance with the Cyber Security Model;

45B.1.3 "**Cyber Security Implementation Plan**" means the plan referred to in Clause 45B.3 (*Contractor Obligations*), including but not limited to any risk-balance case and mitigation measures required by the Authority;

45B.1.4 "**Cyber Security Incident**" means an event, act or omission which gives rise or may give rise to:

(a) unauthorised access to an information system or electronic communications network;

(b) disruption or change of the operation (including but not limited to takeover of control) of an information system or electronic communications network;

(c) destruction, damage, deletion or the change of MOD Identifiable Information residing in an information system or electronic communications network;

(d) removal or limiting the possibility to use MOD Identifiable Information residing in an information system or electronic communications network; or

(e) the appropriation, publication, dissemination or any other use of non- public MOD Identifiable Information by persons unauthorised to do so;

45B.1.5 "**Cyber Security Instructions**" means Def Stan 05-138, together with any relevant ISN and specific security instructions relating to this Contract issued by the Authority to the Contractor;

45B.1.6 "**Cyber Security Model**" or "**CSM**" means the process by which the Authority ensures that MOD Identifiable Information is adequately protected from a Cyber Security Incident and includes the CSM Risk Assessment Process, Def Stan 05-138 and the CSM Supplier Assurance Questionnaire;

45B.1.7 "**CSM Risk Assessment Process**" means the risk assessment process which forms part of the Cyber Security Model and is used to measure the Cyber Risk Level for this Contract and any Sub-Contract;

45B.1.8 "**CSM Supplier Assurance Questionnaire**" means the supplier assessment questionnaire which forms part of the Cyber Security Model and is to be used by the Contractor to demonstrate compliance with this Clause 45B (*Cyber*);

45B.1.9 "**Data**" means any data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media.

45B.1.10 "**Def Stan 05-138**" means the Defence Standard 05-138 as amended or replaced from time to time;

45B.1.11 "**Electronic Information**" means all information generated, processed, transferred or otherwise dealt with under or in connection with this Contract, including but not limited to Data, recorded or preserved on any information system or electronic communications network;

45B.1.12 "**Good Industry Practice**" means in relation to any undertaking and any circumstances, the exercise of skill, diligence, prudence, foresight and judgment and the making of any expenditure that would reasonably be expected from a skilled person in the same type of undertaking under the same or similar circumstances;

45B.1.13 "**ISN**" means Industry Security Notices issued by the Authority to the Contractor whether directly or by issue on the gov.uk website at: https://www.gov.uk/government/publications/industry-security-notices-isns;

45B.1.14 "**JSyCC WARP**" means the Joint Security Co-ordination Centre MOD Defence Industry Warning, Advice and Reporting Point or any successor body notified by way of ISN;

45B.1.15 "**MOD Identifiable Information**" means all Electronic Information which is attributed to or could identify an existing or proposed Authority capability, defence activities or personnel and which the Authority requires to be protected against loss, misuse, corruption, alteration and unauthorised disclosure;

45B.1.16 "**NSA/DSA**" means, as appropriate, the National or Designated Security Authority of the Contractor that is responsible for the oversight of the security requirements to be applied by the Contractor and for ensuring compliance with applicable national security regulations;

45B.1.17 "**Sites**" means any premises from which Contractor Deliverables are provided in connection with this Contract or from which the Contractor or any relevant Sub-Contractor manages, organises or otherwise directs the provision or the use of the Contractor Deliverables and/or any sites from which the Contractor or any relevant Sub-Contractor generates, processes, stores or transmits MOD Identifiable Information in relation to this Contract;

45B.1.18 "**Sub-Contract**" means any Sub-Contract at any level of the supply chain, whether awarded directly by the Contractor or indirectly by any lower tier Sub-Contractor or Associated Company, which is entered into as a consequence of or in connection with this Contract;

45B.1.19 "**Sub-Contractor**" means a Sub-Contractor of the Contractor or any Associated Company whether a direct Sub-Contractor or at any lower level of the supply chain who provides any Contractor Deliverables in connection with this Contract;

45B.1.20 "**Supplier Cyber Protection Service**" means the CSM Risk Assessment Process and CSM Supplier Assurance Questionnaire.

Authority obligations

45B.2 The Authority shall:

45B.2.1 determine the Cyber Risk Level appropriate to this Contract and, where the Contractor has not already been notified of the Cyber Risk Level prior to the date of this 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

45B.2.2 notify the Contractor as soon as reasonably practicable where the Authority reassesses the Cyber Risk Level relating to this Contract.

Contractor obligations

45B.3 The Contractor shall, and shall procure that its Sub-Contractors shall:

45B.3.1 comply with Def Stan 05-138;

45B.3.2 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 Process or CSM Supplier Assurance Questionnaire where a change is proposed to the Contractor's supply chain which has or may have an impact on the Cyber Risk Level of this Contract or on receipt of any reasonable request by the Authority;

45B.3.3 carry out the CSM Supplier Assurance Questionnaire no less than once in each year of this Contract, commencing on the first anniversary of completion of the CSM Supplier Assurance Questionnaire;

45B.3.4 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 45B (*Cyber*) in accordance with Good Industry Practice, provided always that where there is a conflict between the Contractor's obligations under Clause 45B.3.1 and this Clause 45B.3.4 (*Contractor obligations*), the Contractor shall notify the Authority in accordance with the notification provisions in Def Stan 05-138 as soon as it becomes aware of the conflict and the Authority shall determine which standard or measure shall take precedence;

45B.3.5 comply with all Cyber Security Instructions notified to it by the Authority as soon as reasonably practicable;

45B.3.6 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;

45B.3.7 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 Contractor's NSA/DSA in the circumstances and taking into account the Cyber Risk Level;

45B.3.8 consent to the Authority recording and using information obtained in relation to this 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

45B.3.9 include provisions equivalent to Clause 45B.7.1 (*Breach of obligations*) in all Sub-Contracts imposing provisions equivalent to this Clause 45B.3 (*Contractor obligations*) (the "**Equivalent Provisions**") and, where a Sub-Contractor breaches terms implementing this Clause 45B.3 (*Contractor obligations*) in a Sub-Contract, the Contractor shall and shall procure that its Sub-Contractors shall, in exercising their rights or remedies under the relevant Sub-Contract:

(i) 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 view into consideration; and

(ii) 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 Clauses 45B.3.1 to 45B.3.9 (*Contractor obligations*), 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 Clauses 45B.3.1 to 45B.3.9 (*Contractor obligations*) shall apply in full. In the event that a Cyber Security Implementation Plan cannot be agreed the matter shall be resolved in accordance with the Dispute Resolution Procedure.

Management of Sub-Contractors

45B.4

45B.4.1 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 45B.3 (*Contractor obligations*). In the event that a Sub-Contractor is found to be in breach of its obligations in Clause 45B.3 (*Contractor obligations*), 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 45B.4 (*Management of Sub-Contractors*).

45B.4.2 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 45B.3.9 (*Contractor obligations*).

45B.4.3 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 45B.4 (*Management of Sub-Contractors*) and the provisions of Clause 45B.7.2 or 45B.7.3 (*Breach of obligations*) as appropriate shall apply.

45B.4.4 The Contractor shall, and shall procure that its Sub-Contractors shall, include provisions equivalent to this Clause 45B.4 (*Management of Sub-Contractors*) in all Sub-Contracts which flow down the obligations set out in Clause 45B.3 (*Contractor obligations*) of this Contract.

Records

45B.5

45B.5.1 The Contractor shall keep and maintain, and shall ensure that any Sub-Contractor shall keep and maintain, until six (6) years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records including but not limited to:

(i) details of all MOD Identifiable Information relating to the Contractor Deliverables provided under this Contract; and

(ii) copies of all documents required to demonstrate compliance with Def Stan 05-138 and this Clause 45B (*Cyber*), 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.

45B.5.2 The Contractor shall, and shall ensure that any Sub-Contractor shall, on request provide the Authority, the Authority's Representatives and/or the Contractor's NSA/DSA such access to those records as may be required in connection with this Contract.

Audit

45B.6

45B.6.1 Except where an audit is imposed on the Authority by a regulatory body or there is a Cyber Security Incident in which case the Contractor agrees, and shall procure that its Sub-Contractors agree, that the Authority and its representatives, in coordination with the 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 NSA/DSA may, not more than twice in any calendar year and for a period of six (6) years following the termination or expiry of this Contract, whichever is the later, conduct an audit for the following purposes:

(i) to review and verify the integrity, confidentiality and security of any MOD Identifiable Information;

(ii) to review the Contractor's and/or any Sub-Contractor's compliance with its obligations under this Clause 45B (*Cyber*); and

(iii) 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 45B.6.1(i) and 45B.6.1(ii) (*Audit*).

45B.6.2 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor and/or Sub-Contractor 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.

45B.6.3 The Contractor shall, and shall ensure that any Sub-Contractor shall, on demand provide the Authority and any relevant regulatory body, including the 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:

(i) all information requested by the Authority within the permitted scope of the audit;

(ii) reasonable access to any Sites controlled by the Contractor or any Associated Company or any Sub-Contractor and to any equipment used (whether exclusively or non-exclusively) in the performance of this Contract and, where such Sites and/or equipment are not within 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

(iii) access to any relevant staff.

45B.6.4 The Authority shall endeavour to (but is not obliged to) provide at least fifteen (15) calendar days' notice of its intention to conduct an audit.

45B.6.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 45B (*Cyber*), unless the audit identifies a material breach of the terms of this Clause 45B (*Cyber*) 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

45B.7

45B.7.1 In exercising its rights or remedies under this Clause 45B (*Cyber*), the Authority shall:

(i) 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 this Contract; and

(ii) give all due consideration, where appropriate, to action other than termination of this Contract, including but not limited to a remedial period if this is appropriate in all the circumstances.

45B.7.2 Where the Cyber Risk Level of this Contract is assessed to be moderate or high, and the Contractor breaches the terms of this Clause 45B (*Cyber*), the Authority shall be entitled to terminate this Contract (whether in whole or in part) and the provisions of Clause 71.4B (*Termination for Contractor Default*) shall apply.

45B.7.3 Where the Cyber Risk Level of this Contract is assessed to be very low or low, and the Contractor breaches the terms of this Clause 45B (*Cyber*), the Authority shall be entitled:

(i) to recover from the Contractor the amount of any Loss sustained in consequence of any breach of this Clause 45B (*Cyber*); and

(ii) where the Contractor does not comply with any reasonable instructions issued by the Authority or the NSA/DSA within the time period specified to remedy such breach or prevent further breaches, the Authority shall be entitled to terminate this Contract (whether in whole or in part) and the provisions of Clause 71.4B (*Termination for Contractor Default*) shall apply.

45B.7.4 Where the Contractor commits an act of fraud, negligence or wilful misconduct in respect of its obligations under this Clause 45B (*Cyber*) the Authority shall be entitled to terminate this Contract (whether in whole or in part) and the provisions of Clause 71.4B (*Termination for Contractor Default*) shall apply.

General

45B.8

45B.8.1 On termination or expiry of this Contract, the provisions of this Clause 45B (*Cyber*) (excepting Clauses 45B.3.2 and 45B.3.3 (*Contractor obligations*)) shall continue in force so long as the Contractor and/or Sub-Contractor holds any MOD Identifiable Information relating to this Contract.

45B.8.2 Without prejudice to Clause 73.1.1 (*Continuing Obligations*), termination or expiry of this Contract shall not affect any rights, remedies, obligations or liabilities of the Parties under this Clause 45B (*Cyber*) 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 this Contract which existed at or before the date of termination or expiry.

45B.8.3

(i) The Contractor agrees that the Authority has absolute discretion to determine changes to Def Stan 05-138 and/or the Cyber Risk Level. In the event that there is such a change to Def Stan 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 Def Stan 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.

(ii) Subject to Clause 45B.8.3(i) (*General*), where the Contractor seeks such adjustment or extension, the provisions of Schedule 11 (*Change Procedure*) shall apply to determine the request for such adjustment or extension, provided always that:

(A) notwithstanding paragraph 5.1 of Schedule 11 (*Change Procedure*), the Contractor shall deliver an Estimate to the Authority within eight (8) weeks of the occurrence of the change in Def Stan 05-138 or Cyber Risk Level (or such longer period as may be agreed by the Parties) and such Estimate shall, without prejudice to paragraph 5.2 of

Schedule 11 (*Change Procedure*), identify the impact of that change and shall be accompanied by full details of the request for adjustment (and for the purposes of Schedule 11 (*Change Procedure*), the notice given by the Authority pursuant to Clause 45B.8.3(i) (*General*) of the changes to Def Stan 05-138 and/or the Cyber Risk Level shall be deemed to be an Authority Change Notice and the request for such proposed changes shall be deemed to be the Authority Change the subject of such Authority Change Notice);

(B) the Contractor shall not be entitled to refuse the proposed Authority Change pursuant to paragraph 3.3 of Schedule 11 (*Change Procedure*) insofar as it relates to Def Stan 05-138 or the Cyber Risk Level whether or not the Contractor Estimate is rejected. In the event that the Contractor does not agree with the Authority's determination, then the provisions of the Dispute Resolution Procedure shall apply.

45B.8.4 The Contractor shall not recover any costs and/or other Losses under or in connection with this Clause 45B (*Cyber*) where such costs and/or other Losses are recoverable or have been recovered by the Contractor elsewhere in this Contract or otherwise. For the avoidance of doubt, this shall include 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 this Contract or has recovered such costs and/or Losses in other contracts between the Contractor and the Authority or with other bodies.

PART 7 - INTELLECTUAL PROPERTY RIGHTS

46 Intellectual Property Rights

46.1 The Parties shall comply with their respective rights and obligations in Schedule 14 (*IPR*).

46A Authorisation By The Crown For Use Of Third Party Intellectual Property Rights

46A.1 Notwithstanding any other provisions of the Contract and for the avoidance of doubt, award of the Contract by the Authority and placement of any contract task under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949. The Contractor acknowledges that any such authorisation by the Authority under its statutory powers must be expressly provided in writing, with reference to the acts authorised and the specific intellectual property involved.

PART 8 - SECURITY PROVISIONS

47 Security – Secret Matters

47.1 In this Clause 47 (*Security – Secret Matters*):

47.1.1 "**Secret Matter**" means any matter connected with this Contract, or its performance which is designated by the Authority in the Security Aspects Letter or otherwise in writing as 'Top Secret' or 'Secret', and shall include any information concerning the content of such matter and anything which contains or may reveal that matter;

47.1.2 "**Employee**" shall include any person who is an employee or director of the Contractor or who occupies the position of a director of the Contractor, by whatever title given; and

47.1.3 "**Security Policy"** has the meaning given it in Schedule 1 (*Definitions and Acronyms*).

Official Secrets Acts

47.2 The Contractor shall:

47.2.1 take all reasonable steps to make sure that all Employees engaged on any work in connection with this Contract have notice that the Official Secrets Acts 1911-1989 apply to them and will continue so to apply after the completion or termination of this Contract;

47.2.2 if directed by the Authority, make sure that any such Employees shall sign a statement acknowledging that, both during the term of this Contract and after its completion or termination, he is bound by the Official Secrets Acts 1911-1989 (and where applicable by any other legislation); and

47.2.3 make sure that any such Employees are aware that all provisions of the Security Aspects Letter and any other statutory provisions and/or guidance provided by the Authority to the Contractor from time to time, apply to such Employees and will continue so to apply after the completion or termination of this Contract.

Security measures

47.3 Unless it has the written authorisation of the Authority to do otherwise, neither the Contractor nor any of its Employees shall, either before or after the completion or termination of this Contract, do or permit to be done anything which they know or ought reasonably to know may result in Secret Matter being disclosed to or acquired by a person in any of the following categories:

47.3.1 who is not a British citizen;

47.3.2 who does not hold the appropriate authority for access to the protected matter;

47.3.3 in respect of whom the Authority has notified the Contractor in writing that the Secret Matter shall not be disclosed to or acquired by that person;

47.3.4 who is not an Employee of the Contractor; or

47.3.5 who is an Employee of the Contractor and has no need to know the information for the proper performance of this Contract.

47.4 Unless it has the written authorisation of the Authority to do otherwise, the Contractor and its Employees shall, both before and after the completion or termination of this Contract, take all reasonable steps to ensure that:

47.4.1 no photograph of, or pertaining to, any Secret Matter shall be taken and no copy of or extract from any Secret Matter shall be made except to the extent necessary for the proper performance of this Contract; and

47.4.2 any Secret Matter is at all times strictly safeguarded in accordance with the Security Policy (as amended from time to time) and, upon request, is delivered up to the Authority who shall be entitled to retain it.

A decision of the Authority on the question of whether the Contractor has taken or is taking reasonable steps as required by this Clause 47 (*Security – Secret Matters*) shall be final and conclusive.

47.5 The Contractor shall:

47.5.1 provide to the Authority:

(i) upon request, such records giving particulars of those Employees who have had, at any time, access to any Secret Matter that is required to be kept in accordance with Clause 47.4.2 (*Security – Secret Matters*);

(ii) upon request, such information as the Authority may from time to time require so as to be satisfied that the Contractor and its Employees are complying with its obligations under this Clause 47 (*Security – Secret Matters*), including the measures taken or proposed by the Contractor so as to comply with its obligations and to prevent any breach of them; and

(iii) full particulars of any failure by the Contractor and its Employees to comply with any obligations relating to any Secret Matter arising under this Clause 47 (*Security – Secret Matters*) immediately upon such failure becoming apparent; and

47.5.2 ensure that, for the purpose of checking the Contractor's compliance with the obligation in Clause 47.4.2 (*Security – Secret Matters*), a representative of the Authority shall be entitled at any time to enter and inspect any premises used by the Contractor which are in any way connected with this Contract and inspect any document or thing in any such premises, which is being used or made for the purposes of this Contract. Such representative shall be entitled to all such information as he may reasonably require.

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

Sub-Contracts

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

47.7.1 submit for approval of the Authority the name of the proposed Sub-Contractor, a statement of the work to be carried out and any other details known to the Contractor which the Authority shall reasonably require;

47.7.2 incorporate into the Sub-Contract the terms of the Appendix to DEFCON 659A and such secrecy and security obligations as the Authority shall direct. In the appendix "Agreement" shall mean the "Sub-Contract", "First Party" shall mean "the Contractor" and "Second Party" shall mean the "Sub-Contractor"; and

47.7.3 inform the Authority immediately if it becomes aware of any breach by the Sub-Contractor of any secrecy or security obligation and, if requested to do so by the Authority, terminate the Sub-Contract.

Termination

47.8 The Authority shall be entitled to terminate this Contract immediately if:

47.8.1 the Contractor is in breach of any obligation under this Clause 47 (*Security – Secret Matters*); or

47.8.2 the Contractor is in breach of any secrecy or security obligation imposed by any other contract with the Crown,

where the Authority considers that the circumstances of the breach jeopardise the secrecy or security of the Secret Matter and claim such damages as may have been sustained as a result of the Contractor's breach of this Clause 47 (*Security – Secret Matters*).

Acknowledgement by the Contractor

47.9 By entering into this Contract, the Contractor confirms that:

47.9.1 it has received the Security Aspects Letter;

47.9.2 the Secret Matter has been brought to the attention of the person directly responsible for the security of this Contract;

47.9.3 the nature and details of the Secret Matter are understood; and

47.9.4 measures will be taken to safeguard the Secret Matter in accordance with the requirements of this Clause 47 (*Security – Secret Matters*).

Submission of security information

47.10 The Contractor shall submit all information required to be submitted under this Clause 47 (*Security – Secret Matters*) to:

Directorate of Defence Security
Scientific, Technical and Industrial Security
6th Floor, Zone D
Main Building
Whitehall
SW1A 2HB

or such other address as may be notified in writing by the Authority to the Contractor from time to time.

48 Personnel Security

48.1 Without prejudice to the provisions of Clauses 48.2 and 48.3 (*Personnel Security*), if the Authority considers that any of the Employees are for any reason unsatisfactory to the Authority, it may:

48.1.1 refuse admission to the relevant person(s) to the Authority Site and/or any Other Contractor's Premises; and/or

48.1.2 direct the Contractor to end the involvement of the relevant person(s) in the provision of the Contractor Deliverables,

and the Contractor shall replace and/or procure the replacement of any such Employees as soon as reasonably practicable.

48.2 The Contractor shall ensure and/or procure that the Employees comply with all reasonable requirements of the Authority and/or Other Contractor (as the case may be) concerning conduct at Authority Sites and/or any Other Contractor's Premises and make themselves familiar with and at all times shall conduct themselves in accordance with any rules and regulations as issued from time to time by the Authority in relation to the relevant Authority Site and/or by the Authority and/or any Other Contractor in relation to any Other Contractor's Premises.

48.3 The Authority reserves the right to refuse access to, or remove anyone from, any Authority Site and/or any Other Contractor's Premises who fails to comply with the applicable rules and regulations.

48.4 Should an Employee be refused access to, or be removed from an Authority Site and/or any Other Contractor's Premises for failure to comply with applicable rules and regulations, the Contractor shall not be relieved from its obligations to provide the Contractor Deliverables in full.

Security clearance

48.5 The Contractor shall be responsible for ensuring that each Employee holds and maintains a valid security clearance up to and including "Secret" level at all times during their employment or engagement in connection with this Contract.

Admission to Authority Sites and/or Other Contractor's Premises

48.6 The Contractor shall provide the Authority with details of each Employee and any other details the Authority may require, together with details of the Authority Site and/or any Other Contractor's Premises to which access is required and the capacity in which such person is concerned with the provision of the Contractor Deliverables.

48.7 The Authority shall:

48.7.1 in respect of any access required to an Authority Site, issue a pass for all Employees who are security cleared to an appropriate level for the Authority Site pursuant to Clause 48.5 (*Security clearance*); and/or

48.7.2 in respect of access to any Other Contractor's Premises and to the extent required by such Other Contractor as a condition to granting access to such Other Contractor's Premises, use reasonable endeavours to procure the issue of a pass for all Employees who are security cleared to an appropriate level for such Other Contractor's Premises,

in each case on or before such person is intended to enter onto an Authority Site and/or such Other Contractor's Premises (as the case may be) in connection with the provision of the Contractor Deliverables. Passes shall remain the property of the Authority or the Other Contractor (as the case may be) and the Contractor shall ensure that passes shall be surrendered on demand or on termination or expiry of this Contract.

48.8 A person not in possession of a pass who is required by the Contractor or any Sub-Contractor to attend an Authority Site and/or (to the extent that a pass is required) any Other Contractor's Premises (as the case may be) to provide emergency reactive services shall be allowed temporary admission to the Authority Site and/or (where permitted by the Other Contractor) the Other Contractor's Premises (as the case may be) provided that the Contractor shall, or shall procure that any Sub-Contractor shall, ensure that such individual is accompanied at all times whilst on the Authority Site and/or such Other Contractor's Premises (as the case may be) by a member of the Contractor or Sub-Contractor's staff who has been issued with a pass pursuant to Clause 48.5 (*Security clearance*).

48.9 Whilst engaged at the Authority's Sites and/or any Other Contractor's Premises (as the case may be), the Contractor shall, and shall procure that any Sub-Contractor shall, ensure that all Employees and other accompanied emergency reactive workers pursuant to Clause 48.8 (*Admission to Authority Sites and/or Other Contractor's Premises*) comply with the Authority's policies and/or those of the Other Contractor (as the case may be) as notified to the Contractor from time to time relating to the conduct of staff and security arrangements.

48.10 Notwithstanding the provisions of Clauses 48.6 to 48.9 (inclusive) *(Personnel Security),* the Authority and/or any Other Contractor (as the case may be) may refuse any person admission to an Authority Site and/or any Other Contractor's Premises (as the case may be) or require the removal of any person from an Authority Site and/or any Other Contractor's Premises (as the case may be):

48.10.1 if such person is not in possession of a pass pursuant to Clause 48.7 (*Admission to Authority Sites and/or Other Contractor's Premises*) or is not an accompanied emergency reactive worker pursuant to Clause 48.8 (*Admission to Authority Sites and/or Other Contractor's Premises*);

48.10.2 if such person, in the Authority's or Other Contractor's (as the case may be) opinion, represents a risk to themselves and/or an Authority Related Party and/or any other Third Party and/or property and the Authority has given written notice to the Contractor's Representative to this effect;

48.10.3 if the Authority and/or Other Contractor has reasonable grounds for considering that the presence or conduct of such person at the Authority Site and/or such Other Contractor's Premises (as the case may be) is undesirable and the Authority and/or Other Contractor has given written notice to the Contractor's Representative to this effect; and/or

48.10.4 for any other reason.

48.11 The Authority's or Other Contractor's (as the case may be) decision on any matter arising under Clause 48.10 (*Admission to Authority Sites and/or Other Contractor's Premises*) shall be final and conclusive.

48.12 Where a person is refused admission:

48.12.1 to an Authority Site and/or any Other Contractor's Premises (as the case may be) or is removed from an Authority Site and/or any Other Contractor's Premises (as the case may be) pursuant to Clauses 48.10.1 to 48.10.3 (inclusive) (*Admission to Authority Sites and/or Other Contractor's Premises*), then the Contractor shall not be relieved from its obligations to provide the Contractor Deliverables in full; or

48.12.2 to an Authority Site and/or any Other Contractor's Premises (as the case may be) or is removed from an Authority Site and/or any Other Contractor's Premises, in each case pursuant to Clause 48.10.4 (*Admission to Authority Sites and/or Other Contractor's Premises*), then the Authority shall give the Contractor such relief from its obligations in respect of those Contractor Deliverables in which such person is or would have been engaged for a reasonable period to allow the Contractor or any Sub-Contractor to make alternative arrangements to replace the person whose admission has been refused or whose removal has been required by the Authority and/or such Other Contractor.

49 Co-operation for Security Investigation

49.1 The Contractor shall, and shall procure that each Sub-Contractor shall, notify the Authority's Representative immediately it becomes aware that an Employee or an accompanied emergency reactive worker pursuant to Clause 48.8 (*Admission to Authority Sites and/or Other Contractor's Premises*) has breached Clause 47 (*Security – Secret Matters*) and/or Clause 48 (*Personnel Security*).

49.2 The Contractor shall, and shall procure that its Sub-Contractors shall, give reasonable assistance to the Authority's Representative and/or any other representative or adviser of the Authority for the purposes of carrying out any investigation that the Authority undertakes (acting reasonably).

PART 9 - SITE ISSUES

50 Access to the Contractor's Premises

Authority's monitoring and inspection rights

50.1 Without prejudice to the other provisions of this Contract (including Schedule 2 (*Statement of Requirements*), Schedule 4 (*Assurance Process*) and Schedule 6 (*Incentivisation*)), the Contractor shall ensure that the Authority and the representatives of the Authority shall have the right at all reasonable times and on reasonable notice (but not so as to materially delay or impede the progress of the provision of the Contractor Deliverables):

50.1.1 to enter any of the Contractor's Premises in order to inspect the state and progress of the provision of the Contractor Deliverables (and to ascertain whether the Contractor Deliverables are being properly provided in accordance with this Contract) and to monitor compliance by the Contractor with its obligations under this Contract; and

50.1.2 subject to obtaining the consent of the relevant Sub-Contractor, manufacturer or supplier (which the Contractor shall use all reasonable endeavours to obtain), to visit any property, site or workshop other than the Contractor's Premises where materials, plant or equipment are being manufactured, prepared or stored for use in connection with this Contract (for the purposes of general inspection and of attending any test or investigation being carried out), or any property other than the Contractor's Premises used by the Contractor as training or workshop facilities or as a place where work is being prepared or materials are being obtained in relation to this Contract.

50.2 The Contractor shall provide and shall ensure the Sub-Contractors provide to the Authority and the representatives of the Authority (in each case without any additional cost to the Authority) for the purposes of Clause 50.1 (*Authority's monitoring and inspection rights*):

50.2.1 all reasonable access to premises and such accommodation and facilities for representatives of the Authority as the Authority may reasonably require (provided that all accommodation shall be adequately furnished, lit, heated and ventilated and shall include suitable cloakroom and communication facilities) for an agreed reasonable period; and

50.2.2 that satisfactory facilities are made available and that reasonable assistance is given to representatives of the Authority,

subject to the Contractor's and any Sub-Contractors' operations not being adversely affected.

Authority's conduct on the Contractor's Premises

50.3 In exercising any right under Clause 50.1 (*Authority's monitoring and inspection rights*), the Authority shall comply with all relevant safety procedures (which shall include any relevant health and safety plans), the Contractor's site rules from time to time and any reasonable directions with regard to site safety that may be issued by or on behalf of the Contractor from time to time.

50.4 The Authority shall indemnify the Contractor for any material damage caused by it to the Contractor's Premises whilst exercising any right under this Clause 50 (*Authority's monitoring and inspection rights*).

51 <u>Authority Sites and/or Other Contractor's Premises</u>

The Contractor's rights over Authority Sites and/or Other Contractor's Premises

51.1 During the Contract Period, the Authority shall, in the case of the Authority Sites, afford the following rights to the Contractor and Contractor Related Parties and, in the case of any Other Contractor's Premises, use reasonable endeavours to procure for the benefit of the Contractor and Contractor Related Parties solely for the purpose of the provision of the Contractor Deliverables:

51.1.1 a non-exclusive licence to enter and remain upon those parts of the Authority Sites and/or any Other Contractor's Premises (as the case may be) that the Contractor and/or any Contractor Related Party requires access to; and

51.1.2 such non-exclusive rights of access to and egress from the Authority Sites and/or any Other Contractor's Premises (as the case may be) as are necessary for the Contractor and/or Contractor Related Parties to perform their obligations and exercise their rights under this Contract or their relevant contracts and in particular for the purposes of providing the Contractor Deliverables, provided that in the case of:

(i) the Authority Sites, such routes may be varied by the Authority to such alternative routes as the Authority may reasonably specify from time to time if such variation does not have a material adverse effect on the provision of the Contractor Deliverables; or

(ii) in the case of any Other Contractor's Premises, such routes may be varied by such Other Contractor to such alternative routes as such Other Contractor may reasonably specify from time to time; and

51.1.3 use of services and utilities including water, waste water, gas, electricity, telephone and other services serving the Authority Sites as specified in Schedule 7 (*Authority Obligations*) and/or, in the case of any Other Contractor's Premises, as may be reasonably required by the Contractor and/or any Contractor Related Party,

provided that:

(i) the rights shall not in any circumstances entitle the Contractor or any Contractor Related Party to exclusive occupancy or exclusive possession of any part of the Authority Sites and/or any Other Contractor's Premises (as the case may be) (save as may be required by the Contractor and approved by the Authority and/or Other Contractor in order to comply with relevant health and safety legislation on a temporary basis); and

(ii) the Contractor and Contractor Related Parties do not cause any material disruption to the operations or activities carried out by:

(A) the Authority on or at the Authority Sites or any of the Authority's legal duties or other functions; and/or

(B) any Third Party on or at any Other Contractor's Premises or any such Third Party's legal duties or other functions.

The Contractor's conduct on Authority Sites and/or Other Contractor's Premises

51.2 The Contractor shall ensure, and/or shall procure, that in providing the Contractor Deliverables at the Authority Sites and/or any Other Contractor's Premises (as the case may be) it and/or any Contractor Related Party shall:

51.2.1 not act or omit to act in any way which shall give rise to a right for any person to obtain title to or any right or interest over an Authority Site and/or any Other Contractor's Premises (as the case may be) or any part of any of them (save in accordance with the terms of this Contract);

51.2.2 not use or occupy the Authority Sites and/or any Other Contractor's Premises (as the case may be) for any purpose other than the provision of the Contractor Deliverables and only to the extent that such Contractor

Deliverables are required to be performed at such Authority Site and/or Other Contractor's Premises;

51.2.3 not deposit or manufacture on the Authority Sites and/or any Other Contractor's Premises (as the case may be) any materials which are not required for the provision of the Contractor Deliverables and, in the case of materials which are required for the provision of the Contractor Deliverables, shall only deposit or manufacture such materials at such Authority Site and/or Other Contractor's Premises to the extent that such part of the Contractor Deliverables to which such materials are being deposited or manufactured are required to be performed at such Authority Site and/or Other Contractor's Premises;

51.2.4 not store materials or park vehicles in the immediate external vicinity of the boundaries of the Authority Sites and/or any Other Contractor's Premises (as the case may be) other than for reasonable periods necessary for loading and unloading;

51.2.5 not discharge any oil, grease or deleterious, dangerous, poisonous, explosive or radioactive matter from the Authority Sites and/or any Other Contractor's Premises (as the case may be) into any rivers or any ditches or conduits on such Authority Sites and/or Other Contractor's Premises (as the case may be) and/or any Adjoining Property and not permit or suffer the blockage of any of such rivers, ditches and conduits by reason of anything done or omitted on such Authority Sites and/or Other Contractor's Premises (as the case may be) by the Contractor or Contractor Related Parties, and shall, subject to the Authority's obligations in Schedule 7 (*Authority Obligations*), comply at the Contractor's expense with any requirements of the Environment Agency or any other Relevant Authority which are required to remedy the breach of this Clause 51.2.5 (*The Contractor's conduct on Authority Sites*). The Authority shall in the case of the Authority Sites allow and in the case of any Other Contractor's Premises, and to the extent applicable, use reasonable endeavours to procure the Contractor access to environmental systems for inspection to confirm they meet the necessary standards;

51.2.6 procure that those parts of the Authority Site and/or any Other Contractor's Premises (as the case may be) which are from time to time occupied by the Contractor and/or Contractor Related Parties for the purpose of carrying out the provision of the Contractor Deliverables (and only to the extent that such Contractor Deliverables are required to be performed at such Authority Site and/or Other Contractor's Premises) are maintained in a clean and tidy state so far as practicable having regard to the nature of the Contractor Deliverables; and

51.2.7 not without the written consent of the Authority's Representative erect any temporary structure.

51.3 Not Used.

51.4 Not Used.

52 The Contractor's Property and Personnel at Government Establishments and Other Contractor's Premises

Liability in respect of damage to Government and Third Party property

52.1 Without prejudice to the provisions of Clause 59 (*Issued Property*), the Contractor shall, except as otherwise provided for in this Contract, make good or, at the option of the Authority, pay compensation for all damage occurring to any Government and/or Third Party property (which includes land or buildings), occasioned by the Contractor, or by any Contractor's Representative or Contractor Related Party, arising from his or their presence on a Government Establishment and/or Other Contractor's Premises in connection with this Contract, provided that this Clause 52.1 (*Liability in respect of damage to Government and Third Party property*) 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 reasonable control.

52.2 Not Used.

52.3 Not Used.

The Contractor's property

52.4 All property of the Contractor and Contractor Related Parties shall be at the risk of the Contractor whilst it is on any Government Establishment and/or any Other Contractor's Premises and the Authority shall accept no liability for any Loss or damage howsoever occurring to or caused by such property, except where any such Loss or damage occurred on a Government Establishment and such Loss or damage was caused or contributed to by any act, neglect or default of any Authority servant, agent or contractor then the Authority shall accept liability for such Loss or damage to the extent to which such Loss or damage is so caused or contributed to by such Authority servant, agent or contractor.

Transport overseas

52.5 Where the Contractor's representatives are required by this Contract to join or visit a Government Establishment overseas, transport between the United Kingdom and the place of duty (but excluding transport within the United Kingdom) may be provided by the Authority by Royal Air Force or by Authority chartered aircraft. The Contractor shall make such arrangements through the Authority's Representative. When such transport is not available within a reasonable time, the Contractor shall make his own transport arrangements.

Medical treatment overseas

52.6 Out-patient medical treatment given to the Contractor's representatives by a medical officer at a Government Establishment overseas shall be free of charge. Treatment in an Authority 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 Government 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

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

Dependants of Contractor's Representatives

52.8 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

52.9 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 Government 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

52.10 Without prejudice to the Contractor's obligations under Clause 57 (*Supply of Hazard Data*), where the Contractor enters a Government Establishment and/or any Other Contractor's Premises for the purpose of providing the whole or any part of the Contractor Deliverables:

52.10.1 the Contractor shall notify the officer in charge or the site project liaison officer or overseeing officer or other person nominated by the Authority and/or Other Contractor (as the case may be) of:

(i) any health and safety hazards associated with the delivery of that part of the Contractor Deliverable to be provided by it or Contractor Related Party;

(ii) any foreseeable risks to the health and safety of all persons associated with such hazards; and

(iii) any precautions to be taken by it as well as any precautions which, in its opinion, ought to be taken by the Authority or other person, in order to control such risks;

52.10.2 the Authority shall notify the Contractor of:

(i) any health and safety hazards which may be encountered by the Contractor or any Contractor Related Party on the Government Establishment and/or (to the extent that the same are brought to the attention of the Authority) any Other Contractor's Premises;

(ii) any foreseeable risks to the health and safety of the Contractor or any Contractor Related Party, associated with such hazards; and

(iii) any precautions to be taken by the Authority and/or any Third Party as well as any precautions which, in its opinion, ought to be taken by the Contractor, in order to control such risks;

52.10.3 the Contractor shall notify the Contractor Related Parties of and, where appropriate, provide adequate instruction in relation to:

(i) the hazards, risks and precautions notified by him to the Authority under Clause 52.10.1 (*Health and safety hazard control*);

(ii) the hazards, risks and precautions notified by the Authority to the Contractor under Clause 52.10.2 (*Health and safety hazard control*); and

(iii) the precautions which, in its opinion, ought to be taken by the Contractor Related Parties in order to control those risks;

52.10.4 the Contractor shall provide the Officer in Charge or the site project liaison officer or overseeing officer nominated in this Contract or other person nominated by the Other Contractor (as the case may be) with:

(i) copies of those sections of its own and, where appropriate, Contractor Related Party's safety policies which are relevant to the risks notified under Clause 52.10.1 (*Health and safety hazard control*);

(ii) copies of any related risk assessments; and

(iii) copies of any notifications and instructions issued by it to any Contractor Related Party under Clause 52.10.3 (*Health and safety hazard control*);

52.10.5 the Authority shall provide the Contractor with:

(i) copies of those sections of its own or (to the extent that the same are provided to the Authority) any Third Party's (as the case may be) safety policies which are relevant to the risks notified under Clause 52.10.2 (*Health and safety hazard control*);

(ii) copies of any related risk assessments (in the case of Other Contractor Premises, to the extent only that the same are provided to the Authority); and

(iii) copies of any notifications and instructions issued by it to its employees similar to those called for from the Contractor under Clause 52.10.3 (*Health and safety hazard control*) (in the case of Other Contractor's Premises, to the extent only that the same are provided to the Authority); and

52.10.6 where the Contractor identifies a health and safety hazard associated with services provided by the Authority under Schedule 7 (*Authority*

Obligations), the Contractor shall notify the Authority of the hazard and the risk to the Contractor's or the Authority's personnel;

(i) the Authority shall implement any urgent temporary actions agreed by the Parties to rectify the hazard within five (5) Working Days; and

(ii) the Authority shall implement permanent changes to rectify the hazard as soon as practicable but no later than three (3) months from the notification in Clause 52.10.6 (*Health and safety hazard control*).**REDACTED**

PART 10 - PEOPLE ISSUES

53 Transfer of Undertakings (Protection of Employment) (TUPE)

53.1 The Parties shall comply with their respective rights and obligations in Schedule 21 (*Transfer Regulations*).

54 Child Labour and Employment Law

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

54.2 The Contractor agrees to take reasonable efforts to reflect this Clause 54 (*Child Labour and Employment Law*) in any Sub-Contract that it enters into to satisfy the requirements of this Contract and to require its Sub-Contractors to reflect this Clause 54 (*Child Labour and Employment Law*) in their Sub-Contracts that they enter into to satisfy the requirements of this Contract.

55 Equality

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

55.2 Without prejudice to the generality of the obligation in Clause 55.1 (*Equality)*, the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 (or any statutory modification or re-enactment thereof) or other relevant or equivalent legislation in the country where this Contract is being performed.

55.3 The Contractor agrees to take reasonable efforts to secure the observance of the provisions of this Clause 55 (*Equality)* by any of its employees, agents or other persons acting under its direction or control who are engaged in the performance of this Contract.

55.4 The Contractor agrees to take reasonable efforts to reflect this Clause 55 (*Equality)* in any Sub-Contract that it enters into to satisfy the requirements of this Contract and to require its Sub-Contractors to reflect this Clause 55 (*Equality)* in their Sub-Contracts that they enter into to satisfy the requirements of this Contract.

PART 11 - ASSET RELATED PROVISIONS

56 Packaging (for Articles other than Munitions)

Definitions

56.1 For the purposes of this Clause 56 (*Packaging (for Articles other than Munitions*)):

56.1.1 "**Packaging**" when used as a verb shall mean the preparation of Articles for transportation, storage and delivery in accordance with this Contract. The term includes, as appropriate, cleaning and preservation processes, packing techniques and marking procedures.

56.1.2 "**Packaging**" when used as a noun shall mean the materials, and components, used for the preparation of the Articles for transportation, storage and delivery in accordance with this Contract.

56.1.3 "**Packaging Design Authority"** or "**PDA**" shall mean the organisation that is responsible for the design of the packaging, identified in Box 3 of DEFFORM 111 in the Agreed Form.

56.1.4 "**Military Packager Approval Scheme"** or "**MPAS**" shall mean an Authority sponsored scheme to certify military Packaging designers and register organisations, as capable of producing acceptable Services Packaging Instruction Sheet ("**SPIS**") designs in accordance with Defence Standard (Def Stan) 81-041 (Part 4).

56.1.5 "**Commercial Packaging**" shall mean commercial Packaging for military use as described in Def Stan 81-041 (Part 1).

56.1.6 "**Military Level Packaging**" or "**MLP**" shall mean Packaging that provides enhanced protection in accordance with Def Stan 81-041 (Part 1), beyond that which Commercial Packaging normally provides for the military supply chain.

56.1.7 "**Military Packaging Level**'' or "**MPL**" shall have the meaning described in Def Stan 81-041 (Part 1).

56.1.8 "**Primary Packaging Quantity**" or "**PPQ**", and Standard Family Specification ("**SFS**") shall have the meaning as described in Def Stan 81-041 (Part 1).

56.1.9 "**Robust Articles**" shall mean Robust items as described in Def Stan 81-041 (Part 2).

56.1.10 "**Dangerous Goods**" shall mean those substances, preparations and articles that are capable of posing a risk to health, safety, property or the environment which are prohibited by regulation, or classified and authorised only under the conditions prescribed by the:

(i) Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 ("**CDG**") (as amended 2011);

(ii) European Agreement Concerning the International Carriage of Dangerous Goods by Road ("**ADR**");

(iii) Regulations Concerning the International Carriage of Dangerous Goods by Rail ("**RID**");

(iv) International Maritime Dangerous Goods ("**IMDG**") Code;

(v) International Civil Aviation Organisation ("**ICAO**") Technical Instructions for the Safe Transport of Dangerous Goods by Air; and

(vi) International Air Transport Association ("**IATA**") Dangerous Goods Regulations.

56.1.11 "**Safety Data Sheet**" shall have the meaning as defined in REACH.

Specifications for Packaging

56.2 General requirements for service Packaging, including details of UK and NATO MLP and Commercial Packaging descriptions, are contained in Def Stan 81-041 (Part 1) "Packaging of Defence Materiel". Def Stans, NATO Standardisation Agreements ("**STANAGs**") and further information are available from the DStan internet site at: http://www.dstan.mod.uk/.

56.3 Not Used.

56.4 In the event of conflict between this Contract and Def Stan 81-041, this Contract shall take precedence.

Responsibilities

56.5 Packaging responsibilities are as follows:

56.5.1 The Contractor shall be responsible for providing Packaging which fully complies with the requirements of this Contract.

56.5.2 The Authority shall indicate in this Contract or order raised against a framework agreement (where applicable) the standard or level of Packaging required for each Article, including the PPQ. If a standard or level of Packaging (including the PPQ) is not indicated in this Contract or order, the Contractor shall request such instructions from the Authority before proceeding further.

56.5.3 The Contractor shall ensure all relevant information necessary for the effective performance of this Contract is made available to all Sub-Contractors.

56.5.4 Where the Contractor or any of their Sub-Contractors have concerns relating to the appropriateness of the Packaging design and or MPL prior to manufacture or supply of the Articles they shall use DEFFORM 129B to feedback these concerns to the Contractor or Authority, as appropriate.

56.5.5 Where the volumetric data of individual package designs is required to be compiled as part of the codification data set, the Contractor shall do so in accordance with DEFCON 117.

Commercial Packaging

56.6 The Contractor shall supply Commercial Packaging meeting the standards and requirements of Def Stan 81-041 (Part 1). In addition the following requirements apply:

56.6.1 The Contractor shall provide Packaging which:

(i) will ensure that each Article may be transported and delivered to the consignee named in this Contract in an undamaged and serviceable condition; and

(ii) is labelled to enable the contents to be identified without need to breach the package; and

(iii) is compliant with statutory requirements and this Clause 56 (*Packaging (for Articles other than Munitions*)).

56.6.2 The Packaging used by the Contractor to supply identical or similar Articles to commercial customers or to the general public (i.e. point of sale packaging) will be acceptable, provided that it complies with the following criteria:

(i) reference in this Contract to a PPQ means the quantity of an Article to be contained in an individual package, which has been selected as being the most suitable for issue(s) to the ultimate user;

(ii) Robust Articles, which by their nature require minimal or no packaging for commercial deliveries, shall be regarded as "PPQ packages" and shall be marked in accordance with Clauses 56.13 (*Package labelling and marking*) to 56.16 (*Consignment of aggregated packages*). References to "PPQ packages" in subsequent text shall be taken to include Robust Articles; and

(iii) for ease of handling, transportation and delivery, packages which contain identical Articles may be bulked and overpacked, in accordance with Clauses 56.13 (*Package labelling and marking*) to 56.15 (*Bar code marking*).

Packaging Regulations for Dangerous Goods

56.7 The Contractor shall ascertain whether the Articles being supplied are, or contain, Dangerous Goods, and shall supply the Dangerous Goods in accordance with:

56.7.1 The Health and Safety At Work Act 1974 (as amended);

56.7.2 The Classification Hazard Information and Packaging for Supply Regulations (CHIP) 2009 (as amended);

56.7.3 The REACH Regulations 2007 (as amended); and

56.7.4 The Classification, Labelling and Packaging Regulations (CLP) 2009 (as amended).

56.8 The Contractor shall package the Dangerous Goods as limited quantities, excepted quantities or similar derogations, for UK or worldwide shipment by all modes of transport in accordance with the regulations relating to the Dangerous Goods and:

56.8.1 The Safety Of Lives At Sea Regulations (SOLAS) 1974 (as amended); and

56.8.2 The Air Navigation (Amendment) Order 2019.

56.9 As soon as possible, and in any event no later than one (1) month before delivery is due, the Contractor shall provide a Safety Data Sheet in respect of each Dangerous Good in accordance with the REACH Regulations 2007 (as amended) and the Health and Safety At Work Act 1974 (as amended).

UK military or NATO Packaging

56.10 The Contractor shall comply with the requirements for the design of MLP which include Clauses 56.10 (*UK military or NATO Packaging*) and 56.11 (*Military Packaging design procedure*) as follows:

56.10.1 Where there is a requirement to design UK or NATO MLP, the work shall be undertaken by an MPAS registered organisation, or one that although non-registered is able to demonstrate to the Authority that its quality systems and military package design expertise are of an equivalent standard.

Note 1: The MPAS certification (for individual designers) and registration (for organisations) scheme details are available from:

DES SEOC SCG-SCEng-Pkg
MOD Abbey Wood
Bristol, BS34 8JH

Tel. +44(0)30679-35353

DESSEOCSCG-SCEng-Pkg@mod.gov.uk

Note 2: The MPAS Documentation is also available on the DStan website

56.10.2 MLP shall be designed to comply with the relevant requirements of Def Stan 81-041, and be capable of meeting the appropriate test requirements of Def Stan 81-041 (Part 3). Packaging designs shall be prepared on a Service Packaging Instruction Sheet (SPIS), in accordance with Def Stan 81-041 (Part 4).

56.10.3 The Contractor shall ensure a search of the SPIS index (the "**SPIN**") is carried out to establish the SPIS status of each requirement (using DEFFORM 129a 'Application for Packaging Designs or their Status').

56.10.4 New designs shall not be made where there is an existing usable SPIS, or one that may be easily modified.

56.10.5 Where there is a usable Standard Family Specification (SFS), it shall be used in place of a SPIS design unless otherwise stated by this Contract. When an SFS is used or replaces a SPIS design, the Contractor shall upload this information on to SPIN in Adobe PDF.

56.10.6 All SPIS, new or modified (and associated documentation), shall, on completion, be uploaded by the Contractor on to SPIN. The format shall be Adobe PDF.

Manufacture of Packaging to a Military Packaging Level

56.10.7 Where it is necessary to use an existing SPIS design, the Contractor shall ensure the Packaging manufacturer is a registered organisation in accordance with Clause 56.10.1 (*UK military or NATO Packaging*), or if un-registered, is compliant with MPAS ANNEX A Supplement (Code) M. The Contractor shall ensure, as far as possible, that the SPIS is up to date.

Intellectual Property Rights (IPR)

56.10.8 The documents supplied under Clause 56.10.6 (*UK military or NATO Packaging*) shall be considered as a contract data requirement and be subject to the terms of DEFCON 15 and DEFCON 21.

Military Packaging design procedure

56.11 Unless otherwise stated in this Contract, one of the following procedures for the production of new or modified SPIS designs shall be applied:

56.11.1 If the Contractor or their Sub-Contractor is the PDA they shall:

(i) On receipt of instructions received from the Authority's representative nominated in Box 2 of DEFFORM 111 in the Agreed Form, prepare the required package design in accordance with Clause 56.10 (*UK military or NATO Packaging*).

(ii) Where the Contractor or their Sub-Contractor is registered they shall, on completion of any design work, provide the Authority with the following documents electronically:

(A) a list of all SPIS which have been prepared or revised against this Contract; and

(B) a copy of all new/revised SPIS, complete with all continuation sheets and associated drawings, where applicable, to be uploaded onto SPIN.

(iii) Where the PDA is not a registered organisation, then they shall obtain approval for their design from a registered organisation before proceeding, then follow Clause 56.11.1(ii) (*Military Packaging design procedure*).

56.11.2 Where the Contractor or their Sub-Contractor is not the PDA and is un-registered, they shall not produce, modify or update SPIS designs. They shall obtain current SPIS design(s) from the Authority or a registered organisation before proceeding with manufacture of Packaging. To allow designs to be provided in ample time, they should apply for SPIS designs as soon as practicable.

56.11.3 Where the Contractor or their Sub-Contractor is un-registered and has been given authority to produce, modify, and update SPIS designs by this Contract, it shall obtain approval for their design from a registered organisation using DEFFORM 129a before proceeding, then follow Clause 56.11.1(ii) (*Military Packaging design procedure*).

56.11.4 Where the Contractor or their Sub-Contractor is not a PDA but is registered, it shall follow Clauses 56.11.1(i) and 56.11.1(ii) (*Military Packaging design procedure*).

Tools

56.12 If Special Jigs, Tools Etc. are required for the production of MLP, the Contractor shall obtain written approval from the Authority's Representative before providing them.

Package labelling and marking

56.13 In addition to any marking required by international or national legislation or regulations, the following package labelling and marking requirements apply:

Labelling – General

56.13.1 If this Contract specifies UK or NATO MLP, labelling and marking of the packages shall be in accordance with Def Stan 81-041 (Part 6) and this Clause 56 (*Packaging (for Articles other than Munitions*)) as follows:

(i) Labels giving the mass of the package, in kilograms, shall be placed such that they may be clearly seen when the items and/or Items are stacked during storage.

Marking – General

(ii) Each consignment package shall be marked with details as follows:

(A) name and address of consignor;

(B) name and address of consignee (as stated in this Contract or order);

(C) destination where it differs from the consignee's address, normally either:

1) delivery destination/address; or

2) transit destination, where delivery address is a point for aggregation/disaggregation and/or onward shipment elsewhere, e.g., railway station, where that mode of transport is used; and

(D) the unique order identifiers and the CP&F Delivery Label / Form which shall be prepared in accordance with DEFFORM 129J.

(iii) If aggregated packages are used, their consignment marking and identification requirements are stated at Clause 56.16 (*Consignment of aggregated packages*).

Marking of Commercial Packaging

56.13.2 If this Contract specifies Commercial Packaging, an external surface of each PPQ package and each consignment package, if it contains identical

PPQ packages, shall be marked, using details of the Articles as shown in this Contract schedule, to state the following:

(i) description of the Article;

(ii) the full thirteen digit NATO Stock Number ("**NSN**");

(iii) the PPQ;

(iv) maker's part/catalogue, serial and/or batch number, as appropriate;

(v) the Contract and order number when applicable;

(vi) the words "Trade Package" in bold lettering, marked in blue in respect of trade packages, and black in respect of export trade packages;

(vii) shelf life of item and/or Item where applicable;

(viii) for rubber items and/or rubber Items and/or items and/or Items containing rubber, the quarter and year of vulcanisation or manufacture of the rubber product or component (marked in accordance with Def Stan 81-041);

(ix) any statutory hazard markings and any handling markings, including the mass of any package which exceeds three (3) kg gross; and

(x) any additional markings specified in this Contract.

Bar code marking

56.14 Bar code marking shall be applied to the external surface of each consignment package and to each PPQ package contained therein. The default symbology shall be as specified in Def Stan 81-041 (Part 6). As a minimum the following information shall be marked on packages:

56.14.1 the full 13-digit NSN;

56.14.2 denomination of quantity ("**D of Q**");

56.14.3 actual quantity (quantity in package);

56.14.4 manufacturer's serial number and/or batch number, if one has been allocated; and

56.14.5 the unique order identifier.

56.15 Requirements for positioning bar codes in relation to related text, as well as positioning on package etc., are defined in Def Stan 81-041 (Part 6). If size of the bar code does not allow a label to be directly attached, then a tag may be used. Any difficulties over size or positioning of barcode markings shall initially be referred to the organisation nominated in Box 3 of DEFFORM 111 in the Agreed Form.

Consignment of aggregated packages

56.16 The requirements for the consignment of aggregated packages are as follows:

56.16.1 With the exception of packages containing Dangerous Goods, over-packing for delivery to the consignee shown in this Contract may be used by the consignor to aggregate a number of packages to different Packaging levels, provided that the package contains Articles of only one NSN or class group. Over-packing shall be in the cheapest commercial form consistent with ease of handling and protection of over-packed items.

56.16.2 Two adjacent sides of the outer container shall be clearly marked to show the following:

(i) class group number;

(ii) name and address of consignor;

(iii) name and address of consignee (as stated on this Contract or order);

(iv) destination if it differs from the consignee's address, normally either:

(A) delivery destination/address; or

(B) transit destination, if the delivery address is a point of aggregation/disaggregation and/or onward shipment e.g. railway station, where that mode of transport is used;

(v) where applicable, the reference number if the delivery note produced by CP&F relating to the contents. The consignee's copy of each delivery note shall be placed in the case/container. If the Articles listed in the delivery note are packed in several cases, the consignee's copy shall be placed in the first case and a separate list detailing the contents shall be prepared for each case after the first and placed in the case to which it relates. Each case is to be numbered to indicate both the number of the case and the total number of cases concerned e.g. 1/3, 2/3, 3/3;

(vi) shipping label in accordance with DEFCON 129J; and

(vii) any statutory hazard markings and any handling markings.

Concessions

56.17 Authorisation of the Contractor to undertake Packaging design, or to use a packaging design, that was not part of the original requirement under this Contract, shall be considered as an alteration to the specification under Schedule 11 (*Change Procedure*).

Environmental - requirements for wood used in Packaging

56.18 The Contractor shall ensure that timber and wood-containing products supplied under this Contract comply with DEFCON 691 and Annex I and Annex II of the International Standards for Phytosanitary Measures, "Guidelines for Regulating Wood Packaging Material in International Trade", Publication No 15 (ISPM 15).

Environmental – Packaging and Packaging waste

56.19 All Packaging shall meet the requirements of the Packaging (Essential Requirements) Regulations 2003 (as amended) where applicable.

56.20 In any design work the Contractor shall comply with the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (as amended) or equivalent legislation. Evidence of compliance shall be a contractor record in accordance with Clause 39 (*The Contractor's Records*).

Packaging design liability statement

56.21 This Clause 56 (*Packaging (for Articles other than Munitions*)) is concerned with the supply of Packaging suitable to protect and ease handling, transport and storage of specified items. Where there is a failure of suitable Packaging (a design failure), or Packaging fails and this is attributed to the Packaging supplier, then the supplier shall be liable for the cost of replacing the Packaging.

56.22 Liability for other Losses resulting from Packaging failure or resulting from damage to Packaging, (such as damage to the packaged item etc.), shall be specified elsewhere in this Contract.

56A Supply of Information for NATO Codification and Defence Inventory Introduction

56A.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.

56A.2 For the purposes of this Clause 56A (*Supply of Information for NATO Codification and Defence Inventory Introduction*) and Clause 56B (*Codification Requirements of Item Identification*):

56A2.1 "**Codification**" shall mean the application of unique identification and classification information to Items of Supply, using a common supply language (as set out in Clause 56B (*Codification Requirements for Item Identification*)) which is recorded in sufficient detail to distinguish uniquely Items of Supply from other items, using NATO Stock Numbers or "**NSN**".

56A2.2 "**Codification Purposes**" shall mean use to enable maximum effectiveness in national and international logistic support, data management in the area of materiel, supply and inventory introduction and management, throughout the life of an equipment, by the United Kingdom Ministry of Defence and its NATO partners.

56A2.3 "**Codification Authority**" shall mean the United Kingdom National Codification Bureau or "**UKNCB**", except as provided in Clause 56A.11.

56A2.4 "**Authority's Agent**" shall mean the Government Departments or contractors authorised by the Codification Authority to undertake NATO codification.

56A2.5 "**Form, Fit and Function**" shall mean, in respect of each of its elements:

(i) Form: The shape, size, dimensions, and other physically measurable parameters that uniquely characterise an article. For software, form denotes the language and media;

(ii) Fit: The characteristics of an article to enable it to interface or interconnect with a part of another article, including the dimensional relationship between mating parts and the limits of tolerances;

(iii) Function: The actions that a product is designed to perform in normal use or operation.

56A2.6 "**Item**" shall mean the part or the whole of any Article as defined in DEFCON 501 or any other Article to the same design or any modification of it.

56A2.7 "**Item of Supply**" shall mean an Item, or where two or more Items are attached or assembled together, the minimum assembly of Items listed in the Design Control Authority's Master Parts List or required to be delivered to the Authority under this Contract.

56A2.8 "**Item Identification**" shall mean the minimum information required to uniquely identify the Item of Supply derived from information supplied in response to the requirements specified in Clause 56B.

56A2.9 "**Technical Data**" shall mean the cataloguing information identified in Clause 56B to be supplied to enable the creation of Item Identification.

56A2.10 "**Design Control Authority**" or "**DCA**" shall mean the individual, company, firm, corporation, designing authority or government department, which controls the design, characteristics and production of an Item by means of its engineering drawings, specifications and inspection requirements.

56A2.11 "**NATO Commercial & Government Entity code**" or "**NCAGE**" shall mean the unique code allocated to a supplier by the UKNCB.

56A.3 In the case of an Item of Supply for which the Contractor is the DCA, the Contractor shall:

56A.3.1 provide Technical Data to the Codification Authority, or the Authority's Agent specified by the Codification Authority, where:

(i) the Item of Supply is not already codified in the NATO Codification System or "**NCS**"; or

(ii) 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;

56A.3.2 where the Item of Supply has already been NATO codified, supply the NSN(s) to the Codification Authority, or the Authority's Agent; and

56A.3.3 inform the Codification Authority, or it's Agent, when and to whom the data was supplied if the information has previously been supplied by the Contractor.

56A.4 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, consider including the terms

of this Condition, or equivalent text, in any Sub-Contracts, to ensure delivery of the cataloguing information.

56A.5 Unless otherwise provided by the Contract, the cost of supplying the information under Clauses 56A.3 and 56A.4 above, and any other information specifically called for under the Contract, shall be deemed to have been included in the Contract Price.

56A.6 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 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.

56A.6.1 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.

56A.6.2 Fair and reasonable payment, based upon the actual work involved, will be made to the Contractor for the supply of additional information under Clause 56A.6 above and, in respect of modifications and design changes approved by the Authority; the supply of updated information under Clause 56A.6.1.

56A.7 Subject to the restrictions resulting from Clause 56A.9, 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 56A, 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.

56A.8 Subject to the restrictions resulting from Clause 56A.9, the information 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.

56A.9 The Contractor shall endeavour to ensure that all information supplied under this Clause 56A 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 the restrictions which apply to its use.

56A.10 The Codification Authority shall not retain or use the Technical Data supplied under this Clause 56A for any purpose other than for Codification.

56A.11 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 UKNCB. All contact between the Contractor and those equivalent organisations will be via the UKNCB.

56A.12 If the DCA is located in a country which is not a member of the NATO Alliance or a NATO sponsored (NCS participating) country, the Codification Authority will be deemed to be the UKNCB, which may nominate an agent to act on its behalf.

56A.13 The Contractor, Sub-Contractor or supplier may contact the Codification Authority for any information concerning the NCS.

56A.14 The requirements set out in Clause 56B shall apply in relation to Item Identification.

56B <u>Codification Requirements for Item Identification</u>

56B.1 Information to be supplied and used for the purposes of Codification is governed by the requirements of the NCS Item Identification Guide ("**IIG"**) and the approved item name shall be used for Codification. The exact requirements are item specific and will vary on an item by item basis.

56B.2 Information may be provided in the form of engineering drawings, international/national or commercial standards and specifications, commercial literature such as catalogues, brochures or similar documentation, in hard or soft copy. Alternatively arrangement may be made to allow the data to be retrieved via a Uniform Resource Locator ("**URL**") or similar.

56B.3 Clause 56B covers all Items of Supply, and the following information must be supplied:

56B.3.1 The NCAGE or name, address and contact details of the Design Control Authority (DCA).

56B.3.2 The name of the Item of Supply, as recognised by the DCA.

56B.3.3 Identifying References:

(i) the DCA's drawing or part number(s), and National or International Standard or Specification Reference, or both (indicating definitive or non-definitive). The references will be assumed to be fully definitive unless stated otherwise;

(ii) where the Contractor's own identifying reference differs from the DCA's reference, this shall also be provided;

(iii) any associated bar code or product identification numbers, assigned by companies compliant with EAN International or the Uniform Code Council ("**UCC**");

(iv) for medical items, the ATC Code (World Health Organisation (WHO) Anatomical Therapeutic Codes), BNF code (British National Formulary) or the ECRI Universal Medical Device Nomenclature code shall be supplied where relevant.

56B.3.4 The following Volumetric Data. Definitions equate to those in ASD S2000M and the data is to be supplied in the format specified therein:

(i) length, width and height/depth of packaged unit ("**SPU**"), used with an associated unit of issue code;

(ii) length, width and height/depth of unpackaged unit ("**SUU**"), used with an associated unit of issue code;

(iii) gross weight of packaged unit ("**WPU**"), used with an associated unit of issue code;

(iv) gross weight of unpackaged unit ("**WUU**"), used with an associated unit of issue code.

56B.4 The following additional information shall be supplied where it is necessary for the information to be used to fully distinguish Items of Supply, as determined by the applicable approved item name and NCS IIG. The DCA is not required to disclose particulars of proprietary processes, manufacturing techniques or proprietary material specifications:

56B.4.1 Basic material (the base material from which the item is fabricated) surface treatment (the finish by which the item is plated, dipped and/or coated, including any special cleanliness conditions).

56B.4.2 All key dimensions shall be supplied for common mechanical parts, such as nuts, bolts, screws, washers etc.

56B.4.3 Where items are threaded, include the size, type, length, class and direction of the thread.

56B.4.4 Electrical characteristics, such as nominal voltage, current or rated power, or both, of the item, rated resistance, capacitance or inductance, and operating frequencies.

56B.4.5 For any pressure system components and equipment details of the pressure ratings.

56B.4.6 Temperature ratings.

56B.4.7 Information on distinguishing features, e.g. colour, shape, style, holes, cut-outs, keyways or slots, etc.

56B.4.8 Radioactive components - radioactive materials.

56B.4.9 Software - the software identification number.

56B.4.10 Markings - markings that indicate the primary purpose, function or application of the Item of Supply.

56B.5 For assemblies only, the Contractor shall supply the final assembly drawing or parts list, or both, including known NSNs and part numbers of constituent parts.

56B.6 Where the Item of Supply is designed for a specific application, the source data shall identify the end item application.

56B.7 Where the Item of Supply contains items of a hazardous nature, the information shall identify the existence of any hazard and the Contractor shall provide a safety data sheet in accordance with DEFCON 68.

Requests For NATO Codification

56B.8 Where the Contractor is required to apply for NATO Codification on behalf of the Authority:

56B.8.1 All requests for codification action must be submitted using the Authority's mandated system.

56B.8.2 Access to the Authority's mandated system is via a user account allocated by UK NCB (subject to conditions).

56B.8.3 The Contractor shall supply the following additional information to the Codification Authority to enable automated item introduction on the Authority's relevant base inventory system. Where this information is not known, the Authority's Representative shall be contacted for guidance:

Data Field	CRISP	SS3	SCCS	ASTRID
Domestic Management Code – DMC		Y		
Inventory Management Code – IMC	Y			
Supply Management Branch – SMBi			Y	
Requirement for Provenance and Traceability (items fitted to aircraft requiring Certificate of Conformity)	Y	Y	Y	Y
Used on next higher assembly – End item information	Y	Y	Y	Y
Unit of Issue Code	Y	Y	Y	Y
Hazardous Indicator	Y	Y	Y	Y
Materiel Accounting Classification Code	Y	Y	Y	Y
Shelf Life Code	Y	Y	Y	
Estimated Price	Y			
Procurement Reference Code	Y	Y		
Special To Contents Container Indicator	Y		Y	
Periodic Maintenance Interval Code	Y			
Pre-Issue Inspection Code	Y			
Quality Assurance Documentation Code	Y			
Inventory Classification Code		Y		
Capital Indicator Code		Y		

57 Supply of Hazard Data

57.1 The Contractor shall provide to the Authority:

57.1.1 for each hazardous material or substance supplied a "**Safety Data Sheet**" ("**SDS**") in accordance with the Classification, Labelling and Packaging (CLP) Regulation 1272/2008 ("**CLP**"); or

57.1.2 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 57 (*Supply of Hazard Data*) shall reduce or limit any statutory duty or legal obligation of the Authority or the Contractor and/or the Contractor's obligations under Schedule 2 (*Statement of Requirements*).

57.2 If the item of supply contains or is a substance falling within the scope of the Registration, Evaluation, Authorisation and Restriction of Chemicals Regulations (EC) No 1907/2006 ("**REACH**"):

57.2.1 the Contractor shall provide to the Authority an SDS for the substance in accordance with REACH. 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 57.8 (*Supply of Hazard Data*); and

57.2.2 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 SDS supplied, shall report this information in writing to the Contractor.

57.3 If the Contractor is required, under, or in connection with this Contract, to supply Articles or components of Articles that, in the course of their use, maintenance, disposal, or in the event of an accident, may release hazardous materials or substances, the Contractor shall provide to the Authority a list of those hazardous materials or substances, and, for each hazardous material or substance listed, provide an SDS.

57.4 The Contractor shall provide to the Authority a completed DEFFORM 68.

57.5 If the Articles, materials or substances are ordnance, munitions or explosives, in addition to the requirements of CLP and REACH the Contractor shall comply with the hazard reporting requirements of Def Stan 07-085 (Design Requirements for Weapons and Associated Systems).

57.6 If the Articles, 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:

57.6.1 activity; and

57.6.2 the substance and form (including any isotope).

57.7 If the Articles, 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.

57.8 Any SDS to be provided in accordance with this Clause 57 (*Supply of Hazard Data*), including any related information to be supplied in compliance with the Contractor's statutory duties under Clauses 57.1.1 and 57.2.1 (*Supply of Hazard Data*), any information arising from the provisions of Clauses 57.5, 57.6 and 57.7 (*Supply of Hazard Data*) and the completed DEFFORM 68, shall be sent directly to the Authority's Representative as soon as practicable, and no later than one (1) month prior to the delivery of the relevant Articles, materials or substances. In addition, so that the safety information can reach users without delay, the Contractor shall send a copy preferably as an email with attachment(s) in Adobe PDF or MS WORD format, or, if only hard copy is available, to the addresses below:

57.8.1 Hard copies to be sent to:

Hazardous Stores Information System (HSIS)
Department of Safety & Environment, Quality and Technology (D S & EQT)
Spruce 2C, #1260
MOD Abbey Wood (South)
Bristol BS34 8JH

57.8.2 Emails to be sent to:

DESTECH-QSEPEnv-HSISmulti@mod.gov.uk

57.9 Failure by the Contractor to comply with the requirements of this Clause 57 (*Supply of Hazard Data*) shall be grounds for rejecting the affected Articles. Any withholding of information concerning hazardous Articles, materials or substances shall be regarded as a breach of this Contract 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 this Contract pursuant to Clause 69 (*Termination for Contractor Default*) without compensation to the Contractor.

57.10 Where delivery is made to the Defence Fulfilment Centre ("**DFC**") and/or other **REDACTED** location/building, the Contractor must comply with the **REDACTED** Supplier Manual.

57A <u>Use of Asbestos</u>

Definitions

57A.1 For the purposes of this Clause 57A, "**Asbestos**" shall have the same meaning as "asbestos" defined in Regulation 2 of the Control of Asbestos Regulations 2012 or "**COAR Regulations**".

Prohibition of Asbestos

57A.2 Subject to Clauses 57A.4 and 57A.5 below, no Asbestos of any type shall be incorporated into any Articles (as defined in DEFCON 501) or other material to be supplied under this Contract.

Notification

57A.3 The Contractor shall notify the Authority in writing as soon as it becomes aware that Asbestos may be incorporated in Articles or other materials to be supplied or processed during performance of this Contract.

Exemption

57A.4 The Authority may issue a Defence Exemption Certificate under the REACH Enforcement Regulations 2008 (the "**Enforcement Regulations**") exempting the Contractor from parts of the Enforcement Regulations. The Contractor may incorporate Asbestos into Articles and/or material supplied, or use or process it in the performance of the Services under this Contract in accordance with the conditions set out in the Defence Exemption Certificate.

57A.5 If at any stage during the Contract Period, 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 Articles or material which have yet to be supplied under this Contract. The Authority may require the Contractor to suspend any further production of such Articles or material or delivery of the relevant Services incorporating Asbestos, pending such determination, thereby relieving the Contractor (for the time being) of any obligations to provide such Articles, material or such Services. In the event that the Authority determines that the alternative substance would be suitable for incorporation into such Articles or material or in the performance of such Services in

lieu of Asbestos, the Authority may vary its requirements in the light of any such determination.

57A.6 If, at any stage during the Contract Period, the Authority issues a further certificate which varies or revokes any Defence Exemption Certificate granted in accordance with the Enforcement Regulations, the effect of which is that any further supply of the Articles or delivery of such Services under the Contract would be prohibited by the Enforcement Regulations, the Contractor shall, on becoming aware of the further certificate, immediately refrain from incorporating Asbestos into any such Articles or performing such Service and shall provide the Authority with written confirmation of this within forty-eight (48) hours. The Authority reserves the right to vary its requirements in the light of any such decision.

57A.7 The Contractor shall obtain from the Health and Safety Executive or the Authority, as appropriate, an exemption from the requirements of COAR Regulations 29 or 30 where an exemption is necessary for performance of this Contract.

58 Delivery, Acceptance, Rejection and transfer of Title and Risk

Delivery

58.1 Unless otherwise agreed by the Parties, delivery of Articles shall occur upon the Articles being handed over by the Contractor to the Authority or to the Authority's Representative at the then relevant address in the United Kingdom that the Authority has notified the Contractor (which at the date of this Contract is the LCS(T) Facility) (such address as may change from time to time following notification (by any means) by the Authority to the Contractor).

58.2 Unless otherwise agreed by the Parties and subject to Clauses 58.4 to 58.17 (inclusive), the title and risk in the Articles shall pass from the Contractor to the Authority upon delivery at the address in Clause 58.1 (*Delivery*) provided the Contractor has complied with its obligations in this Clause 58 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*).

58.3 The Contractor shall ensure that the Articles are packaged in accordance with the terms of this Contract (including Clause 56 (*Packaging (for Articles other than Munitions)*).

58.4 Where:

58.4.1 in respect of an Article that is delivered and assured in accordance with Schedule 4 (*Assurance and Acceptance Process*) (an "**Assured Article**"), after delivery:

(i) the Entry Criteria and/or the Exit Criteria in relation to the Review at which such Assured Article is delivered as a Required Item is not achieved and the reason for such Entry Criteria and/or Exit Criteria not being achieved arises (whether in whole or in part) out of or in connection with the delivery of such Assured Article (including where the Authority considers such Assured Article to be defective); and/or

(ii) the relevant Contractor Deliverable under which such Assured Article is delivered does not achieve Acceptance and the reason for such Acceptance not being achieved arises (whether in whole or in

part) out of or in connection with the delivery of such Assured Article (including where the Authority considers such Assured Article to be defective),

then, in either case (and whether or not such Assured Article is in the possession of the Contractor to assess and/or repair such Assured Article where the Authority considers such item is defective and requires repair and/or other remedial work):

(A) the provisions of Schedule 4 (*Assurance and Acceptance Process*) shall apply until the relevant Exit Criteria and/or, where the relevant Article is not assured as part of a Review, (as applicable) Acceptance have been achieved; and

(B) such Assured Article shall, for the purposes of this Contract, be considered as not having been delivered under this Contract and, subject to Clause 58.17 (*Risk*), the title, property and risk in that Assured Article shall return to the Contractor; or

58.4.2 in respect of an Article that is not delivered and assured in accordance with Schedule 4 (*Assurance and Acceptance Process*) (a "**Non-Assured Article**"), after delivery such Non-Assured Article is:

(i) rejected by the Authority in accordance with Clauses 58.5 and 58.6 (*Rejection*); or

(ii) is in the possession of the Contractor to assess and/or repair such Non-Assured Article where the Authority considers such item is defective and requires repair,

that Non-Assured Article shall, for the purposes of this Contract, be considered as not having been delivered under this Contract and, subject to Clause 58.17 (*Risk*), the title, property and risk in that Non-Assured Article shall return to the Contractor (unless, in the case of a Non-Assured Article purported to have been rejected by the Authority, a notice of objection has been issued to the Authority in accordance with Clause 58.11 (*Rejection*), when the title, property and risk in that Non-Assured Article shall only return to the Contractor if it is agreed or determined such objection is not valid).

Rejection

58.5 Without prejudice to the Authority's rights under Schedule 4 (*Assurance and Acceptance Process*) in respect of an Assured Article, prior to acceptance by the Authority in accordance with Clauses 58.12 to 58.16 (inclusive) (*Acceptance*), the Authority may reject any Non-Assured Article (whether or not after inspection) which does not conform with the requirements of this Contract.

58.6 Without prejudice to the Authority's rights under Schedule 4 (*Assurance and Acceptance Process*) in respect of an Assured Article, the Authority may (whether or not after inspection) reject the whole of any consignment of the Non-Assured Articles if:

58.6.1 a reasonable proportion or percentage of such Non-Assured Articles in that consignment does not conform with the requirements of this Contract; or

58.6.2 samples, whether of Non-Assured Articles or of the material in the Non-Assured Articles, taken randomly from that consignment do not conform with the requirements of this Contract; and

58.6.3 in either such case, where not more than ten (10) Working Days has elapsed since the date of delivery in the manner required in Clauses 58.1 to 58.3 (inclusive) (*Delivery*), subject always to Clause 58.14 (*Acceptance*).

58.7 Without prejudice to the Authority's rights under Schedule 4 (*Assurance and Acceptance Process*) in respect of an Assured Article, for the purposes of this Clause 58 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*), an item of Issued Property in connection with which the Contractor is required to perform obligations in accordance with this Contract shall, following completion of the relevant part of the Contractor Deliverables, be subject to rejection under Clause 58.6 (*Rejection*) as if it was a Non-Assured Article, but without prejudice to the Authority's proprietary and other rights in that item of Issued Property. The provisions of Clauses 58.8 to 58.11 (inclusive) (*Rejection*) shall similarly apply to such items.

58.8 Subject to Clause 58.11 (*Rejection*), the Contractor shall at its own expense:

58.8.1 in the case of an Assured Article (and without prejudice to the Authority's other rights under Schedule 4 (*Assurance and Acceptance Process*)), at the request of the Authority (and in the manner and at the time reasonably requested by the Authority), remove any Assured Article in relation to which the reason for the Entry Criteria and/or Exit Criteria and/or Acceptance (as applicable) referred to in Clause 58.4.1 (*Delivery*) not being achieved arises (whether in whole or in part) out of or in connection with the delivery of such Assured Article (including where the Authority considers such Assured Article to be defective); and/or

58.8.2 in the case of a Non-Assured Article and within fourteen (14) Working Days of being notified of the rejection, or within any other applicable period specified in this Contract, remove any such Non-Assured Article and/or consignment which the Authority has rejected.

58.9 If the Contractor fails to remove the relevant Article and/or consignment in accordance with Clause 58.8 (*Rejection*) or the Authority considers such Article and/or consignment is defective and is in need of repair, the Authority may return it to the Contractor at the Contractor's risk and expense.

58.10 The Contractor shall at its own expense and within the contractual period for delivery, or within such further reasonable period as the Authority may allow, supply and deliver Articles that conform with the requirements of this Contract.

58.11 Without prejudice to the provisions of Schedule 4 (*Assurance and Acceptance Process*) in respect of an Assured Article, the Contractor may object in writing to a notification of rejection of a Non-Assured Article by the Authority within the period specified at Clause 58.8.2(*Rejection*). If the objection is not resolved within a reasonable time, it shall be treated as a Dispute and the provisions of the Dispute Resolution Procedure shall apply. Unless otherwise agreed the Contractor shall not remove the Non-Assured Articles which are the subject of the rejection notice unless and until the objection or Dispute has been resolved in favour of the Authority.

Acceptance

58.12 Subject to Clause 58.13 (*Acceptance*) and without prejudice to the provisions of Schedule 4 (*Assurance and Acceptance Process*) in respect of the Acceptance of an Assured Article, acceptance of a Non-Assured Article and/or consignment occurs at the time and in accordance with the procedure specified in this Contract on the date that is ten (10) Working Days from delivery in accordance with Clause 58.1 (*Delivery*) unless the Authority has rejected such Non-Assured Article in accordance with Clause 58.6 (*Rejection*).

58.13 The Authority shall not (and subject always to the provisions of Schedule 4 (*Assurance and Acceptance Process*) in respect of the Acceptance of an Assured Article) have accepted an Article:

58.13.1 merely because the Authority asks for, or agrees to, its repair by or under an arrangement with the Contractor; or

58.13.2 unless otherwise specified in this Contract, merely because the Article has been delivered to a Third Party.

58.14 The Authority shall not (and subject always to the provisions of Schedule 4 (*Assurance and Acceptance Process*) in respect of the Acceptance of an Assured Article) be deemed to have accepted a Non-Assured Article unless it has had a reasonable opportunity to examine it after delivery for the purpose of ascertaining whether it is in conformity with this Contract.

58.15 Acceptance of any Article and/or consignment does not limit or in any way affect the Contractor's obligations to remedy any defects which are discovered in any Articles after the date such Article was accepted.

58.16 Where software is to be supplied as a requirement of this Contract it will be subject to the provisions of this Clause 58 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*) as if it were an Article.

Risk

58.17 For the avoidance of doubt, title and risk in an Article will, subject to Clause 58.18, remain with the Contractor until such time as the Article has been delivered to the Authority in accordance with Clause 58.2 (*Delivery*).

58.18 Where following such delivery referred to in Clause 58.17:

58.18.1 in the case of any Assured Article, the relevant Assured Article is identified as the reason (whether in whole or in part) for the Entry Criteria and/or Exit Criteria and/or Acceptance (as applicable) referred to in Clause 58.4.1 (*Delivery*) not being achieved; and/or

58.18.2 in the case of a Non-Assured Article, the relevant Non-Assured Article is rejected by the Authority in accordance with this Clause 58 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*); and/or

58.18.3 in the case of an Article which is in the possession of the Contractor to assess and/or repair such Article where the Authority considers such item is defective and requires repair (as referred to in Clauses 58.4.1 and 58.4.2(ii) (*Delivery*)),

then title and risk will, on the relevant date the circumstances described in Clauses 58.18.1, 58.18.2 or 58.18.3 occurs, be allocated so that title in the Article will remain with the Authority and risk in the Article will be with the Contractor (until such time as the relevant Article is again delivered to the Authority in accordance with Clause 58.2 (*Delivery*)).

59 Issued Property

59.1 All Issued Property shall remain the property of the Authority. It shall be used in the execution of this Contract and for no other purpose, without the prior approval in writing of the Authority.

59.2 Neither the Contractor, nor any Sub-Contractor, nor any other person, shall have a lien on Issued Property, for any sum due to the Contractor, Sub-Contractor or other person, and the Contractor shall take all such steps as may be necessary to ensure that the title of the Authority, and the exclusion of such lien, are brought to the notice of all Sub-Contractors and other persons dealing with any Issued Property.

Receipt

59.3 Subject to Clauses 59.4 and 59.7 (*Receipt*), within fourteen (14) Working Days of receipt of Issued Property, or such other longer period as may be specified in this Contract, the Contractor shall:

59.3.1 check the Issued Property to verify that it corresponds with the Issued Property specified in this Contract;

59.3.2 conduct a reasonable visual inspection; and

59.3.3 conduct any additional inspection and testing as may be necessary and practicable to check that the Issued Property is not defective or deficient for the purpose for which it has been provided,

and notify the Authority of any defects, deficiencies or discrepancies discovered.

59.4 Where Issued Property is packaged it shall not be unpacked earlier than is necessary. The period identified at Clause 59.3 (*Receipt*) shall count from the date on which packages are opened.

59.5 The Authority shall within a reasonable time after receipt of any notice under Clause 59.3 (*Receipt*) replace, re-reissue or authorise repair of Issued Property agreed to be defective or deficient and the Contractor shall (having first taken all reasonable measures to mitigate the consequences of any such delay) consider whether such matter gives rise to a GFA Failure and, if so, shall consider initiating the procedures in Clause 31 (*Authority Performance Failures*) and shall also issue written instructions for the return or disposal of the defective or deficient Issued Property.

59.6 In the event that the Authority fails to provide, replace or authorise repair of defective or deficient Issued Property within a reasonable time of receipt of a notice in accordance with Clause 59.3 (*Receipt*), the Contractor shall (having first taken all reasonable measures to mitigate the consequences of any such delay) consider whether such matter gives rise to a GFA Failure and, if so, shall consider initiating the procedures in Clause 31 (*Authority Performance Failures*) and if the Parties agree, fair and reasonable revisions of the Contract Price, delivery schedule and/or any other matter shall be considered and, if agreed, an Authority Change, to incorporate the

agreed changes to this Contract, shall be initiated (such changes having due regard to any relief that may have been granted to the Contractor in accordance with Clause 31 (*Authority Performance Failures*)).

59.7 Clauses 59.3 to 59.6 (inclusive) (*Receipt*) do not apply in the following circumstances:

59.7.1 where Issued Property is issued for the purpose of repair, overhaul, conversion or other work to be performed on the Issued Property, inspection of such property shall be as specified in this Contract;

59.7.2 where the Contractor can show that the Issued Property cannot be fully tested until it has been integrated with other items, inspection of such property shall be as specified in this Contract;

59.7.3 where Special Jigs, Tools Etc. become Issued Property under Clause 63 (*Special Jigs, Tooling and Test Equipment*);

59.7.4 where Issued Property is in the care, custody or control of the Contractor as at the Effective Date; and/or

59.7.5 subject to Clause 31.10.1 (*Discretionary GFA*) (in so far as such Clause 31.10.1 (*Discretionary GFA*) refers to Clause 59.4 (*Receipt*)), where such Issued Property is Discretionary GFA.

Custody

59.8 Subject to Clause 59.11 (*Custody*), the Contractor shall be responsible for the safe custody and due return of Issued Property, whether or not incorporated into any Articles, and shall be responsible for all Loss or damage thereto, until re-delivered in accordance with the Authority's instructions (as may be amended from time to time) or until the expiry of the period specified in Clause 59.15 (*Accounting and Return of Issued Property*).

59.9 The Contractor shall be responsible for such calibration and maintenance of the Issued Property as may be required for the purpose of the Contractor delivering the Contractor Deliverables and performing its other obligations in accordance with this Contract.

59.10 If requested, the Authority, within a reasonable time, and where practicable before delivery of the Issued Property, shall notify the Contractor of the value of the Issued Property, provided that the provisions of this Clause 59.10 (*Custody*) shall not apply to any Issued Property in the care, custody or control of the Contractor as at the Effective Date.

59.11 The Contractor shall not be liable in respect of:

59.11.1 defects or deficiencies notified to the Authority in accordance with Clause 59.3 (*Issued Property*) or latent defects which the Contractor can show could not reasonably have been discovered by means of the activities described at Clause 59.3 (*Issued Property*);

59.11.2 fair wear and tear in Issued Property resulting from its normal and proper use in the execution of this Contract (except insofar as the deterioration is contributed to by any misuse, lack of care or want of maintenance by the Contractor);

59.11.3 Issued Property rendered unserviceable as a direct result of ordinary performance of this Contract; and

59.11.4 any Loss or damage to Issued Property arising from:

(i) aircraft or other aerial devices or objects dropped from them, including pressure waves caused by aircraft or such devices whether travelling at sonic or supersonic speeds;

(ii) ionising radiation or contamination by radioactivity from any nuclear fuel or from nuclear waste from the combustion of nuclear fuel;

(iii) the radioactive, toxic, explosive or other hazardous properties of any nuclear assembly or nuclear component thereof; or

(iv) riot, civil commotion, civil war, rebellion, revolution, insurrection, military or usurped power or acts of the Queen's enemies.

Accounting and return of Issued Property

59.12 The Contractor shall:

59.12.1 open and maintain a Public Store Account ("**PSA**") in accordance with Def Stan 05-099;

59.12.2 ensure that all property of the Authority recorded in the PSA, including but not limited to Issued Property, is available for inspection by the Authority at any reasonable time; and

59.12.3 on being given two (2) months' notice or such other period as has been stated in this Contract permit, and co-operate with, the Authority to conduct audits of the property of the Authority recorded in the PSA in a manner to be determined by the Authority and where the Authority has reasonable grounds to believe that the property of the Authority has not been used in accordance with the terms of issue, then these audits may be conducted without notice.

59.13 Once title in Special Jigs, Tools Etc. has passed to the Authority in accordance with Clause 63.4 (*Special Jigs, Tooling and Test Equipment: Passing of Property*), the Contractor shall record that equipment in the PSA in accordance with Def Stan 05-099.

59.14 The Contractor shall at least once in every two (2) Contract Months forward a list of Issued Property which is in its possession but which is no longer required by the Contractor for the provision of the Contractor Deliverables, to the Authority's Representative. The Authority's Representative shall, within two (2) Contract Months from receipt of the relevant list notify the Contractor of a place or places within the United Kingdom where the Contractor should deliver such Issued Property. Where the Authority has notified such delivery instructions, the Contractor shall comply with such instructions as soon as is reasonably practicable, ensuring that appropriate packaging (having due regard to the nature of the relevant Issued Property) is utilised. Where there is no such notification, the Contractor shall request (in writing) the Authority for delivery instructions and shall repeat such request at least once weekly thereafter until such delivery instructions are notified to the Contractor by the Authority. Following receipt of such delivery instructions the Contractor shall deliver the relevant Issued

Property to the Authority (in each case ensuring appropriate packaging (having due regard to the nature of the relevant Issued Property) is utilised).

59.15 Without prejudice to Clause 59.14 (*Accounting and Return of Issued* Property), on completion or termination of this Contract, the Contractor shall forward a list of Issued Property still held to the Authority's Representative. Return or disposal of such Issued Property will be as specified in this Contract, or as instructed by the Authority on completion or termination of this Contract. If no disposal instructions are specified in this Contract the Authority shall provide such instructions within two (2) months of the Contractor's written request to do so.

60 Accounting for property of the Authority

60.1 The Contractor shall:

60.1.1 maintain a Public Store Account (PSA), as defined in Def Stan 05-099, which shall include a complete list of all property of the Authority, as defined in Clause 60.2 (*Accounting for property of the Authority*), and record for that property all transactions or other accounting information specified in Annex A to DEFCON 694;

60.1.2 supply to the Authority quarterly reports on the current PSA holdings. At least one (1) report in any twelve (12) month accounting period or part thereof shall be a reconciled report. This shall be submitted with the Annual Certificate Form AAC 32 as required in Def Stan 05-099. The other three (3) reports submitted in the period may be un-reconciled advisory reports. The submission by the Contractor and receipt by the Authority of these reports shall not prejudice any rights or obligations of the Authority or the Contractor under this Contract;

60.1.3 ensure that the PSA is available for inspection by the Authority at any reasonable time;

60.1.4 on being given two (2) months' notice permit, and co-operate with, the Authority to conduct audits of the PSA in a manner to be determined by the Authority provided that where the Authority is not satisfied of the proper use of property of the Authority, an audit may be conducted without notice;

60.1.5 retain the PSA for a period of three (3) years after disposal of the last item of the property of the Authority or for any other period as may be specified in this Contract;

60.1.6 if the Authority agrees that a Sub-Contractor at whatever level of sub-contracting shall have responsibility in the Sub-Contractor's PSA for property of the Authority issued in aid of this Contract, the Contractor shall include in any Sub-Contract with those Sub-Contractors the provisions corresponding to those set out in this Clause 60 (*Accounting for property of the Authority*) that apply to property of the Authority issued in aid of the Sub-Contract, in particular Clauses 60.1, 60.2, 60.4 and 60.7 (*Accounting for property of the Authority*); and

60.1.7 manage the GFA component of the PSA in accordance with the provisions of Def Stan 05-099 and implement any new edition of or amendment to Def Stan 05-099 subject to Clause 75 (*Change*) within three (3) months of the

publication date of the new edition. These amendments shall not have retrospective effect.

60.2 For the purposes of this Clause 60 (*Accounting for property of the Authority*), "property of the Authority" means GFA and fixed assets, including property issued under Clause 31.10 (*Discretionary GFA*), Clause 59 (*Issued Property*) and property of the Authority issued to the Contractor under any other authorising document.

60.3 For the avoidance of doubt, it is a condition of this Contract that this Clause 60 (*Accounting for property of the Authority*) shall apply to all property issued to the Contractor from the Effective Date, whether in aid of this Contract, any other contract or other agreement with the Authority. Property of the Authority issued prior to the Effective Date may be subject to separate contractual arrangements.

60.4 The obligations of the Contractor arising under this Clause 60 (*Accounting for property of the Authority*) in respect of property of the Authority issued in aid of this Contract shall survive completion of this Contract and shall not be completed until all such obligations are fulfilled including the provisions of Clause 60.1.5 (*Accounting for property of the Authority*).

60.5 The obligations of the Contractor arising under this Clause 60 (*Accounting for property of the Authority*) in respect of property of the Authority unconnected with this Contract shall survive completion of this Contract and shall not be completed until all those obligations are fulfilled including the provisions of Clause 60.1.5 (*Accounting for property of the Authority*) unless and until a subsequent contract containing DEFCON 694 is placed with the Contractor at which time obligations in respect of any remaining property of the Authority unconnected with this Contract shall be subsumed in the subsequent contract.

60.6 If, after completion of this Contract, no subsequent contract is placed containing DEFCON 694 within the period detailed at Clause 60.1.5 (*Accounting for property of the Authority*) then the obligations of the Contractor arising under this Clause 60 (*Accounting for property of the Authority*) in respect of property of the Authority unconnected with this Contract shall cease on expiry of the period detailed in Clause 60.1.5 (*Accounting for property of the Authority*).

60.7 The Authority reserves the right to amend Annex A to DEFCON 694 without further consultation where the amendments arise from the Authority's proper and reasonable accounting requirements. For the purposes of this Clause 60 (*Accounting for property of the Authority*), Annex A to DEFCON 694 shall be regarded as a specification which is subject to the provisions of Clause 75 (*Change*). If the Authority exercises this right:

60.7.1 the Contractor shall implement the amendment to Annex A to DEFCON 694 at the commencement of the Authority's next accounting year provided that a notice of six (6) months or such other period as may expressly be agreed between the Authority and the Contractor is given to the Contractor. These amendments shall not have retrospective effect; and

60.7.2 the Contractor shall inform the Authority as soon as practicable, but in any event within three (3) months of notice having been given, if the Contractor cannot comply with the amendment to Annex A to DEFCON 694.

61 Marking of Articles

61.1 Each Article shall be marked in accordance with the procedure laid out in this Contract. Where no procedure is stated, the Contractor shall mark each Article clearly and indelibly in accordance with the requirements of the relevant Def Stan 05-132 as specified in this Contract or specification. In the absence of such requirements, the Articles shall be marked with the Authority stock reference, NATO Stock Number ("**NSN**") or alternative reference number shown in this Contract. Any marking method used shall not have a detrimental effect on the strength, serviceability or corrosion resistance of the Articles.

61.2 The marking shall include any serial numbers allocated to the Article.

61.3 Where because of its size or nature it is not possible to mark an Article with the required particulars, the required information should be included on the package or carton in which the Article is packed in accordance with Clause 56 (*Packaging (for Articles other than Munitions)*).

62 Transport

62.1 Where this Contract states that the Authority is responsible for transport of items of Issued Property, the Authority shall only be responsible to transport such Issued Property to the Contractor's premises at Building 6, JSCS Ashchurch, Tewkesbury, Gloucestershire, GL20 8LZ unless an alternative destination is identified as the delivery point for any specific item of Issued Property in the tables at Part 2 to Schedule 7 (*Authority Obligations*).

62.2 The Contractor shall be responsible for transporting the Articles supported under this Contract and returning the items of Issued Property (as the case may be) from the point of origin to the relevant locations within the United Kingdom as notified by the Authority to the Contractor from time to time. The Contractor shall also be responsible for all loading and unloading of the Articles and the items of Issued Property, including, where necessary, the provision of special handling equipment.

63 Special Jigs, Tooling and Test Equipment

63.1 The Contractor shall provide all jigs, tools, patterns, moulds, dies, manufacturing gauges and test equipment, together with associated fixtures, fittings and software necessary for the manufacture of the Articles or for the provision of the Contractor Deliverables, unless supplied by the Authority in accordance with Schedule 7 (*Authority Obligations*).

Pricing

63.2 The Contract Price includes an appropriate amount to enable the Contractor to recover his expenditure on Special Jigs, Tools Etc., including the cost of maintenance and calibration under Clause 63.8 (*Accounting and Control*).

63.3 The Contractor shall not claim assistance from other Government funds (e.g. Regional Development Grants or selective financial assistance) or other third parties towards the costs of any Special Jigs, Tools Etc.

Passing of property

63.4 Except where otherwise specified in this Contract, the Special Jigs, Tools Etc. shall become the property of the Authority:

63.4.1 where the Special Jigs, Tools Etc. are delivered to the Authority before being utilised by the Contractor for any purpose, in accordance with Clause 58 (*Delivery, Acceptance, Rejection and Transfer of Title and Risk*) as if they were Articles; or

63.4.2 where the Authority authorises the Contractor to utilise the Special Jigs, Tools Etc. for the production of articles for a Third Party in advance of their being used for the production of Articles under this Contract, upon delivery of the first article so produced for the Third Party; or

63.4.3 where the Contractor is to utilise the Special Jigs, Tools Etc. in respect of the Contractor Deliverables before delivery of such Special Jigs, Tools Etc. to the Authority, the earlier to occur of when the Special Jigs, Tools Etc. are delivered to the Contractor or title to such Special Jigs, Tools Etc. is secured by the Contractor or any Contractor Related Party through any contractual arrangement to which the Contractor or any Contractor Related Party is a party; and

63.4.4 in all other cases upon acceptance of the first Article delivered under this Contract or upon expiry or termination of this Contract whichever is the earlier.

63.5 Where property in the Special Jigs, Tools Etc. passes to the Authority while they are still required to provide the Contractor Deliverables, they shall be treated thereafter as Issued Property for the purposes of Clauses 59 (*Issued Property*) and 60 (*Accounting for property of the Authority*).

Modifications

63.6 Notwithstanding the passing of property to the Authority pursuant to Clause 63.4 (*Passing of Property*), the Contractor shall be free to modify the Special Jigs, Tools Etc. as it may deem necessary in order to produce the Articles or to provide the Contractor Deliverables, and the Authority's approval of such modifications shall not be required.

Accounting and control

63.7 The Contractor shall account for and control the Special Jigs, Tools Etc. in accordance with the provisions of Clause 63.5 (*Passing of Property*). Pending the transfer to the Public Store Account, the Contractor shall:

63.7.1 maintain a list of Special Jigs, Tools Etc. procured or manufactured by the Contractor;

63.7.2 make the list available to the Authority for inspection by the Authority;

63.7.3 maintain the list for three (3) years after disposal of the Special Jigs, Tools Etc., where not transferred to the Public Store Account in accordance with Clause 59 (*Issued Property*);

63.7.4 forward the list to the Authority's Representative following first Article acceptance and prior to transfer of Special Jigs, Tools Etc. to the Public Store Account; and

63.7.5 remove from the list any Special Jigs, Tools Etc. transferred to the Public Store Account.

63.8 The Contractor shall be responsible for the safe custody, maintenance and calibration necessary to retain the relevant Special Jigs, Tools Etc. on any Contractor premises until delivered to the Authority in accordance with Clause 63.9.

Availability

63.9 Once property in the Special Jigs, Tools Etc. has passed to the Authority in accordance with Clause 63.4 (*Passing of property*), the Contractor shall, if required, deliver the Special Jigs, Tools Etc. to such individual, company, factory or Government Establishment as may be named by the Authority. The Contractor shall not be entitled to any further payment for delivering the Special Jigs, Tools Etc. other than for the recovery of packing and carriage costs reasonably incurred. This Clause 63.9 (*Availability*) shall not, however, entitle the Authority to require the Contractor to dispose of the Special Jigs, Tools Etc. to the prejudice of this Contract or other contracts held by the Contractor with the Authority or with another customer, provided the Authority's approval for such use has been given in accordance with Clause 63.11 (*Use for other than the purposes of the Authority*). Where the Contractor holds no contracts for such articles, but having received the Authority's approval in accordance with Clause 63.11 (*Use for other than the purposes of the Authority*), has made a firm written offer to a Third Party to supply such articles, the Authority shall not be entitled to dispose of the Special Jigs, Tools Etc. until such time as the Contractor's offer has expired and no commitment to supply those articles or perform those services remains.

Delivery

63.10 The Special Jigs, Tools Etc. shall be delivered to the Authority by the Contractor in accordance with Clause 59.12 (*Accounting and return of Issued Property*) or as notified to the Contractor from time to time (in each case at no additional cost to the Authority).

Use for other than the purposes of the Authority

63.11 The Contractor shall not use the Special Jigs, Tools Etc. for any other purposes other than those of the Authority without first obtaining the written approval of the Authority and in accordance with the terms, including payment, for such other use as stated in a commercial exploitation, or other agreement between the Contractor and the Authority. In Sub-Contracts, which include the provisions of this Clause 63 (*Special Jigs, Tooling and Test Equipment*), the Contractor shall require that such written approval be obtained direct from the Authority.

64 Montreal Protocol Substances

64.1 The Contractor shall provide annually to the Authority a list (or a nil return where appropriate) setting out which of the substances listed in Regulation (EC) No. 1005/2009 (as amended by Regulation (EC) No. 744/2010 and as subsequently amended from time to time) have been used in the Contractor Deliverables and/or any Packaging specifying:

64.1.1 the quantity of such substances; and

64.1.2 where in the Contractor Deliverables and/or Packaging such substances have been used.

65 Not Used

PART 12 - CONTRACT SPECIFIC PROVISIONS

66 Authority Obligations

66.1 The Parties shall comply with the provisions of Schedule 7 (*Authority Obligations*).

67 Management and Reporting

67.1 The Parties shall comply with the provisions of this Contract with regard to the provision of periodic reporting (including Schedule 8 (*Governance and Management*) and Schedule 6 (*Incentivisation*)).

67.2 The submission by the Contractor and receipt by the Authority of reports on the progress of this Contract shall not prejudice any rights or obligations of the Authority or the Contractor under this Contract.

68 Quality Assurance

68.1 The Contractor shall comply with the documents referred to in Schedule 15 (*Ancillary Documents*).

68.2 The Quality Plan is in the Agreed Form (and the Quality Plan shall be amended from time to time in accordance with Good Industry Practice and AQAP 2015).

68.3 Notwithstanding that the Quality Plan will have been seen and agreed by the Authority, the Contractor shall be solely responsible for the accuracy, suitability and applicability of the Quality Plan.

PART 13 - TERMINATION

69 Termination for Contractor Default

Right to Terminate

69.1 If a Contractor Default has occurred, the Authority shall be entitled to terminate the whole or any part of this Contract in accordance with the provisions of Clause 69.2 (*Right to Terminate*) and subject to the provisions of Clauses 69.3 to 69.6 (inclusive) (*Rectification*).

69.2 If a Contractor Default has occurred (including a default as contemplated in Clause 69.13 (*Termination Following a Change of Ownership*)) and the Authority wishes to terminate the whole or any part of this Contract pursuant to this Clause 69 (*Termination for Contractor Default*), it must serve a notice (the "**Termination Notice**") on the Contractor stating:

69.2.1 that the Authority is terminating this Contract or part thereof for Contractor Default;

69.2.2 where relevant, the part of this Contract that the Authority is terminating;

69.2.3 the type and nature of the Contractor Default that has occurred, giving reasonable details; and

69.2.4 that this Contract or part thereof shall (subject to the provisions of Clauses 69.3 to 69.6 (inclusive) (*Rectification*)) terminate on the day (the "**Contractor Default Termination Date**") falling twenty (20) Working Days after the date the Contractor receives the Termination Notice.

Rectification

69.3 Where a Termination Notice cites a Contractor Default of the type and nature falling under limbs (a), (f) or (i) of the definition of "Contractor Default", the Contractor shall, in consultation with the Authority, have the opportunity to set out within ten (10) Working Days or such other period as agreed between the Parties before the end of such ten (10) Working Day period how it intends to remedy such Contractor Default.

69.4 Where the Authority agrees with such proposed remedy, and the remedy is implemented as agreed, the Termination Notice in question shall be deemed to be revoked.

69.5 Where the Authority agrees with such proposed remedy, and the remedy is not implemented as agreed, the Contractor Default Termination Date shall be the day falling twenty (20) Working Days after the date by which the remedy was agreed to be implemented.

69.6 If by the day falling twenty (20) Working Days after the date the Contractor receives the Termination Notice (or such later date as the Authority, acting reasonably, may agree) the Authority considers that such proposed remedy will not restore the provision of the Contractor Deliverables or any portion thereof in accordance with the terms of this Contract, and/or that such proposed remedy will not rectify the Contractor Default, the Authority may terminate the whole or the relevant part of this Contract forthwith (and the Contractor Default Termination Date shall be the day falling twenty (20) Working Days after the date the Contractor receives the Termination Notice (or such later date to be determined at the Authority's discretion)).

Termination Date for Contractor Default

69.7 Following the issue of a Termination Notice pursuant to Clause 69.2 (*Right to Terminate*) and where the Authority is terminating the whole of this Contract, this Contract shall (subject to the provisions of Clauses 69.3 to 69.6 (inclusive) (*Rectification*)) terminate on the Contractor Default Termination Date.

Partial Termination

69.8 Where the Authority is terminating part of this Contract, the Parties shall, subject to Clause 73 (*Continuing Obligations*), owe each other no further obligations in respect of such part of this Contract as is specified in the Termination Notice from the Contractor Default Termination Date.

69.9 For the avoidance of doubt, where Clause 69.8 (*Partial Termination*) applies, the Parties shall continue to fulfil their respective obligations in respect of those parts of this Contract that are not identified in the Termination Notice as being terminated.

Termination following a Prohibited Act

69.10 If the Contractor commits a Prohibited Act and/or breaches and/or is in default under Clauses 5.1.13, 5.1.14 and/or 5.1.15 (*Contractor Warranties*), the Authority may (without prejudice to its rights in Clauses 13.3 and 13.4 (*Sub-Contracting*) and subject to the provisions of Clause 69.11 (*Termination following a Prohibited Act*)) by notice:

69.10.1 require the Contractor to remove from performance of this Contract any Contractor Related Party, and any of the Contractor's employees, consultants, or agents whose acts or omissions have caused the default; or

69.10.2 immediately terminate this Contract; and

69.10.3 any notice served by the Authority under this Clause 69.10 (*Termination Following a Prohibited Act*) shall specify the nature of the Prohibited Act, the identity of the party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Contract shall terminate).

69.11 In exercising its rights and remedies in respect of a Prohibited Act, the Authority shall:

69.11.1 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

69.11.2 give all due consideration, where appropriate, to action other than termination of this Contract, including without being limited to:

(i) requiring the Contractor to procure the termination of a Sub-Contract where the Prohibited Act was undertaken by or on behalf of a Sub-Contractor or anyone acting on its or their behalf; or

(ii) requiring the Contractor to procure the re-assignment of an employee, consultant or agent (whether its own or that of a Sub-Contractor or anyone acting on its behalf) from performing this Contract where the Prohibited Act is that of such employee, consultant or agent,

and the Contractor shall (and shall use all reasonable endeavours to procure that its Sub-Contractors shall) give all due consideration to the Authority's proposal under this Clause 69.11.2 (*Termination Following a Prohibited Act*).

Termination following withholding of Hazard Data

69.12 As an alternative to terminating this Contract (or any part thereof) following a Contractor Default of the type described at limb (i) of the definition of that term, the Authority shall have the option to require the Contractor to rectify the relevant breach immediately at no additional cost to the Authority.

Termination following a Change of Ownership

69.13 If a Change of Ownership occurs in the circumstances described in Clause 80.3 (*Change of Ownership*), a Contractor Default shall be deemed to have occurred and the Authority shall be entitled to terminate the whole or any part of this Contract within twelve (12) months of the date the Authority became aware that the relevant Change

of Ownership has occurred and such termination shall be subject to the provisions of Clause 69.2 (*Right to Terminate*) and shall not be subject to the provisions of Clauses 69.3 to 69.6 (inclusive) (*Rectification*).

70 Termination for Convenience

70.1 The Authority shall, in addition to its power under any other of the provisions of this Contract, have the power to determine this Contract at any time by giving to the Contractor at least twenty (20) Working Days written notice, and upon the expiration of such notice period this Contract shall terminate, without prejudice to the rights of the Parties already accrued as at the Termination Date, but subject to the operation of the following provisions of this Clause 70 (*Termination for Convenience*).

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

70.2.1 to direct the Contractor, where provision of any element of the Contractor Deliverables has not been commenced, to refrain from commencing such provision;

70.2.2 to direct the Contractor to complete the provision of any element of the Contractor Deliverables and/or to concentrate its efforts on the completion of any elements of the Contractor Deliverables where provision of the same (or any activities that are integral to such provision) has (or have) already commenced;

70.2.3 to direct the Contractor to, as soon as may be reasonably practicable after the receipt of such notice, take such steps as will ensure that the rate of provision of the Contractor Deliverables (or the rate of performance of any activities that are integral to such provision) is reduced as rapidly as possible; and/or

70.2.4 to direct the Contractor to determine on the best possible terms such Sub-Contracts and orders for materials, parts, components and/or services as have not been completed, observing in connection with this any direction given under Clauses 70.2.1 to 70.2.3 (*Termination for Convenience*) as far as may be possible.

70.3 If in any particular case of hardship to the Contractor should arise from the operation of this Clause 70 (*Termination for Convenience*) it shall be open to the Contractor to refer the circumstances to the Authority who, on being satisfied that such hardship exists, shall make such allowance (having particular regard to the provisions of Clause 71 (*Financial consequences of Termination*)), if any, as in its opinion is reasonable, and the decision of the Authority on any matter or thing arising out of this Clause 70.3 (*Termination for Convenience*) shall be final and conclusive.

71 Financial consequences of Termination

Termination for Contractor Default

71.1 Where this Contract or any part thereof is terminated pursuant to Clause 69 (*Termination for Contractor Default*), the provisions of Clauses 71.2 to 71.4B (inclusive) (*Termination for Contractor Default*) shall apply (provided always that where such

termination is as a result of an Insolvency Event the Contractor shall not be entitled to any compensation or any further payment from the Authority).

71.2 Where Clause 71.1 (*Termination for Contractor Default*) applies, and the Authority makes alternative arrangements for the provision of the Contractor Deliverables (which may, for the avoidance of doubt, include the Authority carrying out the Contractor Deliverables itself and/or through Third Parties), the Authority shall be entitled to recover from the Contractor the cost of tendering for and/or making such alternative arrangements (including the Losses contemplated in paragraphs 4.2 and 6.2 of Schedule 10 (*Transition*), together with any additional expenditure incurred by the Authority as a result of such alternative arrangements (i) throughout the remainder of what would have been (as at the date of the Termination Notice) the term of this Contract had it not been terminated pursuant to Clause 69 (*Termination for Contractor Default*) and (ii) during the period after the Termination Date in respect of which the exercise of any Option would have extended the term of this Contract (and assuming for the purposes of this Clause 71.2, that the Authority has exercised either the Option referred to in Clause 4.4.1 or either or both of the Options referred to in Clauses 4.4.2 and 4.4.3 (*Contract Period and Options*)).

71.3 Where Clause 71.1 (*Termination for Contractor Default*) applies, the Contractor shall not be entitled to be paid any sums until the Authority has assessed the cost of the alternative arrangements referred to in Clause 71.2 (*Termination for Contractor Default*). If following such assessment, the amount of such Losses is less than the amount outstanding to the Contractor for any aspect of the Contractor Deliverables that it has, as at the Termination Date, delivered to the Authority in accordance with this Contract, then the Authority shall pay the difference to the Contractor. The Authority shall complete such assessment, and the Parties shall complete the reconciliation process, within three (3) months of the Termination Date and payment shall be made within twenty (20) Working Days of such completion.

71.4 Where the Authority is entitled to terminate this Contract pursuant to Clause 69 (*Termination for Contractor Default*) as a result of the occurrence of a Prohibited Act (and/or the Contractor breaches and/or is in default under Clauses 5.1.13, 5.1.14 and/or 5.1.15 (*Contractor Warranties*)), the Authority shall, in addition to its rights set out in Clauses 71.2 and 71.3 (*Termination for Contractor Default*) (but without any double-counting) be entitled to:

71.4.1 recover from the Contractor the amount of any Losses resulting from such termination;

71.4.2 recover from the Contractor the amount or value of any gift, consideration or commission entailed by such Prohibited Act; and

71.4.3 where this Clause 71.4 (*Termination for Contractor Default*) applies but this Contract has not been terminated, to recover from the Contractor any other Losses sustained as a result of such Prohibited Act,

and any recovery action taken against any employee of the Authority shall be without prejudice to any recovery action taken against the Contractor pursuant to this Clause 71.4 (*Termination for Contractor Default*).

71.4A Where the Authority is entitled to terminate this Contract pursuant to Clause 86.5 (*Tax Compliance*), the Authority shall, subject to the provisions of Clause 86.7 (*Tax Compliance*) and in addition to the Authority's rights in Clauses 71.2 and 71.3

(*Termination for Contractor Default*) (but without double-counting), be entitled to recover from the Contractor:

71.4A.1 the amount of any Losses resulting from such termination; and

71.4A.2 where this Clause 71.4A (*Termination for Contractor Default*) applies but where this Contract has not been terminated, any other Losses sustained as a result of the breach by the Contractor giving rise to the Authority's rights in this Clause 71.4A (*Termination for Contractor Default*).

71.4B Where the Authority is entitled to terminate this Contract pursuant to Clause 45B.7.2, 45B.7.3 or 45B.7.4 (*Cyber*), the Authority shall, subject to the provisions of Clause 45B.7.1 (*Cyber*) and in addition to the Authority's rights in Clauses 71.2 and 71.3 (*Termination for Contractor Default*) (but without double-counting), be entitled to recover from the Contractor:

71.4B.1 the amount of any Losses resulting from such termination;

71.4B.2 any other Losses sustained in consequence of any breach of Clause 45B.7 (*Cyber*); and

71.4B.3 where this Clause 71.4B (*Termination for Contractor Default*) applies but where this Contract has not been terminated, any other Losses sustained as a result of the breach by the Contractor giving rise to the Authority's rights in this Clause 71.4B (*Termination for Contractor Default*).

Termination for Convenience

71.5 Where this Contract is terminated pursuant to Clause 70 (*Termination for Convenience*), the provisions of Clauses 71.6 to 71.8 (*Termination for Convenience*) shall apply.

71.6 Where Clause 70 (*Termination for Convenience*) applies (subject always to the Contractor's compliance with any direction given by the Authority pursuant to Clause 70.2 (*Termination for Convenience*)):

71.6.1 the Authority shall take over from the Contractor at a fair and reasonable price (to the extent the Contractor has not already been paid) all unused and undamaged materiel and any Contractor Deliverables which consist of physical items and are in the course of manufacture, that are:

(i) in the possession of the Contractor at the Termination Date; and

(ii) properly provided by or supplied to the Contractor for the performance of this Contract,

except such materiel and Contractor Deliverables that consist of physical items as the Contractor shall, with the agreement of the Authority, elect to retain;

71.6.2 without prejudice to any other obligations the Contractor may have in accordance with this Contract, the Contractor shall, at the Authority's request, grant a licence on the terms set out in Schedule 14 (*IPR*) at a fair and reasonable price (to the extent that the Contractor has not already been paid) to Use any Contractor Deliverable (or any elements thereof) that do

not consist of physical items that have been provided or partially provided in accordance with this Contract at the Termination Date; and

71.6.3 the Contractor shall prepare and deliver to the Authority within an agreed period, or in default of agreement within such period as the Authority may specify, a list of:

(i) all such unused and undamaged materiel; and

(ii) the Contractor Deliverables that consist of physical items and are in the course of manufacture,

that are liable to be taken over by, licensed to or previously belonged to the Authority and shall deliver such materiel and the Contractor Deliverables in accordance with the directions of the Authority,

and in assessing a fair and reasonable price in Clauses 71.6.1 to 71.6.3 (*Termination for Convenience*) the Parties shall have due regard to the provisions of Schedule 9 (*Pricing and Payment*) and the Parties shall carry out a reconciliation for that purpose in accordance with paragraph 6 of Part 1 of Schedule 9 (*Pricing and Payment*).

71.7 Where Clause 70 (*Termination for Convenience*) applies, the Authority shall (subject to Clause 71.8 (*Termination for Convenience*) and to the Contractor's compliance with any direction given by the Authority pursuant to Clause 70.2 (*Termination for Convenience*)) indemnify the Contractor against any commitments, liabilities or expenditure which represent an unavoidable Loss by the Contractor by reason of the termination of this Contract, subject to:

71.7.1 the Contractor taking all reasonable steps to mitigate such Loss; and

71.7.2 the Contractor submitting a fully itemised and costed list of such Loss, with supporting evidence of Losses reasonably and actually incurred by the Contractor as a result of termination of this Contract pursuant to Clause 70 (*Termination for Convenience*).

71.8 Not Used.

71.9 Not Used.

Termination for Force Majeure

71.9A Where this Contract is terminated pursuant to Clause 35.4 (*Force Majeure*), the provisions of Clause 71.9B (*Termination for Force Majeure*) shall apply.

71.9B Where this Clause 71.9B applies, the Contractor shall only be entitled to be paid (subject to any other provision of this Contract affecting the level of such payment, including any reduction for sums that the Authority is entitled to deduct under or in connection with this Contract (whether arising under any term of this Contract or under any Legislation or of equity)) for any aspect of the Contractor Deliverables that it has, as at the Termination Date, delivered to the Authority in accordance with this Contract.

71.9C Where Clause 35.4 (*Force Majeure*) applies (subject always to the Contractor's compliance with Clause 35 (*Force Majeure*)):

71.9C.1 the Authority shall take over from the Contractor at a fair and reasonable price (to the extent the Contractor has not already been paid) all unused and undamaged materiel and any Contractor Deliverables which consist of physical items and are in the course of manufacture, that are:

(i) in the possession of the Contractor at the Termination Date; and

(ii) properly provided by or supplied to the Contractor for the performance of this Contract,

except such materiel and Contractor Deliverables that consist of physical items as the Contractor shall, with the agreement of the Authority, elect to retain;

71.9C.2 without prejudice to any other obligations the Contractor may have in accordance with this Contract, the Contractor shall, at the Authority's request, grant a licence on the terms set out in Schedule 14 (*IPR*) at a fair and reasonable price (to the extent that the Contractor has not already been paid) to Use any Contractor Deliverable (or any elements thereof) that do not consist of physical items that have been provided or partially provided in accordance with this Contract at the Termination Date; and

71.9C.3 the Contractor shall prepare and deliver to the Authority within an agreed period, or in default of agreement within such period as the Authority may specify, a list of:

(i) all such unused and undamaged materiel; and

(ii) the Contractor Deliverables that consist of physical items and are in the course of manufacture,

that are liable to be taken over by, licensed to or previously belonged to the Authority and shall deliver such materiel and the Contractor Deliverables in accordance with the directions of the Authority,

and in assessing a fair and reasonable price in Clauses 71.9C.1 to 71.9C.3 (*Termination for Force Majeure*) the Parties shall have due regard to the provisions of Schedule 9 (*Pricing and Payment*) and the Parties shall carry out a reconciliation for that purpose in accordance with paragraph 10.3 of Part 1 of Schedule 9 (*Pricing and Payment*).

Miscellaneous provisions

71.10 Where on the Termination Date or the Expiry Date (as the case may be) the Parties:

71.10.1 agree all amounts which are due to each other arising under this Contract, each Party shall (subject to the provisions of Clause 27 (*Recovery of Sums Due*)) pay to the other any amounts payable pursuant to this Clause 71 (*Financial Consequences of Termination*) within twenty (20) Working Days of the Termination Date or the Expiry Date (as the case may be) or such other period as agreed between the Parties before the end of the relevant twenty (20) Working Day period; or

71.10.2 do not agree what amounts are due to each other arising under this Contract, the Parties shall carry out a reconciliation as contemplated at

paragraph 10.3 of Part 1 of Schedule 9 (*Pricing and Payment*) within ten (10) Working Days of the Termination Date or the Expiry Date (as the case may be) or such other period as agreed between the Parties before the end of the relevant twenty (20) Working Day period.

72 Exit Plan

72.1 The Parties have agreed that the matters which are likely to be required to be implemented on expiry or early termination of this Contract are set out in Schedule 17 (*Exit Plan*). The Parties have agreed that on the earlier to occur of:

72.1.1 no later than thirty (30) calendar months from the Effective Date; and

72.1.2 ten (10) Working Days following receipt of a written notice from the Authority,

the Contractor shall review the Exit Plan in accordance with Good Industry Practice, having due regard to the status of the Contractor Deliverables and any other relevant factors at that time and issue to the Authority a proposed update and revision of the Exit Plan, giving full details of the rationale for any proposed changes. Following receipt by the Authority of the revised Exit Plan and rationale, the Contractor and the Authority shall meet (as soon as reasonably practicable and on such number of occasions as the Authority may reasonably require) to discuss and make any agreed amendments to the revised Exit Plan.

72.2 The Parties acknowledge that:

72.2.1 the preparation and development of the Exit Plan as contemplated in this Clause 72 (*Exit Plan*) forms part of this Contract and the Contractor shall be entitled to receive the Exit Payment on full satisfaction of the obligations and requirements set out in the Exit Plan (as may have been updated in accordance with this Contract) (as more particularly referred to in paragraph 9 of Part 1 of Schedule 9 (*Pricing and Payment*));

72.2.2 the Contractor shall be obliged to carry out those activities described in Clause 74 (*Continuing Assistance*) whether or not such activities are also incorporated or contemplated or referred to in the Exit Plan and the Contractor acknowledges that it has incorporated pricing for the performance of such activities in Clause 74 (*Continuing Assistance*); and

72.2.3 in the event that the Authority wishes to require the Contractor to perform any additional or alternative obligations to those set out in the Exit Plan as at the date set out in Clause 72.1.1 or the Termination Date (as the case may be), identified in the Exit Plan (as may have been updated or revised) in addition to those activities referred to in Clause 72.2.2 (*Exit Plan*) the Authority shall issue an Authority Change Notice and the Contractor shall not be permitted to object to such proposed Authority Change, notwithstanding any other provisions of this Contract and the price for such obligations as detailed in the Authority Change shall be fair and reasonable and shall be added to the Exit Payment.

73 Continuing Obligations

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

73.1.1 termination of this Contract shall be without prejudice to any accrued rights or obligations under this Contract prior to termination; and

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

(i) Not Used;

(ii) Clause 3.3 (*Contractor's Obligations*);

(iii) Clause 5 (*Contractor Warranties and Undertakings*);

(iv) Clause 32 (*Indemnity and Liabilities*);

(v) Clause 39 (*The Contractor's Records*);

(vi) Clause 45B (*Cyber*), to the extent contemplated in Clause 45B.8.1 (*Cyber*);

(vii) Clause 46 (*Intellectual Property Rights*);

(viii) Clause 47 (*Security – Secret Matters*);

(ix) Clause 53 (*TUPE*);

(x) Clause 59 (*Issued Property*);

(xi) Clause 60 (*Accounting for property of the Authority*);

(xii) Clause 71 (*Financial consequences of Termination*);

(xiii) Clause 74 (*Continuing Assistance*);

(xiv) Clause 86 (*Tax Compliance*);

(xv) Clause 89 (*Dispute Resolution (English Law*)); and

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

PART 14 - GENERAL CONTRACT PROVISIONS

74 Continuing Assistance

Co-operation

74.1 Without prejudice to the provisions of Clause 53 (*TUPE*) and Clause 72 (*Exit Plan*), during the last six (6) months before the Expiry Date or during the period that any Termination Notice is subsisting the Contractor shall co-operate as far as is reasonably practicable with the transfer of responsibility for the provision of the Contractor Deliverables (or part of the Contractor Deliverables) (including co-operation with one (1) or more Other Contractors with responsibility for providing deliverables to the Authority in respect of which the performance of such deliverables by such Other Contractor is connected with and/or dependent upon and/or for which it is necessary to have an understanding of, in each case, such whole or part of the Contractor

Deliverables) from the Contractor to any person (a "**Follow-On Contractor**") or to the Authority as so directed by the Authority, and for the purposes of this Clause 74 (*Continuing Assistance*) the meaning of the term co-operate shall include:

74.1.1 liaising with the Authority and/or any Follow-On Contractor, and providing reasonable assistance and advice concerning the provision of the whole or the relevant part of the Contractor Deliverables and their transfer to the Authority or such Follow-On Contractor;

74.1.2 allowing any such Follow-On Contractor access (at reasonable times and on reasonable notice) to any assets applicable to the performance of this Contract, but not so as to interfere with or impede the provision of the Contractor Deliverables; and

74.1.3 providing to the Authority and/or any Follow-On Contractor any relevant information concerning the Authority Sites and the provision of the Contractor Deliverables which is reasonably required for the efficient transfer of responsibility for the performance of the Contractor's obligations under this Contract.

74.2 Without prejudice to Clause 59 (*Issued Property*), during the last six (6) months before the Expiry Date or during the period that any Termination Notice is subsisting, the Contractor shall protect and preserve material, Articles and Issued Property in its possession, custody or control in which the Authority has notified an interest, provided that the Contractor shall be entitled to use such material, Articles and Issued Property in accordance with the provisions of this Contract where it is agreed that the provision of the Contractor Deliverables requires the use of that material and/or those Articles and/or Issued Property in part or in its entirety.

74.3 Not Used.

74.4 Without prejudice to the provisions of Clauses 74.1 and 74.2, (*Co-operation*), the Contractor shall use all reasonable endeavours to assist the Authority to facilitate the smooth transfer of responsibility for the provision of the Contractor Deliverables (or any part of the Contractor Deliverables) to the Authority or Follow-On Contractor, as the case may be, and the Contractor shall take no action at any time during the term of this Contract or thereafter which is calculated or intended to prejudice or frustrate or make more difficult any such transfer.

74.5 Following the Expiry Date or, if earlier, the Termination Date, the Contractor shall, with the Authority's consent (not to be unreasonably withheld or delayed) be allowed reasonable access to the Authority Sites by the Authority in order to carry out winding-down activities, provided that in exercising such right of access, the Contractor shall not interfere with or impede the delivery of goods and/or services equivalent to the Contractor Deliverables (and/or the provision of any other services and/or the carrying out of any other activities) by or on behalf of the Authority and/or any Follow-On Contractor.

74.6 On expiry or earlier termination of this Contract, the Contractor shall:

74.6.1 upon request by the Authority make arrangements, to be agreed between the Authority and the Contractor (acting reasonably and in good faith), for the Authority to take over at fair and reasonable prices, where payment has not already been made, the rights, title and interest in such Articles and/or material as are held by the Contractor and/or any Sub-Contractor and which

the Authority requires to maintain continuity of the delivery of goods and services equivalent to the Contractor Deliverables following the Expiry Date or, if earlier, the Termination Date; and

74.6.2 provide, procure the provision of, or provide access to, as the Authority may require, all such information, documents and data in the possession or control of the Contractor, together with a sufficient explanation of such information, documents and data, the full rights to use such information, documents and data, and a formal certificate confirming those rights, as is required to put the Authority in the position it would have been had there been full and proper performance by the Contractor of the Contractor Deliverables.

74.7 The Contractor agrees that following the early termination of this Contract, the Authority shall be entitled to continue to purchase (and the Contractor shall continue to supply) on reasonable terms and conditions at fair and reasonable prices goods and services (which would, but for the expiry or early termination of this Contract, amount to Articles) which are required by the Authority to maintain continuity of the delivery of goods and services equivalent to the Contractor Deliverables following the Termination Date.

74.8 The Contractor shall not be obliged to co-operate with a Follow-On Contractor where this Contract is terminated under Clause 70 (*Termination for Convenience*).

75 Change

Changes

75.1 Changes (other than Minor Changes) shall be in accordance with the provisions of Schedule 11 (*Change Procedure*).

Minor Changes

75.2 The Contractor shall ensure that the Contractor Deliverables conform in all respects with the Statement of Requirements.

75.3 The Contractor shall use a configuration control system to control Minor Changes. The configuration control system shall be compatible with ISO 9001 (latest published version).

75.4 The Authority's Representative may alter the Statement of Requirements, provided always that any such alterations shall not alter the fit, form, function or characteristics of the Contractor Deliverables or otherwise give rise to any change of the nature referred to in Clause 75.6 ("**Minor Changes**").

75.5 The Minor Changes referred to in Clause 75.4 shall:

75.5.1 be notified by the Authority's Representative in writing;

75.5.2 apply from the date specified by the Authority in the notice referred to in Clause 75.5.1; and

75.5.3 be recorded as a formal amendment to this Contract pursuant to Clause 76.1 (*Amendments to Contract*),

and, following such notification, the Authority shall provide an updated Statement of Requirements to reflect such Minor Changes and the Contractor shall ensure that the Contractor Deliverables shall be delivered in accordance with such updated Statement of Requirements from the date referred to in Clause 75.5.2.

75.6 Any proposed alterations to the Statement of Requirements that cause a change to:

75.6.1 the fit, form, function or characteristics of the Contractor Deliverables;

75.6.2 the cost of the whole or part of the Contractor Deliverables;

75.6.3 the delivery dates for the whole or part of the Contractor Deliverables; or

75.6.4 the period required for the production or completion of the whole or part of the Contractor Deliverables,

shall be subject to the provisions of Schedule 11 (*Change Procedure*).

75.7 Any documentation provided by or on behalf of the Authority outside of this Clause 75 shall not alter the Statement of Requirements.

76 Amendments to Contract

76.1 Amendments to this Contract may not be made except by the written agreement of the duly authorised Representatives of the Parties in accordance with Clause 75 (*Change*) and, where applicable, Schedule 11 (*Change Procedure*), provided always that any such amendments shall come into force only when the Contractor has issued:

76.1.1 in the case of a Change proposed in an Authority Change Notice, the Form set out in Appendix 2 to Schedule 11 (*Change Procedure*); and

76.1.2 in the case of a Change proposed in a Contractor Change Notice, the Form set out in Appendix 3 to Schedule 11 (*Change Procedure*),

as an unqualified Estimate and the Authority agrees to all the terms of such Estimate and, following such agreement, the Parties confirm that a deed of variation to give effect to such Change will be entered into pursuant to Clause 76.2 (*Amendments to Contract*).

76.2 The Parties shall, on an annual basis during the Contract Period, create a conformed copy of this Contract incorporating all changes agreed in the previous twelve (12) months and enter into a deed of variation (and/or take such further steps) to record such changes ("**Conformed Copy**"). Any Conformed Copy shall record all changes since creation of the last Conformed Copy.

76.3 Subject to the provisions of Clause 76.1 (*Amendments to Contract*), any purported amendment to this Contract which does not satisfy the provisions of this Clause 76 (*Amendments to Contract*) shall be of no effect.

77 Not Used

78 Transfer

78.1 Subject to Clause 79 (*Novation*), neither Party to this Contract shall give, bargain, sell, assign, or otherwise dispose of this Contract or any part thereof, or the benefit or

advantage of this Contract or any part thereof, without the prior consent in writing of the other Party.

78.2 Subject to the Contractor obtaining the prior written consent of the Authority in accordance with Clause 78.1 (*Transfer*) above, the Contractor may assign to a Third Party (the "**Assignee**") the right to receive payment of the Contract Price or any part thereof due to the Contractor under this Contract (including any interest incurred by the Authority in accordance with Clause 24 (*Disputed Amounts*)).

78.3 Any assignment of the right to receive payment of the Contract Price (or any part thereof) under Clause 78.2 (*Transfer*) above shall be subject to:

78.3.1 reduction of any sums in respect of which the Authority exercises its right of recovery under Clause *27* (*Recovery of Sums Due*) or under any other clause concerning recovery of sums due;

78.3.2 all related rights of the Authority under this Contract in relation to the recovery of sums due but unpaid; and

78.3.3 the Authority receiving notification under both Clause 78.4 and Clause 78.5.2 (*Transfer*) below.

78.4 In the event that the Contractor obtains from the Authority the consent to assign the right to receive the Contract Price (or any part thereof) under Clause 78.2 (*Transfer*) above, the Contractor shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.

78.5 The Contractor shall ensure that the Assignee:

78.5.1 is made aware of the Authority's continuing rights under Clauses 78.3.1 and 78.3.2 (*Transfer*); and

78.5.2 notifies the Authority of the Assignee's contact information and bank account details, to which the Authority shall make payment, subject to any reduction made by the Authority in accordance Clauses 78.3.1 and 78.3.2 (*Transfer*) above.

78.6 The provisions of this Contract, including any clauses concerning payment, shall continue to apply in all other respects after any assignment in accordance with this Clause 78 (*Transfer*) and shall not be amended without the prior approval of the Authority.

79 <u>Novation</u>

79.1 Subject to Clause 79.2, the rights and obligations of the Authority under this Contract shall not be assigned, novated or otherwise transferred (whether by virtue of any law or any scheme pursuant to any law or otherwise) other than:

79.1.1 in respect of the whole of this Contract to any person who performs any of the functions that previously had been performed by the Authority; or

79.1.2 to any public body (being a single entity) acquiring the whole of this Contract and having the legal capacity, power and authority to become a Party to and to perform the obligations of the Authority under this Contract, being:

(i) a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975; or

(ii) any other public body whose obligations under this Contract are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Contractor) by the Authority or a Minister of the Crown having the legal capacity, power and authority to perform the obligations under the guarantee and the obligations of the Authority under this Contract.

79.2 The Contractor agrees that the Authority may at any time on written notice elect to appoint a Third Party to act as its agent to manage the whole or any part of this Contract on the Authority's behalf and/or to perform any or all of the obligations of the Authority under this Contract to the extent set out in such notice.

80 Change of Ownership

80.1 The Contractor acknowledges that the Authority has a legitimate interest in the ownership of the Contractor and that the Contractor is required to notify the Authority of any Change of Ownership in accordance with this Clause 80 (*Change of Ownership*).

80.2 The Contractor shall notify the Authority's Representative in writing (providing a copy to the Mergers & Acquisitions Section, Strategic Supplier Management Team, Spruce 3b #1301, MOD Abbey Wood, Bristol, BS34 8JH), so far as permitted by relevant law (relevant law for the purposes of this Clause 80 (*Change of Ownership*) being law in the United Kingdom and in all relevant jurisdictions where the Contractor would be subject to a legal sanction arising from issuing such notice), if any proposed Change of Ownership is contemplated, including details of the proposed new ownership structure (legal and beneficial) and/or details of the material asset (including shares held in any company by the Contractor or any of its Subsidiaries), business or undertaking proposed to be disposed or acquired (as the case may be).

80.3 Where:

80.3.1 the Authority is not informed of a proposed Change of Ownership for the reasons set out in Clause 80.2 (*Change of Ownership*) or for any other reason and a Change of Ownership occurs; and/or

80.3.2 the Authority objects to the proposed (or actual) transferee to whom the sale, transfer, disposal or other arrangement is made and/or the Authority is concerned that the disposal or acquisition by the Contractor of the material asset, business or undertaking in question may have a material effect on the ability of the Contractor to perform its obligations under this Contract, in either case, whether or not the Authority is informed of the proposed Change of Ownership pursuant to Clause 80.2 (*Change of Ownership*) and whether the Authority becomes aware of such Change of Ownership prior to or after such Change of Ownership occurring,

then the Authority may terminate this Contract at any time within twelve (12) months of the date the Authority becomes aware that the relevant Change of Ownership has occurred and the provisions of Clause 69.2 (*Termination for Contractor Default*) and Clause 69.13 (*Termination following a Change of Ownership*) shall apply.

81 Disruption

81.1 The Contractor shall immediately inform the Authority of any actual or potential industrial action, whether such action be by its own employees or others, which affects or might affect its ability at any time to perform its obligations under this Contract.

81.2 The Contractor shall have robust contingency plans in place, in accordance with the Business Continuity Plans, to ensure that the provision of the Contractor Deliverables is maintained in the event of any disruption (including disruption to information technology systems) to the operations of the Contractor and/or any Sub-Contractor. Such contingency plans shall be available for the Authority to:

81.2.1 inspect; and/or

81.2.2 (subject to the Authority giving the Contractor reasonable advance notice, and subject to the Authority exercising this right a maximum of three (3) times in any one (1) Year in respect of the same plan) practically test at any reasonable time,

and shall be updated and revised as necessary by the Contractor throughout the Contract Period.

82 Waiver

82.1 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.

82.2 No waiver in respect of any right or remedy shall operate as a waiver in respect of any other right or remedy.

83 Discrepancies, Errors and Omissions

83.1 If either Party identifies any discrepancy, error or omission between the provisions of this Contract, it shall notify the other Party in writing of such discrepancy, error or omission as soon as reasonably practical.

83.2 The Parties shall seek to agree such amendments to resolve such discrepancy, error or omission as soon as reasonably practical.

83.3 Where the Parties fail to reach agreement within ten (10) Working Days of the notice under Clause 83.1 (*Discrepancies, Errors and Omissions*) and either Party considers that the discrepancy, error or omission to be material to its rights and obligations under this Contract, then the matter will be referred to the Dispute Resolution Procedure.

84 Severability

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

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

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

85 Whole Agreement

85.1 This Contract constitutes the entire agreement between the Parties relating to the subject matter of this Contract.

85.2 This Contract supersedes all prior negotiations, representations and undertakings (whether written or oral), except that this Clause 85 (*Whole Agreement*) shall not exclude liability in respect of any fraudulent misrepresentation.

86 Tax Compliance

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

86.2 If, at any point during the performance of this Contract, an OOTNC occurs, the Contractor shall:

86.2.1 notify the Authority in writing of such fact within twenty (20) Working Days of its occurrence; and

86.2.2 promptly provide to the Authority:

(i) 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

(ii) such other information in relation to the OOTNC as the Authority may reasonably require.

86.3 For the avoidance of doubt, the obligation at Clause 86.2 (*Tax Compliance*) 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.

86.4 The duty to notify does not substitute the Contractor's other reporting obligations under this Contract.

86.5 The Authority shall be entitled to terminate this Contract in the event that:

86.5.1 the warranty given by the Contractor pursuant to Clause 86.1 (*Tax Compliance*) is materially untrue; or

86.5.2 the Contractor commits a material breach of its obligation to notify the Authority of any OOTNC as required by Clause 86.2 (*Tax Compliance*); or

86.5.3 the Contractor fails to provide details of proposed mitigating factors which in the reasonable opinion of the Authority, are acceptable.

86.6 In the event that the Authority is entitled to terminate this Contract under Clause 86.5 (*Tax Compliance*) the provisions of Clause 71.4A (*Termination for Contractor Default*) and Clause 86.7 (*Tax Compliance*) shall apply.

86.7 In exercising its rights or remedies under this Clause 86 (*Tax Compliance*), the Authority shall:

86.7.1 act in a reasonable and proportionate manner taking into account, among other things:

(i) the gravity and duration of the OOTNC and any sanctions imposed by a court or tribunal; and

(ii) any remedial action taken by the Contractor to prevent reoccurrence of the OOTNC; and

86.7.2 without prejudice to Clause 86 (*Tax Compliance*), seriously consider, where appropriate, action other than termination of this Contract to deal with the failure by the Contractor to comply with this Clause 86 (*Tax Compliance*).

86.8 Not Used.

87 Representatives

References to Authority and the Contractor

87.1 Except as provided otherwise under this Contract, any reference to the Authority and the Contractor in respect of:

87.1.1 the giving of consent;

87.1.2 the delivering of any notices; or

87.1.3 the doing of any other thing that may reasonably be undertaken by an individual acting on behalf of the relevant Party,

shall be deemed to be references to the Authority's Representatives and the Contractor's Representatives (respectively) in accordance with this Clause 87 (*Representatives*).

The Contractor's Representatives

87.2 The Contractor shall employ representatives (the "**Contractor's Representatives**") to act as the Contractor's representatives in connection with the provision of the Contractor Deliverables and generally in connection with this Contract. Such representatives are described in the table forming Part 2 to Schedule 8 (*Governance and Management*).

Authority of the Contractor's Representatives

87.3 The Contractor's Representative shall have full authority to act on behalf of the Contractor for all purposes of this Contract.

Appointment of successor

87.4 The Contractor may terminate the appointment of any Contractor's Representative and shall appoint a successor, the identity of whom shall be made known to the Authority.

Authority's Representatives

87.5 The Authority shall employ representatives (the "**Authority's Representatives**") to act as the Authority's representatives in connection with the provision of the Contractor Deliverables and generally in connection with this Contract. Such representatives are described in the table forming Part 2 to Schedule 8 (*Governance and Management*).

Authority of Authority's Representatives

87.6 The Authority's Representative shall have the full authority to act on behalf of the Authority for all purposes of this Contract.

Appointment of Successor

87.7 The Authority may terminate the appointment of any Authority's Representative and shall appoint a successor, the identity of whom shall be made known to the Contractor.

88 Notices

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

88.1.1 be in a form which can be read, copied and recorded;

88.1.2 be authenticated by signature or by such other method as agreed between the Parties;

88.1.3 be marked for the attention of the appropriate Authority's Representative or the Contractor's Representative; and

88.1.4 be marked in a prominent position with the relevant Contract number.

88.2 Notices should be delivered by:

88.2.1 hand;

88.2.2 prepaid post (or airmail, in the case of Notices to or from overseas);

88.2.3 facsimile; or

88.2.4 electronic mail.

88.3 Notices shall be deemed to have been received:

88.3.1 if delivered by hand, on the day of delivery if it is a Working Day and otherwise on the first Working Day immediately following the day of delivery;

88.3.2 if sent by prepaid post (or airmail, if appropriate), on the fifth Working Day (or on the tenth Working Day, in the case of airmail) after the day of posting; and

88.3.3 if sent by facsimile, or other electronic means:

(i) if transmitted between 09.00 and 17.00 hours on a Working Day (recipient's time), on completion of receipt by the sender of verification of the transmission from the receiving instrument; or

(ii) if transmitted at any other time, at 09.00 hours on the first Working Day (recipient's time) following the completion of receipt by the sender of verification of the transmission from the receiving instrument.

88.4 The addresses (including electronic addresses) of each Party and their Representatives to which all Notices shall be sent are set out in DEFFORM 111 in the Agreed Form, or such other address as either Party may by written Notice specify to the other for the purpose of this Clause 88 (*Notices*).

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

89 Dispute Resolution (English Law)

89.1 The Parties will attempt in good faith to resolve any Dispute through negotiations between the respective representatives of the Parties having authority to settle the matter, which attempts may include the use of any Alternative Dispute Resolution ("**ADR**") procedure on which the Parties may agree.

89.2 In the event that the Dispute 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.

89.3 The Party initiating the arbitration shall give a written notice (the "**Notice of Arbitration**") to the other Party. The Notice of Arbitration shall specifically state:

89.3.1 that the Dispute is referred to arbitration; and

89.3.2 the particulars of the Contract out of or in relation to which the Dispute arises.

89.4 Unless otherwise agreed in writing by the Parties, the arbitration and this Clause 89 (*Dispute Resolution (English Law))* shall be governed by the provisions of the Arbitration Act 1996.

89.5 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.

89.6 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.

90 Contractor's Status

90.1 Nothing in this Contract shall be construed as creating a partnership or as a contract of employment between the Authority and Contractor.

90.2 Save as expressly provided otherwise in this Contract, the Contractor shall not be, nor be deemed to be, an agent of the Authority and the Contractor shall not hold itself out as having authority or power to bind the Authority in any way.

90.3 Neither Party shall place or cause to be placed any order with suppliers or otherwise incur liabilities in the name of the other Party or any representative of the other Party.

91 Conflicts of Interest and Impartiality

91.1 The Contractor has notified the Authority of its intention to operate a conflicts of interest regime in the Agreed Form ("**Conflicts Regime**"), the Contractor acknowledging that its obligations under this Contract and its aspiration to participate to be a provider of goods and/or services in future procurements connected with the MORPHEUS Programme will require the careful management of information both internally and externally by the Contractor and Contractor Related Parties.

91.2 Notwithstanding the full adherence by the Contractor to the provisions of the Conflicts Regime, the Authority reserves the right to exclude the Contractor from participation in any future procurements contemplated in Clause 91.1(*Conflicts of Interest and Impartiality*) (whether to comply with law, as may be permitted in accordance with the regulations applying to any such future procurements or for any reason to ensure fair competition for such procurements).

92 Rights of Third Parties

92.1 Except as provided in Clause 92.2 (*Rights of Third Parties*) and notwithstanding anything to the contrary elsewhere in this Contract, no right is granted to any person who is not a Party to enforce any term of this Contract in his own right and the Parties declare that they have no intention to grant any such right.

92.2 Where, and only where, this Contract expressly states that a Third Party shall be entitled to enforce a term of this Contract:

92.2.1 the said Third Party shall be entitled to enforce that term in his own right;

92.2.2 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 92.2 (*Rights of Third Parties*)) relevant to the exercise of that right; and

92.2.3 the Third Party's rights shall be subject to:

(i) the resolution of any Dispute pursuant to the Dispute Resolution Procedure; and

(ii) Clause 93 (Law (English)).

93 Law (English)

93.1 The Contract shall be considered as a contract made in England and subject to English Law.

93.2 Subject to and without prejudice to the Dispute Resolution Procedure, each Party hereby irrevocably submits and agrees to the exclusive jurisdiction of the Courts of England to resolve, and the laws of England to govern, any actions, proceedings, controversy or claim of whatever nature arising out of or relating to this Contract or breach thereof.

93.3 Other jurisdictions may apply solely for the purpose of giving effect to this Clause 93 (*Law (English)*) and for the enforcement of any judgement, order or award given under English jurisdiction.

94 Counterparts

94.1 This Contract may be entered into in any number of counterparts and each of the executed counterparts, when duly executed and delivered, shall be deemed to be an original but, taken together, they shall constitute one and the same instrument.

IN WITNESS this document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a deed by affixing the))
CORPORATE SEAL of **THE SECRETARY**))
OF STATE FOR DEFENCE)
authenticated by:)

.....

REDACTED

Head of Commercial Military Technology

Category authorised by The Secretary of State

for Defence

Executed as a deed by **BABCOCK**)
INTEGRATED TECHNOLOGY LIMITED)
acting by a director in the presence of:)
)

Director's Signature .....

Director's name (in BLOCK CAPITALS) .....

Witness' signature: ……..

Witness' name (in BLOCK CAPITALS) ……..

Witness' address (including post code): ……

…….....

Witness' occupation: ……

Schedule 1

Definitions and Acronyms

1.1 In this Contract the following words and expressions shall be deemed to have the following meanings:

"**A1**" means an unused Item which forms part of Stock at Hand and which is considered to be fully functional and fit for its intended purpose;

"**A2**" means an Item which has been used, which forms part of Stock at Hand and which is considered to be fully functional and fit for its intended purpose;

"**Acceptance**" means the satisfaction of the relevant acceptance criteria for the relevant Contractor Deliverable as referred to in Schedule 4 (*Assurance and Acceptance Process*) and "**Accept**" and "**Accepted**" shall be construed accordingly;

"**Accepted Costs**" means the costs that the Authority determines (in its sole discretion) have been reasonably and properly incurred by the Contractor for each Contract Month in relation to the Core Contractor Deliverables, any relevant Exercised Options, any Proposal Price, any Spares Price and any Repairs Price (all as referred to in Schedule 9 (*Pricing and Payment*));

"**Actual FOC Date**" means the date that FOC occurs;

"**Actual Demands**" or "**AD**" means the aggregate number of Works Orders which are placed (and for which payment is committed) in the relevant Contract Year

"**Additional Contractor Deliverables**" means the additional, revised and/or reduced services and/or Articles that the Contractor is to perform and which form part of the Contractor Deliverables following an approved Change in accordance with Schedule 11 (*Change Procedure*);

"**Ad-Hoc Project Report**" means the report to be created by the Contractor pursuant to, and in accordance with, paragraph 10.3 of Schedule 8 (*Governance and Management*);

"**Ad-Hoc Project Review**" means the review referred to in paragraph 10 of Schedule 8 (*Governance and Management*);

"**Adjoining Property**" means any land and/or property adjoining the Authority Sites and/or any Other Contractor's Premises (as the case may be) and each and every part of such land and/or property, including all conduits, roads, footpaths, walls, fences, buildings and other erections and all other apparatus on, under or within such land and/or property;

"**Affiliate**" means in relation to any person, any Holding Company or Subsidiary of that person or any Subsidiary of such Holding Company;

"**Aggregate Milestone Payment Amount**" means the sum of all of the Milestone Payment Amounts for the Core Contractor Deliverables contemplated (in the Milestone Payments Schedule) as having accrued as at Contract Month n (and including all of

the Milestone Payment Amounts for the Core Contractor Deliverables for each Contract Month preceding Contract Month n);

"**Aggregate Milestone Option Payment Amount**" means, in respect of an Exercised Option, the sum of all of the Milestone Payment Amounts (if any) for such Exercised Option contemplated (in the Milestone Payments Schedule) as having accrued as at Contract Month n (and including all of the Milestone Payment Amounts for such Exercised Option for each Contract Month preceding Contract Month n);

"**Aggregate Monthly Payment**" means the sum of each preceding Gross Monthly Payment which has become due (whether or not paid) in accordance with Schedule 9 (*Pricing and Payment*) in each Contract Month preceding (but not including) Contract Month n;

"**Aggregate Option Accepted Costs**" means, in respect of an Exercised Option, the sum of the Accepted Costs for such Exercised Option (if any) which has become due (whether or not paid) in accordance with Schedule 9 (*Pricing and Payment*) in each Contract Month preceding (but not including) Contract Month n;

"**Agreed Catalogue Prices**" means the Fixed Prices set out in the Spares Catalogue and the Repairs Catalogue for each Contract Year (as may be amended by the MADS Process for Catalogue, Critical Items List and/or Le TacCIS Equipment Portfolio Amendments set out in Schedule 5 and as the result of a change pursuant to Schedule 11 (*Change Procedure*)), which are subject to the Agreed Indexation;

"**Agreed Form**" has the meaning given in Clause 1.1.12 (*Definitions and Interpretation*);

"**Agreed Indexation**" means the indexation mechanism relating to the Agreed Catalogue Prices as described in paragraph 6.4 of Part 1 of Schedule 9 (*Pricing and Payment*);

"**Annual Activity Percentage**" or "**AAP**" means the percentage of activity carried out by the Contractor as calculated in accordance with paragraph 8.5 of Part 1 of Schedule 9 (*Pricing and Payment*);

"**Annual Performance Report**" means the report to be created by the Contractor pursuant to, and in accordance with paragraph 9.3 of Schedule 8 (*Governance and Management*);

"**Annual Spares and Repairs Cap**" means the aggregate capped expenditure for the aggregate of the Spares Price and the Repairs Price in the relevant Contract Year, as notified by the Authority to the Contractor before the commencement of each Contract Year in accordance with paragraph 6.1.1(v) of Schedule 9 (*Pricing and Payment*);

"**Applicable Deduction"** means the relevant deduction identified in column J in the Table at Appendix 1 to Schedule 6 (*Incentivisation*), being a percentage of the Inventory Management Monthly Payment, the Inventory Modelling Monthly Payment, the Technical Service Monthly Payment and the Information Management Monthly Payment for either a Contract Month or a three Contract Month period (in respect of KPIs which have a Monitoring Period of a quarter) or a 12 (twelve) Contract Month period in respect of KPIs which have a Monitoring Period of a year (as the case may be);

"**Articles**" means all goods which the Contractor is required under this Contract to supply (including as part of any Exercised Option);

"**Assets**" has the meaning given in paragraph 2.1.6 of Schedule 17 (*Exit Plan*);

"**Assumed Demands**" means the estimated aggregate number of Works Orders anticipated to be placed (and for which payment would be committed to be made) in the relevant Contract Year, as set out in the table at Appendix 1 (Baseline Assumed Demands) to Part 1 of Schedule 9 (*Pricing and Payment*);

"**Assurance and Acceptance Process**" (or "**Assurance Process**") means the assurance and acceptance process outlined in Schedule 4 (*Assurance and Acceptance Process*), or as developed as part of an approved Change (giving effect to the exercise of an Option) pursuant to Schedule 11 (*Change Procedure*) as applicable to the relevant Contractor Deliverable;

"**Assured Article**" shall have the meaning given in Clause 58.4.1 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*);

"**Authority Background IPR**" means any IPR subsisting and owned by the Authority (other than any Vesting IPR);

"**Authority Change**" means a change initiated by the Authority in accordance with Schedule 11 (*Change Procedure*);

"**Authority Change Notice**" means the notice issued in accordance with paragraph 3.1 of Schedule 11 (*Change Procedure*) and described in paragraph 4.1 of Schedule 11 (*Change Procedure*);

"**Authority Data**" has the meaning given in Clause 37.1 (*Authority Data*);

"**Authority Related Party**" means an officer, servant or agent of the Authority (other than the Contractor and/or any Contractor Related Party);

"**Authority Sites**" means those sites which are in the Authority's control or were in the Authority's control immediately prior to the Effective Date and which are to be used by the Contractor for the purposes of providing the Contractor Deliverables, but not including any Other Contractor's Premises;

"**Authority System**" means the Authority's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Contractor in connection with this Contract which is owned by the Authority or licensed to it by a Third Party and which interfaces with the Contractor System or which is necessary for the Authority to receive the Contractor Deliverables;

"**Authority's Project Manager**" means the person who is responsible for the project outcome identified in the table of Authority's Representatives at Part 2 of Schedule 8 (*Governance and Management*);

"**Authority's Representatives**" means the persons referred to in Clause 87.5 (*Authority's Representatives*);

"**Back Order Demand**" means a Demand that cannot be fulfilled immediately from Stock at Hand;

"**Back Order Demand Satisfaction Rate**" (or "**BODSR")** the percentage of all Back Order Demands that the Contractor fulfils by the relevant time set out in:

(a) the Spares Catalogue (where the Back Order Demand is satisfied by a purchase of a Spare) or:

(b) the Repairs Catalogue (where the Back Order Demand is satisfied by a Repair),

in the relevant Contract Month as more particularly set out in the Table at Appendix 1 to Schedule 6 (*KPIs and Incentivisation*);

"**Back Order Demand Satisfaction Value**" (or "**BODSV")** the percentage by Notional Value of all Back Order Demands that the Contractor fulfils by the relevant time set out in:

(a) the Spares Catalogue (where the Back Order Demand is satisfied by a purchase of a Spare) or:

(b) the Repairs Catalogue (where the Back Order Demand is satisfied by a Repair)

in the relevant Contract Month as more particularly set out in the Table at Appendix 1 to Schedule 6 (*KPIs and Incentivisation*);

"**Baseline Activity**" or "**BA**" means the number of Assumed Demands in the relevant Contract Year;

"**Beyond Economic Repair**" means the estimated or quoted cost of repair exceeds the replacement value;

"**BOWMAN**" means the tactical communication and information systems suite used across the land environment and part of the LE TacCIS Equipment Portfolio;

"**British Standards**" means the standards produced by the British Standards Institution;

"**Business Continuity Plan**" means the business continuity plans set out in Schedule 16 (*Business Continuity Plans*);

"**CAGR**" means the relevant compound annual growth rate for the purposes of KPI 8;

"**Catalogues**" means the Spares Catalogue and/or the Repairs Catalogue as the context requires;

"**Central Government Body**" means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

(a) Government Department;

(b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);

(c) Non-Ministerial Department; or

(d) Executive Agency;

"**Change**" means a change which the Authority or the Contractor shall be entitled to propose in accordance with paragraph 1.1 of Schedule 11 (*Change Procedure*);

"**Change of Ownership**" means:

(a) any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares in the Contractor or a Sub-Contractor (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 or the rights to dividends):

(i) in the case of the Contractor, from that set out in Clause 5.1.5 (*Contractor Warranties and Undertakings*); and

(ii) in the case of a Sub-Contractor, from the relevant holdings at the time of the entry by the relevant Sub-Contractor into the relevant Sub-Contract; and/or

(b) any other arrangements that have or may have or which result in the same effect as limb (a) above; and/or

(c) any disposal or acquisition by the Contractor of a material asset (including shares held by the Contractor or any of its Subsidiaries in any company), business or undertaking;

"**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 this Contract;

"**CHIP**" has the meaning given in Clause 57.1 (*Supply of Hazard Data*);

"**Conflicts Regime**" has the meaning given in Clause 91.1 (*Conflicts of Interest and Impartiality*);

"**Conformed Copy**" has the meaning given in Clause 76.2 (*Amendments to Contract*);

"**Contract**" means this contract (including its Schedules, Appendices and Annexes) as may be amended and/or extended from time to time as a result of any Exercised Option;

"**Contract Award**" means the Effective Date*;*

"**Contract Month**" means the period commencing on and including the Effective Date to the end of the calendar month in which the Effective Date occurs and thereafter each subsequent calendar month commencing on the first day of each calendar month, provided that the final Contract Month shall be such period as commences on the first day of the Contract Month in which the Expiry Date or the Termination Date (as the case may be) falls and ends on the Expiry Date or Termination Date (as the case may be);**REDACTED**"**Contract Month n**" has the meaning given in paragraph 2.1 of Part 1 of Schedule 9 (*Pricing and Payment*);

"**Contract Notice**" is the pre-qualification document relating to this Contract dated **REDACTED**;

"**Contract Period**" means the period commencing on and from the Effective Date and ending on the earlier of the Expiry Date and the Termination Date;

"**Contract Price**" means the sum of the:

(a) Transition Deliverables Firm Price;

(b) Core Contractor Deliverables Firm Price (including the Exit Payment Firm Price);

(c) Option Firm Price for each Exercised Option that is a Pre-Priced Option (during such period only as such Exercised Option is subsisting in accordance with this Contract);

in each case, as adjusted from time to time in accordance with this Contract and which is payable to the Contractor by the Authority under this Contract for the full and proper performance by the Contractor of its obligations under this Contract as determined under the provisions of Schedule 9 (*Pricing and Payment*) and any other relevant provisions of this Contract;

"**Contract Programme**" means the programme set out in Schedule 22 (*Contract Programme*) as amended from time to time in accordance with this Contract;

"**Contract Quarter**" means a period of three (3) Contract Months, the first period commencing on the FOC Date;

"**Contract Year**" means:

(a) in respect of the first Contract Year, the date commencing with the Effective Date and ending on **REDACTED**

(b) in respect of the second Contract Year, the date commencing on **REDACTED** and ending on **REDACTED**

(c) in respect of the third Contract Year, the date commencing on **REDACTED** and ending on **REDACTED**

(d) in respect of the fourth Contract Year, the date commencing on **REDACTED** and ending on **REDACTED**

(e) in respect of the fifth Contract Year, the date commencing on **REDACTED** and ending on **REDACTED** and

(f) in respect of the sixth Contract Year, the date commencing on **REDACTED** and ending on the Expiry Date (subject to the provisions of any Exercised Options);

"**Contractor Background IPR**" means any IPR and/or Information (as the case may be) subsisting and owned by the Contractor prior to the date of, or created or generated by or on behalf of the Contractor outside the scope of, this Contract;

"**Contractor Change**" means a change initiated by the Contractor in accordance with Schedule 11 (*Change Procedure*);

"**Contractor Change Notice**" means the notice issued in accordance with paragraph 11.1 of Schedule 11 (*Change Procedure*);

"**Contractor Commercially Sensitive Information**" shall mean the information listed in a DEFFORM 539A in the Agreed Form, being information notified by the Contractor to the Authority which is acknowledged by the Authority as being commercially sensitive information;

"**Contractor Default**" means any one or more of the following:

(a) a breach by the Contractor of any of its obligations under this Contract which materially and adversely affects the provision of the Contractor Deliverables (except where such breach is of any obligation to which limb (b) relates);

(b) the occurrence of any of the circumstances set out in:

(i) paragraphs 15A1.1(ii), 15A1.2 or 15A1.3 of Schedule 6 (*Incentivisation*);

(ii) the occurrence of any of the circumstances in paragraphs 4.1.1(ii), 4.1.2, 4.1.3, 6.1.1(ii), 6.1.2 or 6.1.3 of Schedule 10 (*Transition*);

(c) the occurrence of a Persistent Breach;

(d) the occurrence of an Insolvency Event in relation to the Contractor and/or the Parent Company or any company that becomes the holding company or parent undertaking of the Contractor (as applicable);

(e) the occurrence of a Prohibited Act and/or the Contractor breaches and/or is in default under Clauses 5.1.13, 5.1.14 and/or 5.1.15 (*Contractor Warranties*);

(f) a breach by the Contractor of Clause 17 (*Competition in Sub-Contracts*);

(g) a breach by the Contractor of Clause 78 (*Transfer*);

(h) a breach by the Contractor and/or any Sub-Contractor (as the case may be) of Clause 80 (*Change of Ownership*);

(i) any withholding of information concerning hazardous Articles, materials or substances as referred to in Clause 57.9 (*Supply of Hazard Data*);

(j) the occurrence of any of the circumstances referred to in Clause 47.8 (*Termination*);

(k) the occurrence of any of the circumstances referred to in Clause 86.5 (*Tax Compliance*);

(l) the Contractor and/or any Sub-Contractor (as the case may be) commits a breach of this Contract which results in the criminal investigation, prosecution and conviction of the Contractor and/or any Sub-Contractor under health and safety legislation;

(m) the Authority is not satisfied that the Contractor has achieved the Transition FOC Completion Requirements on or before the FOC Date;

(n) any of the Authority's rights under the Parent Company Guarantee ceasing to be in full force and effect;

(o) the occurrence of the circumstances referred to in Clause 18.18 (*Import and Export Licences*); and/or

(p) the occurrence of the circumstances referred to in Clause 45B.7.2, 45B.7.3 or 45B.7.4 (*Cyber*);

"**Contractor Default Termination Date**" has the meaning given in Clause 69.2.4 (*Right to Terminate*);

"**Contractor Deliverables**" means the services and/or Articles which the Contractor is required to provide under this Contract, including the Transition Deliverables, Core Contractor Deliverables, the Contractor Deliverables relating to the Exit Plan, all of Exercised Options and any Additional Contractor Deliverables;

"**Contractor Demand Forecast**" (or "**CDF**") means a monthly report, updated each month, which includes details of anticipated demands over the following Contract Month, Contract Quarter, and Contract Year, and optimal purchasing profiles and repair schedules to meet Demands (as more particularly referred to in Serial 2.2.3.1 of Schedule 2 (*Statement of Requirements*);

"**Contractor Equipment**" means the hardware, computer and telecoms devices and equipment used by the Contractor or its Sub-Contractors (but not hired, leased or loaned from the Authority) for the provision of the Contractor Deliverables;

"**Contractor Personnel**" means the Contractor's employees, agents and employees and agents of the Sub-Contractors;

"**Contractor Related Party**" means:

(a) an officer, servant, agent or employee of the Contractor or any Affiliate of the Contractor;

(b) any Sub-Contractor acting in connection with this Contract; and/or

(c) any person on or at:

(i) any of the Authority Sites or other Government Establishment (as the case may be) at the express or implied invitation of the Contractor (other than an Authority Related Party); and/or

(ii) any Other Contractor's Premises at the express or implied invitation of the Contractor,

save to the extent such person is acting under the instruction or control of the Authority or such Other Contractor;

"**Contractor System**" means the information and communications technology system used by the Contractor in implementing and performing the Contractor Deliverables including software, the Contractor Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Authority System);**REDACTED**"**Contractor's Premises**" means those premises or parts of premises which are not Authority Sites and/or Other Contractor's Premises but which

are used by the Contractor and/or Contractor Related Parties for the purpose of providing the Contractor Deliverables;

"**Contractor's Project Manager**" means the person who is responsible for the project outcome to the Authority;

"**Contractor's Proposals**" means the Contractor's proposals in the Agreed Form referred to in Schedule 3 (*Contractor's Proposals*);

"**Contractor's Representatives**" means the persons referred to in Clause 87.2 (*Contractor's Representatives*);

"**Controlled Information**" means any information in any written or tangible form in any media which is disclosed to the Contractor by or on behalf of the Authority under or in connection with this Contract, and which is identified by the legend "Controlled Information" or any other approved legend notified to the Contractor, and which is subject to an export, transfer or transit obligation or any other related technology transfer or disclosure restriction that requires special handling measures or is deemed by the Authority to be especially sensitive commercial information that has been obtained from a Third Party, and the term "Controlled Information" shall exclude information provided by oral communication;

"**Controller**" has the meaning given in Clause 45.1 (*Protection of Personal Data*);

"**Core Contractor Deliverables**" means all of the Contractor Deliverables set out in Schedule 2 (*Statement of Requirements*) (excluding the Transition Deliverables) as adjusted following an approved Change pursuant to Schedule 11 (*Change Procedure*);

"**Core Contractor Deliverables Adjustment Firm Price**" means the amount by which the Core Contractor Deliverables Firm Price (current at the Effective Date) will be adjusted following a Change, as more particularly referred to in paragraph 1.3 of Part 2 of Schedule 9 (*Pricing and Payment*);

"**Core Contractor Deliverables Firm Price**" means the Firm Price for the Core Contractor Deliverables as described in paragraph 1 of Part 2 of Schedule 9 (*Pricing and Payment*) and as adjusted as described in paragraph 1.3 of Part 2 of Schedule 9 (*Pricing and Payment*) being, at the date of this Contract, the sum of **REDACTED** being the aggregate of the:

(a) Inventory Management Service Firm Price;

(b) Inventory Modelling Service Firm Price;

(c) Technical Services Firm Price;

(d) Information Management Firm Price; and

(e) Exit Payment Firm Price;

"**CP&F**" has the meaning given in Clause 20 (*Payment under CP&F*);

"**Critical Items**" means the Items included in the Critical Items List;

"**Critical Items List**" means a list of Items deemed critical to Authority operations and to be managed and updated in accordance with the provisions of Serial 4.2.1.12 of Schedule 2 (*Statement of Requirements*) and Schedule 5 (*MADS Process for Catalogue, Critical Items List and/or Le TacCIS Equipment Portfolio Amendments*) and the Critical Items List at the date of this Contract is attached as Appendix 2 to Schedule 2 (*Statement of Requirements*);

"**Cryptographic Controlled Items**" means Items which are subject to secure handling requirements as more particularly referred to in Serials 2.1.2.1, 2.1.5.2, 2.1.6.1 of Schedule 2 (*Statement of Requirement*);

"**Data Protection Legislation**" has the meaning given in Clause 45.2 (*Protection of Personal Data*);

"**Deduction**" means each deduction calculated in accordance with the Authority's right to make Applicable Deductions in accordance with Schedule 6 (*Incentivisation*);**REDACTED**"**Deductions Adjustment**" means the upwards balancing adjustment to the Deductions made in respect of certain Contract Years as the result of the requirement for the Authority to pay any agreed Demand Volume Adjustment in the relevant Contract Year, (as calculated in accordance with paragraph 8.9 of Part 1 of Schedule 9 (*Pricing and Payment*));

"**Default**" has the meaning given in Clause 32.4 (*Indemnity and Liabilities*);

"**Defence Logistics Framework** (or "**DLF**")" means the body of policy and standards which sets out how the Authority undertakes logistics activities, being documents referred to in Schedule 15 (*Ancillary Documents*);

"**Defence Log IS Solution**" means the suite of information systems employed by the Authority in the management of the inventory and to which the Contractor has access for the purposes of performing the Contractor Deliverables;

"**Defence Supply Chain**" means the supply chain to support Defence logistics, implicitly forward, between storage locations and the front-line commands to distribute a specific product or products as demanded by the final user;

"**DEFFORM 111**" means the completed DEFFORM 111 in the Agreed Form as referred to in Clauses 56.1.3, 56.11.1(i), 56.15 (*Packaging (for Articles other than Munitions*)) and 88.4 (*Notices*);

"**Delivery Error**" means an error as defined in Section 9 of the LCS(T) Supplier Manual;

"**Demand**" means a single request for any quantity of a single Item, which is visible on the Defence Log IS Solution (and the term "**Demanded**" shall be construed accordingly);

"**Demand Actuals**" means the actual Demands which were made on a daily, weekly and monthly basis to be reported on by the Contractor in each Contract Month and to form part of the Demands Register;

"**Demand Volume Adjustment**" means an adjustment which may be applied to the price payable for the Inventory Management Service and Technical Service in certain Contract Years in accordance with the Demand Volume Adjustment Process;

"**Demand Volume Adjustment Process**" means the process which may adjust the price payable for the Inventory Management Service and the Technical Service, as described in paragraph 8 of Part 1 of Schedule 9 (*Pricing and Payment*);

"**Demands Register**" means the register forming part of the KPI Report and identifying the Contractor's performance in relation to certain of the KPIs;

"**Directed Purchase Price**" means the agreed Proposal Price for the purchase of Spares which is set out in an agreed Directed Purchase Proposal in accordance with Schedule 20 (*Directed Purchases and Repairs*);

"**Directed Purchase Proposal**" means a proposal issued by the Contractor in response to a Directed Purchase Request in accordance with paragraph 2.1 of Schedule 20 (*Directed Purchases and Repairs*);

"**Directed Purchase Spares**" means spares or Spares or other items which have been purchased by the Contractor following a Request by the Authority in accordance with Schedule 20 (*Directed Purchases and Repairs*);

"**Directed Repairs**" means repairs carried out by the Contractor on Spares or other spares following a Request by the Authority in accordance with Schedule 20 (*Directed Purchases and Repairs*);

"**Directed Repairs Price**" means the agreed Proposal Price for repairs which is set out in an agreed Directed Repairs Proposal;

"**Directed Repairs Proposal**" means a proposal issued by the Contractor in respect of a Directed Repairs Request in accordance with paragraph 2.1 of Schedule 20 (*Directed Purchases and Repairs*);

"**Discretionary GFA**" means the provision by the Authority to the Contractor of items and/or information to assist the Contractor in delivery of the Contractor Deliverables as listed in the table at Part 3 (*Discretionary GFA*) to Schedule 7 (*Authority Obligations*) (as more particularly referred to in Clauses 31.7 to 31.13 (*Discretionary GFA*));

"**Disposals**" means any process utilised by the Contractor for the removal of any single or multiple number of Items from the LE TacCIS Equipment Portfolio in accordance with Serial 2.1.6.1 of Schedule 2 (*Statement of Requirements*);

"**Dispute**" means any dispute, claim or difference of whatever nature arising out of, in connection with, or in relation to this Contract, including a claim based on contract, tort, equity or domestic or international statute;

"**Disputed Amount**" has the meaning given in Clause 24.1 (*Disputed Amounts*);

"**Dispute Resolution Procedure**" means the procedure set out in Clause 89 (*Dispute Resolution (English Law)*);

"**Diversion Order**" means a Demand for urgently required Items to be delivered to a specified delivery address may be different to a contracted delivery point and is requested to be dispatched to the consignee by the quickest means available;

"**Dues-In**" means Items ordered but yet to arrive at the LCS(T) Facility;

"**Dues-Out**" means Items allocated to satisfy a Demand still held by the LCS(T) Facility;

"**DOTAS**" means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to:

(a) tell HM Revenue & Customs of any specified notifiable arrangements or proposals; and

(b) provide prescribed information on those arrangements or proposals within set time limits as:

(i) contained in Part 7 of the Finance Act 2004 and in secondary legislation made under powers contained in Part 7 of the Finance Act 2004; and as

(ii) extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;

"**EBC**" has the meaning given in limb (c) of the definition of "Unique Identifiers";

"**Effective Date**" means the date of this Contract;

"**Employee**" means any person who is an employee, officer or director of the Contractor and/or any person who is an employee, officer or director of any Sub-Contractor (as the case may be) or who occupies the position of an officer or director of the Contractor and/or any Sub-Contractor (as the case may be), by whatever title given;

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

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

"**E0**" means an Item which required to be the subject of diagnostics to determine whether it is fully functional and fit for its intended purpose;

"**Estimate**" means the estimate prepared in accordance with paragraph 5 of Schedule 11 (*Change Procedure*);

"**EUPI**" has the meaning given in limb (c) of the definition of "Unique Identifiers";

"**EvO Contract**" means the contract (reference BATCM/0263) entered into by the Authority with the EvO Contractor on or around **REDACTED** pursuant to which (and in accordance with the terms of which) the Authority procured the design, development and delivery of the Evo System; **REDACTED**"**EvO Contractor**" means the counterparty to the EvO Contract, other than the Authority;

"**EvO System**" means the battlespace information and communications system that shall be designed, developed and delivered by the EvO Contractor pursuant to and in accordance with the EvO Contract;

"**Exercised Option**" means an Option which has been exercised in accordance with the provisions of Clause 4 (*Contract Period and Options*);

"**Excess Monthly Payment**" shall have the meaning given in paragraph 2.3 of Part 1 of Schedule 9 (*Pricing and Payment*);

"**Exit Management**" means services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Contractor Deliverables from the Contractor to the Authority and/or a Follow-On Contractor as referred to in Clauses 72 (*Exit Plan*) and 74 (*Continuing Assistance*);

"**Exit Management Information**" all information which may be relevant on the expiry or early termination of the Contract including any information which may be relevant to the Authority and/or any Follow-On Contractors, including information relating to time schedules, performance measures and staff transfers (and which information shall be updated and increased by the Contractor as it considers necessary and/or as requested by the Authority from time to time);

"**Exit Manager**" the person allocated by the Contractor for managing the Contractor's obligations on exit as more particularly referred to in paragraph 5 of Schedule 17 (*Exit Plan*);

"**Exit Payment**" means the Firm Price sum of **REDACTED** payable by the Authority to the Contractor in accordance with paragraph 9 of Part 1 of Schedule 9 (*Pricing and Payment*);

"**Exit Payment Firm Price**" means the Firm Price for the Exit Payment;**REDACTED**"**Exit Period**" the period during which exit management activities will be performed following Expiry or an early termination of the Contract, as more particularly described in paragraph 6 of Schedule 17 (*Exit* Plan);

"**Exit Plan**" means the plan referred to in Schedule 17 (*Exit Plan*) as may be developed and/or amended in accordance with Clause 72 (*Exit Plan*) and paragraph 4 of Schedule 17 (*Exit Plan*);

"**Expiry Date**" means **REDACTED**6 as such date may be extended in accordance with Clause 4.1.1 (*Contract Period*) and Clauses 4.2 to 4.12 (inclusive) (*Contract Period and Options*);

"**Fail**" means in relation to the KPI in question, where the Contractor has not satisfied the relevant KPI Threshold;

"**Financial Management Information**" means the financial information as detailed in and in the format required in DEFCON 647, Annex A as referred to in Clause 40 (*Financial Management Information*);

"**Firm Price**" means, as the context requires, the Transition Deliverables Firm Price, the Core Contractor Deliverables Firm Price, an Option Firm Price, a Core Contractor Deliverables Adjustment Firm Price, an Option Adjustment Firm Price, a Proposal Price or the Exit Payment Firm Price;

"**First Order Demand**" means a Demand, placed via the Defence Log IS Solution, which is able to be satisfied from Stock at Hand at the LCS(T) Facility;

"**First Order Demand Satisfaction Rate**" the percentage of relevant Demands in a Contract Month that the Contractor fulfils from Stock at Hand at the LCS(T) Facility in the relevant Contract Month;

"**Fixed Price Pass Through Costs**" means the pass-through prices for the purchase and repair of Spares and/or Repairs based on prices set out within the Spares Catalogue and the Repairs Catalogue (as the context requires) which are subject to the Agreed Indexation (as more particularly referred to in paragraph 6 of Schedule 9 (*Pricing and Payment*);

"**FOC Date**" means **REDACTED**;**REDACTED**"**Forecastable Item**" means an Item which has been the subject of a Demand on at least ten (10) occasions in the last twelve (12) calendar months;

"**FOI Act**" means the Freedom of Information Act 2000;

"**Fortnightly Project Report**" means the report to be created by the Contractor pursuant to and in accordance with paragraph 5 of Schedule 8 (*Governance and Management*);

"**Fortnightly Project Review**" means the report to be created by the Contractor pursuant to and in accordance with paragraph 5 of Schedule 8 (*Governance and Management*);

"**Follow-On Contractor**" has the meaning given in Clause 74 (*Continuing Assistance*);

"**Full Operating Capability**" or "**FOC**" means the later of the date the Contractor has satisfied the Transition FOC Completion Requirements and the date when the Authority issues to the Contractor the MAC FOC Certificate;

"**GAR Entry Criteria**" means the criteria specified in paragraph 1 of Part 2 of Schedule 4 (*Assurance and Acceptance Process*);

"**GAR Exit Criteria**" means the criteria specified in paragraph 2 of Part 2 of Schedule 4 (*Assurance and Acceptance Process*);

"**GAR Final Form**" is when the Authority considers a GAR Relevant Deliverable satisfies the Statement of Requirements and/or other Authority requirements in respect of such GAR Relevant Deliverable and the Authority does not require the Contractor to carry out any additional work in respect of such GAR;

"**GAR Relevant Deliverable**" has the meaning given in paragraph 1.3 of Part 1 of Schedule 4 (*Assurance and Acceptance Process*);

"**GAR Review Date**" means, subject to paragraphs 1.5, 1.9 and 1.10 of Part 1 of Schedule 4 (*Assurance and Acceptance Process*);

(a) in respect of a Programmed Contractor Deliverable, the last date of the relevant GAR Review Period as identified in the Contract Programme; and

(b) in respect of an Unprogrammed Contractor Deliverable, the date notified by the Authority to the Contractor in accordance with paragraph 1.3 of Part 1 Schedule 4 (*Assurance and Acceptance Process*);

"**GAR Review Period**" means, subject to paragraphs 1.5, 1.9 and 1.10 of Part 1 of Schedule 4 (*Assurance and Acceptance Process*), the period for the review of the relevant GAR Relevant Deliverable applicable to the review in question, being the period commencing on the date the GAR Entry Criteria for the relevant review having been satisfied;

"**GAR Submission Date**" means, subject to paragraphs 1.3, 1.9 and 1.10 of Part 1 of Schedule 4 (*Assurance and Acceptance Process*):

(a) in respect of a Programmed Contractor Deliverable, the programmed date for the relevant GAR to commence, on or before which the relevant GAR Entry Criteria is to be satisfied, as identified in the Contract Programme; and

(b) in respect of an Unprogrammed Contractor Deliverable, the programmed date for the relevant GAR Review Period to commence as notified by the Authority to the Contractor in accordance with paragraph 1.3 of Part 1 of Schedule 4 (*Assurance and Acceptance Process*);

"**GAR Subsequent Review**" means, subject to paragraphs 1.9.2 and 1.10 of Part 1 of Schedule 4 (*Assurance and Acceptance Process*), the period for a subsequent review of the GAR Relevant Deliverable applicable to the GAR in question;

"**GDPR**" means the General Data Protection Regulation (Regulation (EU) 2016/679);

"**General Anti-Abuse Rule**" means:

(a) the legislation in Part 5 of the Finance Act 2013; and

(b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;

"**General Assurance Review**" or "**GAR**" is a review of a Programmed Contractor Deliverable or Unprogrammed Contractor Deliverable as referred to in paragraph 1 of Schedule 4 (*Assurance and Acceptance Process*);

"**General LSC Remedial Action Plan**" is a recovery plan to be proposed by the Contractor as referred to in paragraph 8 of Schedule 6 (*Incentivisation*) and which should include (as a minimum):

(a) the proposed start date and proposed completion date for recovery action;

(b) identified milestones within the recovery action to enable the Authority to monitor progress against the plan;

(c) name and contact details for the Contractor's senior manager responsible for the proposed recovery action; and

(d) in the case of a recovery action in relation to a KPI (where the Contractor has registered a Fail for such KPI) the process to be undertaken in order that the Contractor will achieve not less than the KPI Threshold for the relevant KPI as soon as possible;

"**GFA**" means the obligations of the Authority as set out in Schedule 7 (*Authority Obligations*);

"**GFA Failure**" means the failure of the Authority to provide GFA (other than Discretionary GFA) as set out in Schedule 7 (*Authority Obligations*);

"**Good Industry Practice**" means that degree of skill, care, prudence and foresight and operating practice, which would reasonably and ordinarily be expected from time to time of a skilled and experienced contractor engaged in the same type of

undertaking as that of the Contractor and/or any Sub-Contractor under the same or similar circumstances;

"**Government Department**" means any department of the central government of the United Kingdom whose powers have not been devolved to any other national or regional executive or body, including any central government department with powers to administrate in specific geographical areas only (such as in England and Wales only);

"**Government Establishment**" means any sites and/or real property owned and/or operated by the Government, including the Authority Sites, any of Her Majesty's ships or vessels and any service stations;

"**Gross Monthly Excess**" shall have the meaning given in paragraph 3.2.2 of Part 1 of Schedule 9 (*Pricing and Payment*);

"**Gross Monthly Payment**" means each payment calculated in accordance with paragraph 3 of Part 1 of Schedule 9 (*Pricing and Payment*);

"**Halifax Abuse Principle**" means the principle explained in the CJEU Case C-255/02 Halifax and others;

"**Holding Company**" has the meaning given in, and shall be construed in accordance with, section 1159 and section 1162 of the Companies Act 2006;

"**IOC**" means the later of the date the Contractor has satisfied the Transition IOC Completion Requirements and the date when the Authority issues to the Contractor the MAC IOC Certificate;

"**IOC Date**" means **REDACTED**;

"**Information**" means:

(a) for the purpose of Schedule 14 (*IPR*), including (without limitation) data, test data, data packs, studies, analyses, specifications, information or designs contained in physical articles (whether or not registered or registerable), know how, inventions (whether or not patented or patentable), formulae and processes which may be presented amongst other things as drawings, reports, software/code (whether in human or machine readable form, Source Code, object code or otherwise) or databases; or

(b) for any other purpose, information in any form, whether written, oral, electronic, or in a tangible form disclosed to one Party by or on behalf of the other Party under or in connection with this Contract that is identified as being of a confidential or proprietary nature or which ought reasonably to be considered to be confidential, including information provided in the tender or negotiations which preceded Contract Award;

"**Information Management Monthly Payment**" means the proportion of the Monthly Payment for the relevant Contract Month relating to the Information Management Service as referred to in paragraph 1.1 of Part 2 of Schedule 9 (*Pricing & Payment*)] forming part of the Core Contractor Deliverables Firm Price and set out in the Milestone Payments Schedule;

"**Information Management Service** means the Contractor Deliverables to be carried out by the Contractor in order to satisfy Serial 2.3 of Annex 1 to Schedule 2 (*Statement of Requirements*);

"**Initial Operating Capability**" or "**IOC**" means the later of the date the Contractor has satisfied the Transition IOC Completion Requirements and the date when the Authority issues to the Contractor the MAC IOC Certificate;

"**Insolvency Event**" occurs in relation to any person (which for the avoidance of doubt shall include an individual, a partnership, whether unlimited, limited, or limited liability, or any other type of entity as applicable and for this purpose "it" or "its" shall refer to such individual or partnership or other entity) when any one or more of the following events occurs to that person:

(a) a meeting of its partners, shareholders, directors or other officers is convened for the purpose of considering any resolution, to petition, to apply, or to file documents with a court or any registrar, for its winding-up, administration or dissolution, or for it to enter the moratorium procedure under Part A1 of the Insolvency Act 1986 (the "**Moratorium Procedure**"), or any such resolution is passed;

(b) its partners, shareholders, directors or other officers request the appointment of, or give notice of their intention to appoint, a liquidator, compulsory manager, receiver, administrative receiver, administrator, monitor or similar officer, or a qualifying floating charge holder gives notice of their intention to appoint an administrator;

(c) any person presents a petition, or makes an application, or files documents with a court or any registrar: for its winding-up, bankruptcy, sequestration, administration or dissolution; or for it to enter the Moratorium Procedure; or, without limitation to the foregoing, in the case of a partnership other than a limited liability partnership, for the individual bankruptcy or sequestration of any one or more partners in the partnership, other than any winding-up, bankruptcy or sequestration petition which is contested in good faith and/or shown as frivolous or vexatious and discharged or dismissed within 3 Working Days after presentation;

(d) any Security Interest is enforced by a judicial decision over a part or all of its assets;

(e) an order for its winding-up, bankruptcy, sequestration, provisional liquidation, administration, or dissolution is made, or an order that it is subject to the Moratorium Procedure is made, or it enters winding-up, bankruptcy, sequestration, provisional liquidation, administration, or the Moratorium Procedure, or is dissolved, or, without limitation to the foregoing, in the case of a partnership other than a limited liability partnership, any one or more of the partners is made bankrupt or an order for their sequestration is made;

(f) any liquidator, provisional liquidator, trustee in bankruptcy, compulsory manager, receiver, administrative receiver, administrator, monitor under the Moratorium Procedure, or similar officer is appointed in respect of it or a part of its assets, or, without limitation to the foregoing, in the case of a partnership other than a limited liability partnership, a trustee in bankruptcy, compulsory manager, receiver or other similar officer is appointed in respect of any one or more of the partners or a part of their assets;

(g) it commences negotiations for, a formal proposal is made for, any formal step is taken in relation to (including filing documents with the court for or applying for a moratorium under Schedule A1 to the Insolvency Act 1986 or an interim order pursuant to section 252 of the Insolvency Act 1986), or it enters or implements a voluntary arrangement under Part I or Part VIII of the Insolvency Act 1986, a scheme of arrangement under Part 26 of the Companies Act 2006, or a composition, arrangement or reconstruction under Part 26A of the Companies Act 2006, but excluding a scheme of arrangement under Part 26 of the Companies Act 2006 which is a scheme of arrangement as a solvent company for the purposes of amalgamation or reconstruction;

(h) without limitation to the foregoing, in the case of a partnership other than a limited liability partnership, any one or more of the partners commences negotiations for, a formal proposal is made for, any formal step is taken in relation to (including filing documents with the court for or applying for an interim order pursuant to section 252 of the Insolvency Act 1986), or that partner or partners enters or implements a voluntary arrangement under Part VIII of the Insolvency Act 1986;

(i) any one or more persons has become entitled to appoint a receiver, including without limitation an administrative receiver, over all or any of its assets, or has become entitled to appoint an administrator to it;

(j) any creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 3 Working Days;

(k) it suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due, or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership other than a limited liability partnership) has any partner to whom any of the foregoing apply;

(l) it commences negotiations for, a formal proposal is made for, any formal step is taken in relation to, or it enters into an agreement for the rescheduling, reduction and/or a moratorium of any debts owed by it with all or any one or more of its creditors;

(m) it commences negotiations for, a formal proposal is made for, any formal step is taken in relation to, or it enters into a composition, scheme or arrangement with or in respect of its creditors or any one or more of them, other than an arrangement as a solvent company for the purposes of amalgamation or reconstruction;

(n) without limitation to the foregoing, in the case of a partnership other than a limited liability partnership, any one or more of the partners commences negotiations for, a formal proposal is made for, any formal step is taken in relation to, or that partner or partners enter into a composition, scheme or

arrangement with or in respect of their creditors or any one or more of their creditors;

(o) it ceases, suspends or threatens to cease or suspend carrying on its business;

(p) an "insolvency event" as defined in sections 121(2) to 121(5) inclusive of the Pensions Act 2004 occurs to it; and/or

(q) any other step, process, procedure and/or event occurs in England and Wales or any other jurisdiction in relation to it that is equivalent, similar and/or analogous to any one or more of those set out in (a) to (p) inclusive above;

"**Intellectual Property**" means the subject of any Intellectual Property Rights;

"**Intellectual Property Rights**" or "**IPR**" means patents, utility models, rights (registered and unregistered) in any designs, applications for any of the foregoing, topography rights, database rights, copyright, inventions, 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;

"**Inventory Management Monthly Payment**" means the proportion of the Monthly Payment for the relevant Contract Month relating to the Inventory Management Service as referred to in paragraph 1.1 of Part 2 of Schedule 9 (*Pricing & Payment*)], forming part of the Core Contractor Deliverables Firm Price and set out in the Milestones Payment Schedule;

"**Inventory Management Service**" means the Contractor Deliverables to be carried out by the Contractor in order to satisfy Serial 2.1 of Annex 1 to Schedule 2 (*Statement of Requirements*);

"**Inventory Modelling Monthly Payment**" means the proportion of the Monthly Payment for the relevant Contract Month relating to the Inventory Modelling Service, as referred to in paragraph 1.1 of Part 2 of Schedule 9 (*Pricing & Payment*), forming part of the Core Contractor Deliverables Firm Price and set out in the Milestones Payment Schedule;

"**Inventory Modelling Service**" means the Contractor Deliverables to be carried out by the Contractor in order to satisfy Serial 2.2 of Annex 1 to Schedule 2 (*Statement of Requirements*);

"**Issued Property**" means any item, including any physical items which the Contractor requires under this Contract in order to provide the Contractor Deliverables (or any element thereof), issued or otherwise furnished to the Contractor in connection with this Contract by or on behalf of the Authority;

"**Item**" means any single item contained in the LE TacCIS Equipment Portfolio and "Items" shall be construed accordingly;

"**JAMES Component Report**" means reports generated from the information contained on JAMES;

"**Joint Asset Management and Equipment Solutions**" (or "**JAMES**") means the management information system to which the Contractor shall have access for the purposes of performing the Contractor Deliverables;

"**Joint Controller**" has the meaning given in the Data Protection Legislation;

"**KPI**" means the KPIs identified in paragraph 2 of Schedule 6 (*Incentivisation*) and "**KPI**" shall be construed accordingly;

"**KPI Threshold**" means the minimum performance to achieve a Pass in relation to the relevant KPI as identified in column G of the Table at Appendix 1 to Schedule 6 (*Incentivisation*);

"**KPI Report**" means the report to be prepared by the Contractor in accordance with paragraph 7.9.5 of Schedule 8 (*Governance and Management)* and which forms part of the Monthly Performance Report*;***REDACTED**"**LCS(T) Contractor**" means the Logistics Commodities and Services (Transformation) contractor, which, at the date of this Contract is Leidos Europe Limited;

"**LCS(T) Delivery Compliance Scorecard**" means an assessment of the Contractor's compliance with the LCS(T) delivery process to be recorded as set out in in Section 10 of the LCS(T) Supplier Manual and supplied by the Authority to the Contractor;

"**LCS(T) Facility**" means the Defence Fulfilment Centre located at Hortonwood 50, Telford, TF1 7GY;

"**LCS(T) Supplier Manual**" means the supplier manual relating to (amongst other things) the procedures for accepting and rejecting goods when delivered to the LCS(T) Facility as may be updated from time to time in accordance with Schedule 15 (*Ancillary Documents*);

"**Legislation**" means in relation to the United Kingdom:

(a) any Act of Parliament;

(b) any subordinate legislation within the meaning of section 21 of the Interpretation Act 1978;

(c) any exercise of the Royal Prerogative; or

(d) any enforceable community right within the meaning of section 2 of the European Communities Act 1972,

in each case in the United Kingdom;

"**LE TacCIS Equipment Portfolio**" means the Items for which the Contractor is responsible in accordance with the Contract and set out at Appendix 1 to Schedule 2 (*Statement of Requirements*);

"**LE TacCIS Programme**" means the programme to sustain, evolve, maintain and replace tactical communication and information systems (including the JCRVT, LDG, BCIP 5.6, FALCON Exploit, TRINITY and MORPHEUS Programme) for the UK Government Armed Forces;**REDACTED**"**Level-3 Repair**" means a repair to an Item which may be carried out by REME Engineers and/or by the Contractor as set out in Appendix 4 of Schedule 2 (*Statement of Requirements*);

"**Level-4 Repair**" means a repair to an Item which is required to be procured to be carried out by the Contractor, utilising an approved third party;

"**Level-3 Screening**" means screening of an Item which may be carried out by REME Engineers and/or by the Contractor as set out in Appendix 3 of Schedule 2 (*Statement of Requirements*);

"**Losses**" means all damage, losses, liabilities, claims, actions, costs, expenses (including legal expenses on a standard basis), proceedings, demands and charges whether arising under statute, contract or at common law (and "**Loss**" or "**loss**" shall have the same meaning as "**Losses**");

"**LSC Annual Performance Review**" means the review referred to in paragraph 9.1 of Schedule 8 (*Governance and Management*);

"**LSC KPI Failure Action Plan**" means a recovery plan proposed by the Contractor in accordance with paragraph 14 of Schedule 6 (*Incentivisation*);

"**LSC Level-3 Activity Register**" means a log of Level-3 Screening as more particularly referred to in Serial 3.2.2.1 of Schedule 2 (*Statement of Requirements*), forming part of the KPI Report;

"**LSC Level-3 Repair List**" means a list of Items which may be repaired by the Contractor (the LSC Level-3 Repair List at the date of this Contract being set out at Appendix 4 to Schedule 2 (*Statement of Requirements*)) as may be updated from time in accordance with Serial 3.2.3.1 of Schedule 2 (*Statement of Requirements*) and Schedule 5 (*MADS Process for Catalogue, Critical Items List and/or LE TacCIS Equipment Portfolio Amendments*)

"**LSC Level-3 Screening List**" means a list of Items which may be screened by the Contractor prior to determining whether the relevant Item requires repair (the LSC Level-3 Screening List at the date of this Contract being set out at Appendix 3 to Schedule 2 (*Statement of Requirements*)) as may be updated from time in accordance with Serial 3.2.2.1 of Schedule 2 (*Statement of Requirements*) and Schedule 5 (*MADS Process for Catalogue, Critical Items List and/or or LE TacCIS Equipment Portfolio Amendments*);

"**LSC Monthly Performance Review**" means the review referred to in paragraph 7 of Schedule 8 (*Governance and Management*);

"**LSC Repair Register**" means the register forming part of the KPI Report and identifying the Contractor's performance for the purposes of the Inventory Management Service and the Technical Service as more particularly referred to in Serial 2.1.2.5 of Schedule 2 (*Statement of Requirements*);

"**LSC Works Order Register**" means the register forming part of the KPI Report and identifying the Contractor's performance for the purposes of the Inventory Management Service (as more particularly referred to in Serial 2.1.3.8 of Schedule 2 (*Statement of Requirements*);

"**LSCMPR Terms of Reference**" means the terms of reference in respect of the LSC Monthly Performance Review to be developed by the Authority and the Contractor in the period between the Effective Date and the IOC Date pursuant to and in accordance with Serial 2.3.4.3 of Annex 1 to Schedule 2 (*Statement of Requirements*);**REDACTED**"**LSCWG Monthly Report**" means the report to be created by the Contractor pursuant to and in accordance with paragraph 6 of Schedule 8 (*Governance and Management*);

"**LSCWGM Terms of Reference**" means the terms of reference in respect of the LSC Working Group Meetings to be developed by the Authority and the Contractor in the period between the Effective Date and the IOC Date pursuant to and in accordance with Serial 2.3.4.3 of Annex 1 to Schedule 2 (*Statement of Requirements*);

"**MAC FOC Certificate**" means the certificate to be issued by the Authority when it is satisfied that the Contractor has fully satisfied the Transition FOC Completion Requirements, in the form set out at Appendix 4 to Schedule 10 (*Transition*);

"**MAC IOC Certificate**" means the certificate to be issued by the Authority when it is satisfied that the Contractor has fully satisfied the Transition IOC Completion Requirements, in the form set out in Appendix 3 to Schedule 10 (*Transition*);

"**MAC FOC Evidence Checklist**" means the checklist confirming satisfaction of each of the Transition IOC Completion Requirements, to be attached to the MAC FOC Certificate, in the form set out at Appendix 6 to Schedule 10 (*Transition*);

"**MAC IOC Evidence Checklist**" means the checklist confirming satisfaction of each of the Transition IOC Completion Requirements, to be attached to the MAC IOC Certificate, in the form set out at Appendix 5 to Schedule 10 (*Transition*);

"**Malicious Software**" means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;

"**Maximum Additional Deliverables Sum**" means the sum available to the Authority for the purposes of funding additional Contractor Deliverables and/or Directed Purchases and/or Directed Repairs as may be created and/or increased from time to time in accordance with paragraph 11.4 of Schedule 6 (*Incentivisation*);

"**Milestone Acceptance Certificate**" or "**MAC**" means the Milestone Completion Certificate in the form set out in Appendix 3 to Schedule 10 (*Transition*) on satisfaction by the Contractor of the Transition IOC Completion Requirements and in the form set out in Appendix 4 to Schedule 10 (*Transition*) on satisfaction by the Contractor of the Transition FOC Completion Requirements;

"**Milestones**" has the meaning given in:

(a) paragraph 1.2 of Part 2 of Schedule 9 (*Pricing and Payment*) in relation to Milestones relevant to the Core Contractor Deliverables; and

(b) paragraph 1.6 of Part 2 of Schedule 9 (*Pricing and Payment*) in relation to Milestones relevant to Exercised Options;

"**Milestone Payment Amount**" means, in respect of the Core Contractor Deliverables and each Exercised Option, the amount set out in column E of the applicable Milestone Payments Schedule;

"**Milestone Payments Schedule**" means, in respect of:

(a) the Core Contractor Deliverables, the schedule in the Agreed Form referred to in Appendix 1 to Part 2 of Schedule 9 (*Pricing and Payment*), as adjusted in accordance with paragraph 1.2 of Part 2 of Schedule 9 (*Pricing and Payment*)

to take account of an approved Change pursuant to Schedule 11 (*Change Procedure*); or

(b) Option numbered 1 (One Year Contract Extension **REDACTED**), the schedule in the Agreed Form referred to in Appendix 2a to Part 2 of Schedule 9 (*Pricing and Payment*), as adjusted in accordance with paragraph 1.7 of Part 2 of Schedule 9 (*Pricing and Payment*) to take account of an approved Change pursuant to Schedule 11 (*Change Procedure*);

(c) Option numbered 2 (Six (6) Contract Months Contract Extension **REDACTED**), the schedule in the Agreed Form referred to in Appendix 2b to Part 2 of Schedule 9 (*Pricing and Payment*), as adjusted in accordance with paragraph 1.7 of Part 2 of Schedule 9 (*Pricing and Payment*) to take account of an approved Change pursuant to Schedule 11 (*Change Procedure*);

(d) Option numbered 3 (Six (6) Contract Months Contract Extension **REDACTED**), the schedule in the Agreed Form referred to in Appendix 2c to Part 2 of Schedule 9 (*Pricing and Payment*), as adjusted in accordance with paragraph 1.7 of Part 2 of Schedule 9 (*Pricing and Payment*) to take account of an approved Change pursuant to Schedule 11 (*Change Procedure*);

"**Minor Changes**" has the meaning given in Clause 75.4 (*Change*);

"**Monitoring Period**" means in respect of each of the KPIs the relevant period in which the relevant KPI is monitored, as set out in column H of the Table at Appendix 1 to Schedule 6 (*Incentivisation*);

"**Monthly Payment**" means the amount calculated in accordance with paragraph 2.1 of Part 1 of Schedule 9 (*Pricing and Payment*);

"**Monthly Performance Report**" means the report in the Agreed Form on the performance and delivery of this Contract to be created by the Contractor pursuant to and in accordance with paragraph 7.5 of Schedule 8 (*Governance and Management*);

"**MORPHEUS Contract**" means any contract entered into or to be entered into by the Authority with any Third Party or any variation to any existing contract to which the Authority is a party (as the context shall require) arising out of or in connection with the MORPHEUS Programme (and, in either case, whether such contract is entered into, to be entered into or varied in whole or in part in connection with the MORPHEUS Programme and/or any part of it);

"**MORPHEUS Contractor**" means a counterparty to a MORPHEUS Contract other than the Authority;

"**MORPHEUS Programme**" means the procurement by the Authority for the provision and support of the MORPHEUS System, including the designing, building, assembling, maintaining, repairing, operating, modifying, developing, implementing, interfacing with, adapting, proving, integrating, updating, configuring, conforming, analysing, instantiating, supplementing, enhancing, training in relation to and/or evolving and/or installation of such MORPHEUS System;

"**MORPHEUS System**" means the future battlespace information and communications system (of which the EvO System forms part) being developed and procured by the Authority;

"**Necessary Consents**" means all permits, licences (including licences required under the USA International Traffic in Arms Regulations (ITAR) and US Export Administration Regulations (EAR)), permissions, clearances, consents, approvals, certificates and authorisations (whether statutory or otherwise) which are required:

(a) for the performance of any of the Contractor's obligations under this Contract, including Clause 30 (*Technical Assistance to the Authority*);

(b) to enable the Authority and/or any person or organisation set out in Schedule 12 (*Technical Assistance*) and any person or organisation notified by the Authority to the Contractor from time to time as a person or organisation with whom the Authority wishes to liaise and/or communicate with from time to time in relation to the Contract or the wider aims of the Authority in connection with the Contractor Deliverables and/or the MORPHEUS Programme, to assist the Authority and/or such person or organisation to carry out their respective aims, functions and/or duties or obligations in connection with the Contractor Deliverables and/or MORPHEUS Programme,

in all cases, whether required in order to comply with law, as a result of the rights of any Third Party and/or the requirements of any foreign government or organisation;

"**New Provider**" means any replacement contractor or contractors engaged to provide the Contractor Deliverables (or part thereof) or substantially similar contractor deliverables or the Authority itself where the Contractor Deliverables or substantially similar contractor deliverables or part thereof continue to be provided by the Authority after partial termination, termination or expiry of this Contract;

"**No Fault Found (**or **"NFF")**" means where prior to carrying out a Level-3 Repair or Level-4 Repair (as the case may be) on an Item, the relevant Item is found to conform with the manufacture's specifications and is fully functional and fit for its intended purpose;

"**Non-Assured Article**" shall have the meaning given in Clause 58.4.2 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*);

"**Non-Critical Item(s)**" means Items not included in the Critical Items List.

"**Notices**" has the meaning given in Clause 88.1 (*Notices*);

"**Notional Value**" means the unit price of an Item as at the Actual FOC Date calculated using the net present value algorithms of JSP507;

"**NSN**" (or "**NATO Stock Number**") means a unique item identifier of thirteen (13) digits in length, composed of a four (4) digit NATO supply classification code and a nine (9) digit NATO item identification number ("**NIIN**").

"**Occasion Of Tax Non-Compliance" or "OOTNC**" means:

(a) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:

(i) a Relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse Principle or under

any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; or

(ii) the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; or

(b) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;

"**Option**" means each Option set out or referred to in each paragraph of Part 1 of Schedule 23 (*Scope of Options*);

"**Option Adjustment Firm Price**" means the amount by which the Option Firm Price (current at the relevant time) will be adjusted following an approved Change which adjusts the relevant Exercised Option, as calculated in accordance with paragraph 1.8 of Part 2 of Schedule 9 (*Pricing and Payment*);

"**Option Adjusted Excess**" shall have the meaning given in paragraph 4.4.2 of Part 1 of Schedule 9 (*Pricing and Payment*);

"**Option Excess**" shall have the meaning given in paragraph 4.2.2 of Part 1 of Schedule 9 (*Pricing and Payment*);

"**Option Firm Price**" means the agreed Firm Price for each such Option (as at the date of this Contract set out or referred to in Part 2 of Schedule 23 (*Scope of Options*) and more particularly referred to in paragraph 1.5 of Part 2 of Schedule 9 (*Pricing and Payment*));

"**Option Notice**" has the meaning given in Clause 4.4 (*Contract Period and Options*);

"**Option Payment**" means the Option Firm Price in respect of all Exercised Options for which an Option Firm Price is due (whether in whole or in part) in Contract Month n, calculated in accordance with paragraph 4 of Part 1 of Schedule 9 (*Pricing and Payment*);

"**Original Expiry Date**" means the Expiry Date as at the Effective Date (and prior to any extension in accordance with Clauses 4.2 to 4.12 (inclusive) (*Contract Period and Options*));

"**Other Contractor**" means any contractor to the Authority (other than the Contractor) or any National Defence Contractor which is notified to the Contractor from time to time and/or of which the Contractor ought reasonably to have been aware including any contractor undertaking activities under or in connection with the LE TacCIS Programme;**REDACTED**"**Other Contractor's Premises**" means any premises which are in the control of any Other Contractor and at which the Contractor and/or any Contractor Related Party is required to attend (whether or not at the invitation of the Authority) in connection with the performance of this Contract and/or the provision of the Contractor Deliverables, but excluding any Authority Site and/or the Contractor's Premises;

"**Packaging**" shall have the meaning given in Clause 56.1 (*Packaging (for Articles other than Munitions*));

"**Parent Company**" means Babcock International Group PLC (registered number 02342138), whose registered office is at 33 Wigmore Street, London W1U 1QX;

"**Parent Company Guarantee**" means the parent company guarantee provided by the Parent Company in accordance with Clause 3.8 (*Delivery of Parent Company Guarantee*) in the form of Schedule 18 (*Parent Company Guarantee*);

"**Parties**" means the Contractor and the Authority unless expressly stated differently;

"**Pass**" means, in relation to the KPI in question, where the Contractor has satisfied the KPI Threshold;

"**Persistent Breach** means either

(a) three (3) or more breaches (the "**Subsequent Breaches**") by the Contractor of one of its obligations under this Contract, provided:

    (i) that the Authority has previously served on the Contractor a notice ("**Warning Notice**") correctly stating that the Contractor has, in any Contract Months prior to the service of such Warning Notice, breached such obligation under this Contract on one (1) or more occasions;

    (ii) that the Contractor's Subsequent Breaches of such obligation take place during the eighteen (18) month period following the service of such Warning Notice; and

    (iii) no service of a Warning Notice may be based on any breaches of such obligation that have already been the subject of a Warning Notice; or

(b) the occurrence of the circumstances set out in paragraph 11.2.3 of Schedule 6 (*Incentivisation*);

"**Personal Data**" has the meaning given in Clause 45.1 (*Protection of Personal Data*);

"**Prescribed Rate**" means two percent (2%) above the base rate from time to time of the Bank of England;

"**Programmed Contractor Deliverables**" means Contractor Deliverables that are items and/or Items, documents or meetings and identified in Part 3 of Schedule 4 (*Assurance and Acceptance Process*) on the Effective Date and/or following a Change pursuant to Schedule 11 (*Change Procedure*), for which there is a GAR Review Date and GAR Submission Date (in each case set out in the Contract Programme) and to be assured in accordance with the procedures in paragraph 1 of Part 1 of Schedule 4 (*Assurance and Acceptance Process*);

"**Prohibited Act**" means any instance of the Contractor or any of its employees, agents or Sub-Contractors (or anyone acting on behalf of such persons), with or without the knowledge or authority of the Contractor:

(a) directly or indirectly offering, promising, giving or agreeing to give to any Crown servant any gift or consideration of any kind as an inducement or reward:

    (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Contract or any other contract with the Crown;

(ii) for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Crown; or

(iii) for improper performance of a relevant function or activity;

(b) entering into this Contract or any other contract with the Crown in connection with which commission has been paid or has been agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless before such contract is entered into, particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Authority;

(c) committing any offence:

(i) under the Prevention of Corruption Acts 1889-1916 or under sub-sections 108 to 109 of the Anti-Terrorism, Crime and Security Act 2001 (before those Acts or sub-sections are revoked);

(ii) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);

(iii) under Legislation creating offences in respect of fraudulent acts;

(iv) at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Crown; or

(v) any activity, practice or conduct which would constitute one or more of the offences listed in limbs (i) to (iv) inclusive, if such activity, practice or conduct had been carried out in the United Kingdom; or

(d) defrauding, attempting to defraud or conspiring to defraud the Crown;

"**Proposal**" or "**Proposals**" has the meaning given in paragraph 1.1 of Schedule 20 (*Directed Purchases and Repairs*);

"**Proposal Price**" means the Firm Price set out in a Proposal in relation to the relevant services to be carried out by the Contractor in relation to the Proposal and any firm price costs for the items to be purchased or repaired that are the subject of the Proposal;

"**Proposal Template**" means the template for a Directed Purchase Proposal and/or Directed Repairs Proposal, as set out in Appendix 2 to Schedule 20 (*Directed Purchases and Repairs*);

"**Proposed Additional Contractor Deliverables**" means the Additional Contractor Deliverables that the Authority is requesting the Contractor to perform at the relevant time in relation to Exercised Options;

"**Public Store Account**" or "**PSA**" has the meaning given in Clause 60.1.1 (*Accounting for property of the Authority*);

"**Quality Plan**" has the meaning given in AQAP2105;

"**Quarter**" means the period 1 January to 31 March, 1 April to 30 June, 1 July to 30 September, 1 October to 31 December and "Quarterly" shall be construed accordingly;

"**Ratchet Mechanism**" means the mechanism for increasing an Applicable Deduction as a consequence of a repeated Fail in respect of those KPIs referred to in paragraph 11.2.1 (ii) of Schedule 6 (*Incentivisation*);

"**REACH**" has the meaning given in Clause 57.2 (*Supply of Hazard Data*);

"**Records**" has the meaning given in Clause 39 (*The Contractor's Records*);

"**Relationship Management Plan**" has the meaning given in Serial 2.3.4.3 of Schedule 2 (*Statement of Requirements*);

"**Relevant Authority**" means any court with the relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union;

"**Relevant Requirements**" means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;

"**Relevant Tax Authority**" means HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the Contractor is established;

"**REME**" means the Royal Electrical and Mechanical Engineers who carry out maintenance and repair of Authority assets,

"**Repairs**" means the repairs to Spares or other Items listed in the Repairs Catalogue;

"**Repairs Catalogue"** means the catalogue for repairs as set out at Part 2 of Appendix 4 to Part 1 of Schedule 9 (*Pricing and Payment)* identifying the prices for Repairs in each Contract Year;

"**Repairs Price**" means the Fixed Price Pass Through Costs for all Repairs carried out by the Contractor on behalf of the Authority (excluding the Proposal Price for any Directed Repairs) as calculated in accordance with paragraph 6 of Part 1 of Schedule 9 (*Pricing and Payment*);

"**Replacement Contractor Deliverables**" means any deliverables which are the same as, or substantially similar to, any of the Contractor Deliverables and which the Authority receives in substitution for any of the Contractor Deliverables following the expiry or termination or partial termination of this Contract (including any Additional Contractor Deliverables which would have been provided as a result of the exercise of any Option had the Contract not been terminated early pursuant to Clauses 69 (*Termination for Contractor Default*) or 70 (*Termination for Convenience*)), whether those deliverables are provided by the Authority internally and/or by any Follow-On Contractor;

"**Representatives**" means the Authority's Representatives or the Contractor's Representatives (as appropriate);

"**Request**" or "**Requests**" has the meaning given in paragraph 1.1 of Schedule 20 (*Directed Purchases and Repairs*);

"**Required Action**" has the meaning given in Clause 36.3 (*Procedure for Authority Step-In*);

"**Required Insurances**" has the meaning given in Clause 33.1 *(Insurances*);

"**Safety Data Sheet**" or "**SDS**" has the meaning given in Clause 57.1.1 (*Supply of Hazard Data*);

"**Screening TAT**" means the time taken for an Item to be screened by the Contractor, measured from the time the relevant Item is collected from the LCS(T) Facility to the time that both of the following have occurred:

(a) the relevant Item has been returned to the LCS(T) Facility in full compliance with the provisions of the LCS(T) Supplier Manual; and

(b) when the completion of the relevant repair is also visible on JAMES;

"**Screenable Items**" means Items listed in the LSC Level-3 Screening List;

"**Secret Matter**" has the meaning given in Clause 47.1.1 (*Security – Secret Matters*);

"**Security Aspects Letter**" means the letter dated **REDACTED** relating to the designation of security classifications attached at Appendix 1 to Schedule 25 (*Security Conditions*);

"**Security Classification**" means the Government classification of information assets to ensure that they are appropriately protected and are classified into one of three types: Official, Secret and Top Secret (each such term having the meaning given in "Government Security Classifications" published by the Cabinet Office, May 2018);

"**Security Interest**" means a mortgage, charge, pledge, lien, assignment, hypothecation or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect;

"**Security Policy**" means the HMG Security Policy Framework relating to the Government Security Classification policy as published by the Cabinet Office;

"**Service Monthly Payments**" means the Inventory Management Monthly Payment, the Inventory Modelling Monthly Payment, the Technical Service Monthly Payment and the Information Management Monthly Payment;

"**Servicemen**" means military manpower (and "**Serviceman**" shall be construed accordingly);

"**Short Item Name**" means descriptive text to describe an Item in addition to the NSN of the relevant Item;

"**Single Source Item**" has the meaning given in Clause 17.9 (*Security of Supply*);

"**SME**" means a small or medium sized enterprise being an establishment or service employing less than two hundred and fifty (250) people and with a turnover of less than fifty million Euro (50,000,000 Euro) per annum;

"**Spares**" means any single Item listed in the Spares Catalogue and/or the Repairs Catalogue;

"**Spares Catalogue**" (referred to in the alternative in this Contract as "Purchasing Catalogue") means the catalogue for spares as set out at Appendix 4 to Part 1 of

Schedule 9 (*Pricing and Payment*) identifying the prices for Spares in each Contract Year (and "Purchasing Catalogue" shall be construed accordingly);

"**Spares Price**" means the Fixed Price Pass Through Costs for the Spares purchased by the Contractor on behalf of the Authority (excluding the Proposal Price for any Directed Purchase Spares) as calculated in accordance with paragraph 6 of Part 1 of Schedule 9 (*Pricing and Payment*);

"**Special Jigs, Tools Etc.**" means all special jigs, tools, patterns, moulds, dies, manufacturing gauges and test equipment, together with any associated fixtures, fittings and software necessary for the manufacture of the Articles or for the performance of the Contractor Deliverables, which are not tools of the trade, as used by the Contractor in the performance of this Contract;

"**SSTDP**" has the meaning given in Clause 17.14 (*Security of Supply*);

"**Statement of Requirements**" means Schedule 2 (*Statement of Requirements*), as amended from time to time in accordance with this Contract;

"**Step-In Notice**" has the meaning given in Clause 36.3 (*Procedure for Authority Step-In*);

"**Step-Out**" has the meaning given in Clause 36.6 (*Authority Step-Out*);

"**Step-Out Plan**" has the meaning given in Clause 36.7.2 (*Authority Step-Out*);

"**Stock at Hand** means items physically present within the LCS(T) Facility;

"**Stock to Issue Ratio (**or "**SIR)**" means a ratio for assessing stock management that is calculated on a per Item basis, as Stock at Hand of the relevant Item divided by the quantity of the relevant Item which has been Demanded in the preceding twelve (12) Contract Months, and such ratio shall be provided by the Contractor as part of the Demands Register in each Contract Month;

"**Sub-Contracting Plan**" has the meaning given in Clause 17.1 (*Competition in Sub-Contracts*);

"**Sub-Contractor**" means any sub-contractor to the Contractor under this Contract, a sub-contractor of a sub-contractor to the Contractor and any other sub-contractor (of whatever tier) engaged by the Contractor or any sub-contractor from time to time as may be permitted by this Contract to provide the Contractor Deliverables (or any part of the Contractor Deliverables);

"**Sub-Contracts**" means the contracts entered into between the Contractor and the Sub-Contractors and the contracts entered into between any Sub-Contractor and any other Sub-Contractor in respect of the provision of the Contractor Deliverables and "**Sub-Contracting**" shall be construed accordingly;

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

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

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

"**Subsidiary**" has the meaning given in, and shall be construed in accordance with, sections 1159 and 1162 of the Companies Act 2006;

"**Supported Businesses**" means establishments or services where more than fifty percent (50%) of the workers are disabled persons who by reason of the nature or severity of their disability are unable to take up work in the open labour market;

"**System Integrator**" means the Authority or any Third Party (including any Other Contractor) responsible at the relevant time for performing any of the System Integrator Activities;

"**System Integrator Activities**" means any services being performed by the System Integrator, including operating, maintaining, updating, releasing to field, building, integrating, evolving and/or de-commissioning the EvO System and/or the MORPHEUS System.

"**Tax**" means any kind of tax, duty, levy or other charge (other than VAT) whether or not similar to any in force at the Effective Date and whether imposed by a local, governmental or other Relevant Authority in the United Kingdom or elsewhere;

"**Technical Service**" means the Contractor Deliverables to be carried out by the Contractor in order to satisfy Serial 3.2 of Annex 1 to Schedule 2 (*Statement of Requirements*);

"**Technical Service Monthly Payment**" means the proportion of the Monthly Payment for the relevant Contract Month relating to the Technical Service, as referred to in paragraph 1.1 of Part 2 Schedule 9 (*Pricing & Payment*) forming part of the Core Contractor Deliverables Firm Price and set out in the Milestone Payments Schedule;

"**Tender Documentation"** means any documents issued to prospective bidders and bidders relating to the opportunity to bid to enter into a contract to provide the Contractor Deliverables;

"**Tender Requirement**" has the meaning given in Clause 17.3 (*Competition in Sub-Contracts*);

"**Termination Date**" means the date of any early termination of the whole or part of this Contract pursuant to Clauses 69 (*Termination for Contractor Default*) or 70 (*Termination for Convenience*);

"**Termination Notice**" has the meaning given in Clause 69.2 (*Termination for Contractor Default*), or as relevant, means any notice to terminate this Contract pursuant to Clause 70 (*Termination for Convenience*);

"**Third Party**" means:

(a) for the purpose of Schedule 14 (*IPR*), a party other than the Authority, the Contractor, and any Affiliate of the Contractor; or

(b) for any other purpose, any person other than the Parties;

"**Third Party IPR**" means any IPR owned by a Third Party;**REDACTED**"**Transfer Regulations**" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time and/or the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 (as amended from time to time), as appropriate;

"**Transferring Contracts**" has the meaning given in paragraph 8.2.3 of Schedule 17 (*Exit Plan*);

"**Transition**" means the obligations of the Contractor as more particularly set out in Schedule 10 (*Transition*);

"**Transition Deliverables**" means that part of the Contractor Deliverables set out in Serials 2.5.1 and 3.2.1 of Annex 1 to Schedule 2 (*Statement of Requirements*) to be performed by the Contractor as more particularly referred to in paragraph 1 of Schedule 10 (*Transition*) (as may be adjusted following an agreement of the Authority to a Transition IOC Remediation Plan or a Transition FOC Remediation Plan and/or as the result of an approved Change pursuant to Schedule 11 (*Change Procedure*));

"**Transition Deliverables Firm Price**" means the Firm Price for the Transition Deliverables as described in paragraph 1 of Part 1 of Schedule 9 (*Pricing and Payment*), subject to the retention and clawback arrangements set out in paragraph 1.14 of Part 1 of Schedule 9 (*Pricing and Payment*) and being the aggregate of the Transition IOC Milestone Payment and the Transition FOC Milestone Payment;

"**Transition FOC Completion Requirements**" means the requirements to be satisfied by the Contractor relating to Transition on or before the FOC Date as set out at Appendix 2 to Schedule 10 (*Transition*);

"**Transition FOC Milestone Payment**" means the payment due to the Contractor on satisfying the Transition FOC Completion Requirements being the sum of **REDACTED** and payable in accordance with the provisions of paragraph 1 of Part 1 of Schedule 9 (*Pricing and Payment*);

"**Transition FOC Remediation Plan**" means the plan proposed by the Contractor in accordance with paragraph 5 of Schedule 10 (*Transition*);

"**Transition IOC Completion Requirements**" means the requirements to be satisfied by the Contractor relating to Transition on or before the IOC Date as set out in Appendix 1 to Schedule 10 (*Transition*);

"**Transition IOC Milestone Payment**" means the payment due to the Contractor on satisfying the Transition IOC Completion Requirements being the sum of **REDACTED** and payable in accordance with the provisions of paragraph 1 of Part 1 of Schedule 9 (*Pricing and Payment*);

"**Transition IOC Remediation Plan**" the plan proposed by the Contractor in accordance with paragraph 3 of Schedule 10 (*Transition*);

"**Transition Milestones**" means the requirements achieve each of the Transition IOC Completion Requirements and the Transition FOC Completion Requirements;

"**Transition Milestone Payments**" means the Transition IOC Milestone Payment and the Transition FOC Milestone Payment;

"**Transition Period**" means the period commencing with the Effective Date and ending on the last to occur of the FOC Date and the Actual FOC Date;

"**Transition Plan**" means the plan in an Agreed Form detailing how the Contractor will perform the Transition Deliverables in accordance with the relevant parts of the Contractor Programme;

"**Transparency Information"** shall mean the content of this Contract in its entirety, including from time to time agreed changes to this Contract, and details of any payments made by the Authority to the Contractor under this Contract;

"**Turn-Around Time**" (or "**TAT**") means the time taken for an Item to pass through the Level-4 Repair process, measured from the time the relevant Item is collected from the LCS(T) Facility to the time that both of the following have occurred:

(a) the relevant Item has been returned to the LCS(T) Facility in full compliance with the provisions of the LCS(T) Supplier Manual; and

(b) when the completion of the relevant repair is also visible on the Defence Log IS solution;

"**UK Government Purposes**" means use for the purposes of the UK Government, including, without limitation, rights to copy, modify, perform, reproduce, display and disclose in whole or in part, and to authorise Third Parties to do so, but shall not extend to commercial sales of Articles except for disposal of outworn or surplus items;

"**Unique Identifiers**" comprise the following:

(a) Unique Order Identifier ("**UOI**") generated by the Contracting, Purchasing & Finance (CP&E) electronic procurement tool for non inventory purchase orders;

(b) Unique Receipt Reference Identifier ("**URRI**"), generated by CP&F for inventory purchase orders; or

(c) Electronic Business Capability ("**EBC**") Unique Package Identifier ("**EUPI**") generated for EBC contractor logistic support contracts. EUPIs comprise two parts, the first part being the identifier allocated by the Authority and the second part being the identifier generated by the Contractor;

"**Unique Order Identifier**" or "**UOI**" has the meaning given in limb (a) of the definition "Unique Identifiers" in Schedule 1 (*Definitions and Acronyms*);

"**Unique Receipt Reference Identifier**" or "**URRI**" has the meaning given in limb (b) of the definition "Unique Identifiers" in Schedule 1 (*Definitions and Acronyms*);

"**Unprogrammed Contractor Deliverable"** means any Contractor Deliverable which is subject to a General Assurance Review as described in paragraph 1.1.2 of Part 1 of Schedule 4 (*Assurance and Acceptance Process*);

"**VAT**" means value added tax and is the tax charged on supplies of goods and services in the UK pursuant to the Value Added Tax Act 1994;

"**Vesting IPR**" shall have the meaning given in paragraph 2.1 of Schedule 14 (*IPR*);

"**Warning Notice**" has the meaning given in limb (a) of the definition of Persistent Breach;

"**Weekly Project Report**" means the report to be created by the Contractor pursuant to and in accordance with paragraph 4 of Schedule 8 (*Governance and Management*);

"**Weekly Project Review**" means the review referred to in paragraph 4 of Schedule 8 (*Governance and Management*);

"**Working Day**" means any day excluding:

(a) Saturdays, Sundays and public and statutory holidays in the jurisdiction of either Party; and

(b) privilege days notified in writing by the Authority to the Contractor at least ten (10) business days in advance;

"**Works Orders**" means each order for purchases or repairs (of a single Item or multiple quantity of Items) which is placed by the Contractor in relation to the purchase of Items or the repair of Spares or other items, in respect of which the Contractor is responsible for maintaining and making available to the Authority in accordance with this Contract, as evidenced in the LSC Works Order Register and the LSC Repair Register (but, for the avoidance of doubt, excluding any orders for purchases or repairs which are Directed Purchase Spares or Directed Repairs);

"**Year**" means the twelve (12) month period from and including the day falling immediately before the day bearing the same number in the same month of the following year (or, in the case of a period commencing on **REDACTED**, ending on the next following **REDACTED**).

Schedule 2

Statement of Requirements

[*Please see Schedule 2 (Statement of Requirements) of the document entitled "Schedules 1 to 25 relating to BATCM/0294 – Logistics Support Contract"]*

Schedule 3

Contractor's Proposals

[*Please see Schedule 3 (Contractor's Proposals) of the document entitled "Schedules 1 to 25 relating to BATCM/0294 - Logistics Support Contract"*]

Schedule 4

Assurance and Acceptance Process

[*Please see Schedule 4 (Assurance and Acceptance Process) of the document entitled "Schedules 1 to 25 relating to BATCM/0294 - Logistics Support Contract"*]

Schedule 5

MADS Process for Catalogue, Critical Items List and/or LE TacCIS Equipment Portfolio Amendments

[*Please see Schedule 5 (MADS Process for Catalogue, Critical Items List and/or LE TacCIS Equipment Portfolio Amendments) of the document entitled "Schedules 1 to 25 relating to BATCM/0294 - Logistics Support Contract"*]

Schedule 6

Incentivisation

[*Please see Schedule 6 (Incentivisation) of the document entitled "Schedules 1 to 25 relating to BATCM/0294 - Logistics Support Contract"*]

Schedule 7

Authority Obligations

[*Please see Schedule 7 (Authority Obligations) of the document entitled "Schedules 1 to 25 relating to BATCM/0294 - Logistics Support Contract"*]

Schedule 8

Governance and Management

[*Please see Schedule 8 (Governance and Management) of the document entitled "Schedules 1 to 25 relating to BATCM/0294 - Logistics Support Contract"*]

Schedule 9

Pricing and Payment

[*Please see Schedule 9 (Pricing and Payment) of the document entitled "Schedules 1 to 25 relating to BATCM/0294 - Logistics Support Contract"*]

Schedule 10

Transition

[*Please see Schedule 10 (Transition) of the document entitled "Schedules 1 to 25 relating to BATCM/0294 - Logistics Support Contract"*]

Schedule 11

Change Procedure

[*Please see Schedule 11 (Change Procedure) of the document entitled "Schedules 1 to 25 relating to BATCM/0294 - Logistics Support Contract"*]

Schedule 12

Technical Assistance

[*Please see Schedule 12 (Technical Assistance) of the document entitled "Schedules 1 to 25 relating to BATCM/0294 - Logistics Support Contract"*]

Schedule 13

Required Insurances

[*Please see Schedule 13 (Required Insurances) of the document entitled "Schedules 1 to 25 relating to BATCM/0294 - Logistics Support Contract"*]

Schedule 14

IPR

[*Please see Schedule 14 (IPR) of the document entitled "Schedules 1 to 25 relating to BATCM/0294 - Logistics Support Contract"*]

Schedule 15

Ancillary Documents

[*Please see Schedule 15 (Ancillary Documents) of the document entitled "Schedules 1 to 25 relating to BATCM/0294 - Logistics Support Contract"*]

Schedule 16

Business Continuity Plans

[*Please see Schedule 16 (Business Continuity Plans) of the document entitled "Schedules 1 to 25 relating to BATCM/0294 - Logistics Support Contract"*]

Schedule 17

Exit Plan

[*Please see Schedule 17 (Exit Plan) of the document entitled "Schedules 1 to 25 relating to BATCM/0294 - Logistics Support Contract"*]

Schedule 18

Parent Company Guarantee

[*Please see Schedule 18 (Parent Company Guarantee) of the document entitled "Schedules 1 to 25 relating to BATCM/0294 - Logistics Support Contract"*]

Schedule 19

Not Used

Schedule 20

Directed Purchases and Repairs

[*Please see Schedule 20 (Directed Purchases and Repairs) of the document entitled "Schedules 1 to 25 relating to BATCM/0294 - Logistics Support Contract"*]

Schedule 21

Transfer Regulations

[*Please see Schedule 21 (Transfer Regulations) of the document entitled "Schedules 1 to 25 relating to BATCM/0294 - Logistics Support Contract"*]

Schedule 22

Contract Programme

[*Please see Schedule 22 (Contract Programme) of the document entitled "Schedules 1 to 25 relating to BATCM/0294 - Logistics Support Contract"*]

Schedule 23

Scope of Options

[*Please see Schedule 23 (Scope of Options) of the document entitled "Schedules 1 to 25 relating to BATCM/0294 - Logistics Support Contract"*]

Schedule 24

Not Used

Schedule 25

Security Conditions

[*Please see Schedule 25 (Security Conditions) of the document entitled "Schedules 1 to 25 relating to BATCM/0294 - Logistics Support Contract"*]